

**10-105** The Town may enforce rules and regulations, as amended from time to time, which establish the following:

- a) Emission standards for solid fuel-burning devices;
- b) A Chimney Sweep Program;
- c) Annual inspection of all solid fuel-burning devices;
- d) Limitations on use, should air quality standards deteriorate.

**10-106** No outdoor, open, wood-burning fires shall be lighted or permitted on any property except in a contained barbecue unit while attended. No open fires or barbecue units shall be lighted or permitted on any property within the Village Center except when in conjunction with a Special Event on Village Center plazas or with specific approval from the Town. Such Special Event taking place on Village Center plazas shall require the approval of the Town.

## **ARTICLE 11 PROHIBITION OF RECREATIONAL VEHICLES, CAMPING, HORSES AND NON-DOMESTICATED ANIMALS**

### **SECTION 11-1**

Horses, all-terrain vehicles, snowmobiles, motor bikes, golf carts or other motorized vehicles shall not be allowed within or on property except as otherwise specifically permitted by rules and regulations of the Town of Mountain Village, the State of Colorado, and Federal transportation rules.

**11-101** Exception: Those motorized vehicles specifically permitted for the uses and activities deemed necessary by TSG and/or the Town for the safe and efficient operation of the ski area, golf course, hotel and accommodations companies luggage and maintenance, are allowed. Horses are allowed within or on property only upon issuance of an Equestrian Special Use Permit pursuant to Article 15 of this LUO. Horses are only allowed on Open Space on approved developed equestrian trails with the written permission of the Owner of the Open Space.

**11-102** No trailer, trailer house, mobile home, or recreational vehicle may be allowed on private property and used as a residence, either permanent or temporary. Camping for the purpose of residing or for recreational purposes on private or public property within the Town of Mountain Village is similarly prohibited unless granted through a Camping Permit.

### **SECTION 11-2**

Non-domesticated animals shall not be allowed to be kept within or on property except as otherwise specifically permitted by rules and regulations of the Town of Mountain Village and the State of Colorado. Domesticated animals are defined as (1) any animal normally domesticated and kept inside a dwelling including but not limited to parakeets, canaries, aquarium fish; (2) any dog or cat not otherwise regulated by Town of Mountain Village ordinances.

## **ARTICLE 12 FOREST HEALTH, FIRE MITIGATION AND TREE PROTECTION POLICY**

### **Section 12-1 Forest Health Policy**

The Mountain Village Forests are a valuable resource and commodity for the Mountain Village community. Many threats to the health of Mountain Village Forests are present, such as insects,

diseases, drought and wildfires. It is the policy of the Town of Mountain Village to be good stewards of the forest and promote Mountain Village Forests' health, vitality and diversity for generations to come.

### **Section 12-2 Fire Mitigation Policy**

Wildfires constitute a real threat to forests, Improvements and Structures within the Town of Mountain Village. It is the policy of the Town of Mountain Village to encourage all Lot Owners, including those with existing Structures to, review the health and wild fire potential that exists on their Lot and, subject to Section 12-4 on Tree Removal Procedures, reduce wildfire risk that exists on their Lot and develop defensible space in accordance with the Defensible Space Zones as set forth in Section 12-3. In the event that a Lot Owner with an existing Structure submits an Application to bring their Lot in compliance with the Defensible Space Zones, and such Application receives the approval of the TOMV Forester, the Application may be approved at a Staff level.

### **Section 12-3 Wild Fire Mitigation**

**12-301** The following types of Development and Redevelopment shall require the property to create and implement a wildfire mitigation plan in accordance with this Article:

**12-301-1** All new Building construction that will create a habitable space, including but not limited to commercial buildings that are occupied by employees guests on a regular basis.

**12-301-2** Additions that increase a building's habitable floor area or number of stories that have a valuation of \$50,000 or greater.

**12-301-3** Any Alteration of the landscaping of a property that has a valuation of \$50,000 or more, including but not limited to the addition of decks, patios, walkways and water features.

**12-302** Development and Redevelopment that must prepare a wildfire mitigation plan as required by Section 12-301 shall create and implement a wildfire mitigation plan, with the following plans and information submitted on one plan sheet as a part of the required DRB application:

- A. Tree survey prepared by a Colorado licensed surveyor that shows all dead and live trees that have a caliper of four (4) inches or greater Diameter at Breast Height ("DBH") within Zone 1 and 2. A tree survey is not required for Zone 3.
- B. Proposed Defensible Space Plan based on the Defensible Space Zone requirements in Section 12-304\_ that shows all trees to be removed that have a four (4) inch or greater DBH. Such plan should be developed with input from the Community Development Department Staff and/or any appointed Town of Mountain Village Forester, collectively referred to as "Staff".
- C. Proposed landscape plan prepared by a qualified professional pursuant to the Design Regulations.
- D. Existing and finished grades in one foot contours, with such grading based on a survey prepared by a Colorado Licensed Surveyor.
- E. Proposed site plan and associated improvements.
- F. Property lines and dimensions.

**12-303** Prior to submitting an Application subject to the Wildfire Mitigation Regulations, an Applicant

shall schedule a meeting with Staff to develop the Defensible Space plan. Staff may require an inspection of the Lot or property affected by the Application to assess forest health. A Defensible Space Plan may also be prepared in consultation with the Colorado State Forest Service or a qualified consultant licensed by the Town.

**12-303-1** Town Staff shall review and approve all Defensible Space Plans to ensure they meet the requirements of this Article.

**12-304** Defensible Space is defined as an area around a Structure where fuels and vegetation are treated, cleared or reduced to slow the spread of wildfire towards the Structure. The following requirements shall be followed in creating the required Defensible Space plan:

**12-304-1** Zone 1 is the area that consists of 15 feet around the Structure as measured from the outside edge of the Structure's eaves, or any Structures such as decks, planters or patios attached to the Structure. The following provisions shall apply in Zone 1:

**12-304-1-1** All slash and flammable vegetation as identified by Staff shall be removed from Zone 1.

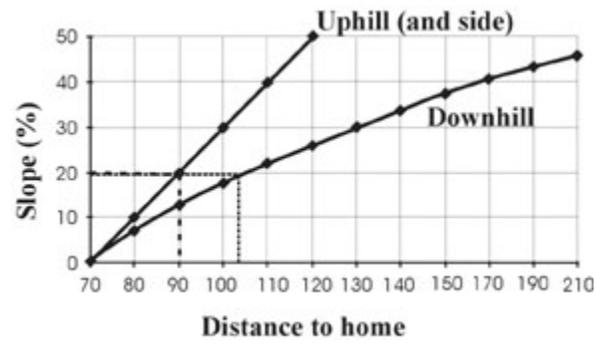
**12-304-1-2** All trees and shrubs located within Zone 1 shall be removed.

**12-304-1-3** The following exceptions apply to Zone 1:

- A. A tree or shrub may remain within Zone 1, provided the defensible space distance is measured commencing from the tree's drip edge rather than from the building plane (so the tree is considered part of or an extension of the structure), and provided the distance is not limited by a property line.
- B. Flammable vegetation shall be allowed in planters attached to the Structure so long as the placement of such vegetation is not planted directly beneath windows or next to foundation vents and are not adjacent to areas of continuous grass.
- C. Firewood may only be stored on a Lot that has a valid fireplace permit issued from the Town of Mountain Village that meets the following limitations:
  - a. Indoor storage can only occur within an enclosed room that is a part of the primary structure on the Lot.
  - b. Outdoor storage shall only occur in the rear yard;
  - c. Up to ten cubic feet of outdoor firewood storage may be located in Zone 1 or Zone 2.
  - d. Outdoor firewood storage larger than ten cubic feet shall have a minimum 30 foot distance from the structure.
  - e. Outdoor firewood storage shall be screened from view from surrounding lots.

**12-304-1-4** In the event Zone 1 encroaches upon the General Easement, the Town shall allow the creation of defensible space as required by this Article.

**12-304-2** Zone 2 is the area that extends from the outer edge of Zone 1, for the distance specified in the following table, based on slope, to the Lot line, whichever is less.



**12-304-2-1** The following provisions shall apply in Zone 2:

**12-304-2-1-1** Live with a Diameter at Breast Height (“DBH”) of four (4) inches or greater shall be spaced with a ten (10) foot crown-to-crown separation. Trees with a DBH of less than four inches and all slash shall be removed from the 10 foot crown-to-crown separation area.

**12-304-2-1-2** In Zone 2, all stressed, diseased, dead or dying trees and shrubs, as identified by Staff, shall be removed except for standing dead trees (aka tree snags) that Staff indicates need to be maintained since standing dead trees provide important wildlife habitat.

**12-304-2-1-3** Shrubs over 5 feet tall shall have an average spacing of 10 feet from shrub-to-shrub.

**12-304-2-2** The following exceptions apply to Zone 2:

- A. Groupings of trees or shrubs may be allowed, provided that all of the crowns in such group of trees or the edge of the shrubs are spaced ten feet from crown-to-crown or from edge of shrub.
- B. Aspens, narrowleaf cottonwoods, willows, and other trees and shrubs listed in CSU Cooperative Extension publication 6.305 Firewise Plant Materials may be spaced closer than the 10 foot crown-to-crown separation as approved by Staff.
- C. Closer spacing of any trees may be allowed by Staff upon a determination that the required 10 foot crown-to-crown spacing would put the remaining trees at undue risk of wind-throw or snow breakage.
- D. Tree removal for the creation of defensible space if such tree removal is determined to be impractical by the Town due to steep slopes, wetland or other environmental constraints, and other mitigation is provided.

**12-304-2-3** Trees remaining within Zone 2 shall have branches pruned to a height of 10 feet, but notwithstanding said height requirement, branches need not be pruned to more than 1/3 of the tree height with the following exceptions:

- A. Aspen trees.
- B. Isolated spruce and fir trees.

**12-304-2-4** In the event that Zone 2 extends upon the General Easement, the Town shall allow the removal of stressed, diseased, dead or dying trees and shrubs, but reserves the right to approve of any further thinning or pruning of vegetation in Zone 2 as directed by DRB.

**12-304-2-5** Chipped wood and small timber may be spread throughout either Zone 2 or Zone 3 as approved by Staff.

**12-304-3** Zone 3 is the area extending beyond Zone 2 to the edge of the property subject to Development or Redevelopment. In Zone 3, **all diseased, beetle infested, dead or dying trees, as identified by Staff**, shall be removed except for standing dead

trees (aka tree snags) that Staff indicates need to be maintained since standing dead trees provide important wildlife habitat.

**12-304-3-1** For lots greater than five acres in size, Zone 3 shall only be implemented for a distance of 500 feet from the outside edge of Zone 2.

**12-305** After the Defensible Space plan has been implemented on a Lot, the owner or developer of such lot shall submit new tree survey to Staff for review and approval. Such tree survey shall be prepared in accordance with Section 12-302(A) to ensure that the Defensible Space plan has been implemented as approved, and that no trees to be saved have been removed.

**12-305-1** Prior to the issuance of any certificate of occupancy Staff shall inspect the Lot or property affected by the fire mitigation plan to ensure that such plan has been implemented in accordance with the approved Defensible Space Plan.

**12-305-2** The Town will issue a certificate of compliance with the Town's wildfire mitigation requirements upon a positive site inspection.

**12-306** Disturbed areas within Zone 1, 2 or 3 shall only be replanted using a short grass, native seed mix approved by the Town using grass seed best management planting practices (application of topsoil or mulch, tilling, netting steeper slopes, etc.)

**12-307** Defensible Space shall be maintained by the Property owner as required by this Article.

#### **SECTION 12-4 Tree Preservation and Removal Policy**

**12-401** The forested areas are one of the character defining features of Mountain Village. It is therefore vitally important to preserve trees that are not removed due to forest health, fire mitigation development in accordance with the policies set forth herein. The following sections detail (1) Best Management Practices ("BMPs") that shall apply to all Development within the Town; and (2) the tree removal policies and procedures.

**12-402** Subject to review and approval by Staff or the DRB as applicable, trees and shrubs shall only be removed from a site for:

1. Development and uses as permitted by the LUO and the Design Guidelines
2. Fire Mitigation
3. Forest Management or Forest Health
4. Driveways
5. View Corridors from windows provided the removal of such trees is minimized to the extent practical.
6. Utilities provided it is not practical for the utilities to follow the driveway or other corridors where trees are being removed as allowed by this section.
7. Renewable energy systems provided it is not possible to locate such on the buildings allowed on the property, or within areas where trees are being removed as allowed by this section.
8. Ski area access as may be permitted by the DRB subject to meeting the applicable requirements of the LUO and the Design Guidelines.
9. Potential damage to a structure or other constructed improvement on a property, such

as but not limited to a utility line or utility meter, a tramway or snowmaking equipment. Trees that pose an immediate, emergency hazard may be immediately removed provided photo-documentation is provided to the Town within 2 business days of removal documenting the emergency hazard nature of the tree.

10. Protection of the public health, safety or welfare.

**12-402** No tree four (4) inches or greater in DBH located on any property within the Town may be removed, or materially altered without the prior written approval of the DRB or the Building Official and after an inspection by Staff.

**12-402-1** All dead or live trees with a diameter of four (4) inches or greater shall be preserved on the site unless Staff or the DRB has approved the removal of such trees as a part of the required Application process.

**12-402-2** It is highly encouraged that existing trees on the site that must be removed for one of the activities listed in Section 12-401 be relocated pursuant to the DRB approved landscape plan.

**12-403** An application must be submitted to the Town prior to the removal or material alteration of any dead or living tree greater than four (4) inches DBH. Such Application shall include the information and plans as set forth in Section 12-302

**12-404** Trees, living or dead, to be removed from the General Easement or Open Space must be marked and field inspected prior to removal.

**12-404-1** Trees removed by TSG in the ordinary operation of the ski area or golf course, including without limitation trees removed for utility and snow making installation, are exempt from the requirements of this Article provided notice and information is provided to the Town and the Town determines that the tree removal is part of the ordinary operation of the ski area or golf course. Other tree removal that is deemed by the Town to not be a part of the ordinary operation of the ski or golf course operations requires the submission of an application for review and approval by the Town pursuant to the requirements of this Article.

**12-404-2** The TOMV has the right to remove any trees on Town owned Open Space for forest health or fire mitigation provided the trees to be removed have been marked and Staff inspects and approves the proposed tree removal.

**12-405** Any tree deemed by Staff to be a hazard to any roadway, adjacent property, gas line, well head, telephone and/or electrical box shall be removed by the owner of the property or the affected utility agency within a reasonable amount of time (as determined by the Town base on the nature of the hazard) after notification. Documentation of the hazard and the Town's approval of the tree removal shall be provided.

**12-405-1** In cases of an emergency, hazard trees may be removed without prior Town approval if photo documentation of the hazard is provided to the Town that clearly shows the emergency nature of the tree removal. Such emergency tree removal shall be reported and the required documentation provided within 48 hours of the tree removal.

**12-406 Development BMPs All** Development within Mountain Village shall use the following BMPs

to protect and preserve trees that will be retained on a project site:

**12-406-1** All dead or live trees with a diameter of four (4) inches or greater that are to be saved on a Lot that may be affected by construction shall be protected by placing and maintaining fencing at the tree's drip line. The required construction mitigation plan shall show the location of all required fencing to protect tree in close proximity to grading or other construction activity.

**12-406-2** Developers shall use extreme care during grading and excavation to avoid damage or removal of existing trees and shrubs to be retained on a project site, and to preserve their root structures

**12-406-2-1** No vehicles shall be parked within the dripline of a tree or shrub to be retained

**12-406-2-2** No accessway shall be constructed within the driplines of tree to be retained.

**12-406-2-3** No grading shall occur on a site until approved fencing is placed at the dripline of trees and shrubs to be retained on the project site.

**12-406-2-4** All trees to be retained shall be clearly marked on the project site to ensure such trees are not removed.

**12-407** Timber and slash encountered during the removal process must be stored at a specific location pursuant to the DRB approved Construction Staging Plan. All timber and slash not allowed by Town Staff to remain on the site must be removed from the Site within thirty (30) days. No burning of wood, or any other material, is permitted within the Town.

## **SECTION 12-500 Tree Removal Violation and Penalties**

**12-501** The removal or material alteration of any tree four (4) inches at DBH without the prior approval of the DRB or the Building Official or the provisions of this Article as set forth herein shall constitute a violation of this LUO and may result in the imposition of a penalty and fine pursuant to this Section 12-500.

**12-502** Each tree removed or materially altered in violation of this Article shall constitute a separate violation of the LUO and shall be subject to a fine of no less than \$5,000 per tree. In addition to a fine of no less than \$5,000 per tree, the penalty assessed for any violation of this Article shall also include all costs incurred by the Town of investigating the violation (including a reasonable allocation of Town employee compensation), reasonable attorneys' fees, and any other costs incurred by the Town in connection with such violation.

**12-503** Any party that violates any provision of this Article as well as the Owner or lessee of the property on which the violation has occurred shall be subject to the penalties imposed pursuant to this Section 12-500.

**12-504** Any party violating the provisions of this Article, and/or the Owner or lessee of the property on which the violation has occurred, shall also be subject to an order requiring that the loss or

damage resulting from a violation of this Article be mitigated. Such mitigation shall be in conformance with a mitigation plan established by the DRB, and the order requiring such mitigation may be issued by the Town Manager or the Building Official. All costs incurred for implementing the mitigation plan established by the DRB shall be the sole responsibility of the party violating this Article and/or the Owner or lessee of the property on which the violation has occurred and shall be in addition to any other penalties assessed for the violation. In connection with any mitigation plan imposed by the DRB, the Town Manager or the Building Official may also require the violator and/or the Owner or lessee of the property on which the violation has occurred to reimburse the Town for the costs it has incurred in investigating the violation and establishing the mitigation plan, including reasonable attorneys' fees.

**12-505** If any party refuses to comply within thirty (30) days of receipt of written notice of the violation of the mitigation plan established by the DRB, the Town may elect to perform the work required by the mitigation plan. If the Town does perform this work, the costs of doing so shall be assessed as an additional cost against the party violating the provisions of this Article and/or the Owner or lessee of the property on which the violation has occurred. If such costs are not timely reimbursed to the Town, the Town may file suit in the County or District Court of San Miguel County, Colorado, to recover such costs. In any such action, the Town shall be entitled to recover its reasonable attorneys' fees, expert witness fees, and any other costs.

**12-506** Any costs, including reasonable attorneys' fees, incurred by the Town in connection with investigating, prosecuting, or mitigating any violation of this Article which are not timely reimbursed shall bear interest at the rate of eighteen percent (18%) per annum from the date reimbursement is requested until paid.

#### **SECTION 12-6 Enforcement**

**12-601** In addition to any other rights under this Article, the Town shall have the right to assert a lien against the property on which the violation has occurred for the amount of any mitigation costs incurred by the Town, and for the Town's costs in investigating and prosecuting any violations under this Article, including its reasonable attorneys' fees. The Town shall have the right to foreclose any lien imposed pursuant to this Article in the manner provided under Colorado law. In any action commenced by the Town to foreclose a lien imposed pursuant to this Article, the Town shall be entitled to recover its reasonable attorneys' fees, expert witness fees, and any other costs.

### ***ARTICLE 13 NONCONFORMING USES***

#### **SECTION 13-1 PURPOSE**

**13-101** Adoption of land use controls and changes in zone district limitations have resulted in Uses, Buildings, and Lots that were lawful at the time they were created but that do not conform to the provisions of this Ordinance. While permitting Nonconforming Uses, structures, and improvements to continue, this Article 13 is intended to limit enlargement, Alteration, restoration, or replacement that would increase the discrepancy between existing conditions and the Development standards prescribed by this Ordinance.