

ORDINANCE NO. 2012-01

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO TO CLARIFY AND REFINE THE TOWN'S USE TAX AS ESTABLISHED UNDER ORDINANCE NUMBERS 1996-15 AND 2007-13

WHEREAS, Ordinance Number 1996-15 fixed a ballot question and called for a vote of the registered electors of the Town of Mountain Village, Colorado ("Town") for a use tax in the amount of 1.5% on 40% of the valuation of a Construction Project as defined therein; and,

WHEREAS, a majority of the registered electors of the Town approved the ballot question on June 25, 1996 and established the Town Use Tax as set forth in Ordinance Number 1996-15; and,

WHEREAS, On November 6, 2007, the majority of registered electors of the Town approved a ballot question which increased the Town Use Tax from 1.5% to 4.5%; and,

WHEREAS, Ordinance Number 2007-13 adopted the approved November 6, 2007 ballot question, including but not limited to the increased 4.5% Town Use Tax; and,

WHEREAS, Ordinance Number 2007-13 stated the following: "...an additional Use Tax of three percent (3.0%) upon the privilege of using or consuming in the Town any construction or building materials purchased at retail, resulting in a total use tax of 4.5%...with such tax to be subject to such exemptions, waivers, credits and collection and enforcement procedures as the Town Council may prescribe..."; and,

WHEREAS, Ordinance Number 2007-13 established the total 4.5% Town Use Tax to apply to the privilege of using or consuming construction or building materials and therefore superseded and prevailed over the definition of a "Construction Project" as defined in Ordinance Number 1996-15; and,

WHEREAS, the Town desires to define "construction and building materials"; and,

WHEREAS, Ordinance Number 1996-15 left the determination of "Valuation" up to the Director of Community Development without any base parameters; and,

WHEREAS, the Town desires to clarify the definition of "Valuation" to ensure consistent and fair application of rules and procedures; and,

WHEREAS, the Town desires to adopt this Ordinance for the purpose of clarifying administration of the Town Use Tax as established under Ordinance Numbers 1996-15 and 2007-13 and to consolidate the Use Tax regulations into one ordinance without repealing Ordinance Numbers 1996-15 or 2007-13; and,

WHEREAS, the Town Use Tax was adopted and imposed by Ordinance Numbers 1996-15 and 2007-13 in accordance with the requirements of Colorado law, including but not limited to CRS 29-2-102; and,

WHEREAS, this Ordinance does not establish a new tax.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO AS FOLLOWS:

Section 1. Definitions

- A.** “**Construction or Building Materials**” means tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a completed structure or project including public and private improvements. This term includes, but is not limited to such things as: asphalt, bricks, builders' hardware, caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal site lighting, steel, stone stucco, tile, trees, shrubs and other landscaping materials, wallboard, wall coping, wallpaper, weather stripping, wire netting and screen, water mains and meters and wood preserver and other similar materials used for construction. The above materials, when used for forms, or other items which do not remain as an integral or inseparable part of a completed structure or project, are not construction materials.
- B.** “**Contractor**” means any Person that contracts with another Person or Property Owner for the construction of a building, structure or other improvement.
- C.** “**Person**” means any individual, firm, limited liability company, partnership, joint venture, corporation, estate, or trust, or any group or combination acting as a unit and the plural as well as the singular number [Same as Ordinance 1996-15].
- D.** “**Property Owner**” shall mean the Person owning a lot on which a Project is located.
- E.** “**Project**” shall mean any development that is required to obtain a building permit (electrical, mechanical, plumbing, etc.) in accordance with the then current building codes of the Town, or any project that must obtain an approval pursuant to the Town’s adopted land use code(s) as amended from time to time.
- F.** “**Town Use Tax**” shall be as set forth in Section 2.A.i.
- G.** “**Valuation**” means the total dollar value of work for which a permit is issued, including but not limited to all material costs, all labor costs [including any housing costs passed on to the developer] and all overhead and profit costs; but does not include Town fees or taxes. Valuation shall include the combined value of all required permits for a Project. This definition is intended to conform with the definition of Valuation in Ordinance Number 1996-15, with such determined by the Director of Community Development upon the review of the design, plans and specifications of a Project as further clarified in Section 3 below.

Section 2: Town Use Tax General Provisions

A. Town Use Tax Restated

The Town Use Tax levied by Ordinance Numbers 1996-15 and 2007-13 of 4.5% remains in full force and effect without modification.

B. Town Use Tax Calculation Restated

In accordance with Ordinance Numbers 1996-15 and 2007-13, the Town Use Tax shall be calculated as 4.5% of 40% of a Project's Construction or Building Materials Valuation.

C. Imposition Restated

1. The Town Use Tax is imposed upon the Person, Property Owner or any Contractor purchasing at retail any Construction or Building Materials for a Project.
2. Materials purchased outside the Town and delivered into the Town are subject to the Town Use Tax.
3. Generally, materials purchased outside the Town and delivered into the Town are not subject to the applicable jurisdictions' sales taxes by vendors except for State sales tax. The Town will issue a Use Tax Certificate to a Contractor, Person or Property Owner to present to vendors outside the Town requesting an exemption from that outside jurisdictions' sales tax. Nothing contained herein, shall be construed to require the Town to waive its use tax upon the refusal of an outside jurisdiction to exempt the purchase of materials within the outside jurisdiction which are to be used within the Town's jurisdiction.
4. The liability for payment of the Town Use Tax is joint and several between the Property Owner and the Contractor.

D. Application of Funds

The proceeds of the Town Use Tax may be used by the Town for any lawful purpose.

Section 3: Administration and Enforcement

A. Determination of Initial Valuation

1. Prior to commencing any work on a Project, a Project, through its representative, shall submit one of the following documents as a condition to the issuance of a building permit or a Development Permit. In each such instance, the Director of Community Development shall determine the appropriate documentation to be submitted.
 - a. Preferred Document: An executed contract for the Project with the Property Owner, Person or Contractor showing Project Valuation and a breakdown of costs between labor, materials overhead and profit, preferably on a standard American Institute of Architects (“AIA”) contract form, breaking down all labor and materials into standard schedules and costs, with associated summaries that also include overhead and profit.
 - b. Next Best: Copy of construction loan documents showing the overall budget for the project broken down by line item costs.
 - c. Least Preferred Document: A spreadsheet breaking down Project Valuation. This option shall only be available upon a showing that no contract or construction loan documents exist and the Owner shall submit a sworn affidavit, under penalty of perjury that the numbers reflected on the spreadsheet are true and accurate.
2. The Director of Community Development or its designated staff person shall use the documentation submitted pursuant to Section 3(A)(1) to review the submitted designs, plans and specifications to determine if a Project’s submitted Valuation is supported or should be adjusted.
3. No permit for work to proceed shall be issued until the required Town Use Tax is paid.
4. Any objection to the Community Development Department’s decision on the initial valuation may be appealed to the Town Manager for a final determination.

B. Reconciliation to Determine Final Valuation

1. Prior to the Town issuing a certificate of occupancy or a certificate of completion, completion Project, through its representative, shall submit one of the following documents reflecting final Project costs:
 - a. Final construction contract showing any change orders from the original contract, preferably on an AIA standard contract form.
 - b. Spreadsheet and receipts documenting final Project Valuation in the same manner as set forth in Section 3(A)(1)(c).
 - c. Final construction loan documents showing the total loan amount and Valuation.
2. The Community Development Department may audit all financial records, invoices and receipts of a Project in order to determine the final Valuation.

3. If the Valuation is increased over the initial Valuation, a Project, through its representative, shall remit the required Use Tax and other Town fees due on the increased Valuation amount.
4. If the Valuation is decreased from the initial Valuation, a Person may request a refund in writing if (a) the request is submitted in the same fiscal year as when the Town Use Tax was paid; and (b) the request is made within 30 days of the date of the issuance of a certificate of occupancy or a certificate of completion. Any objection to the Community Development Department's decision on the final Valuation may be appealed to the Town Manager for a final determination.

C. Exemptions

The following Project's shall be exempt from the payment of the Town Use Tax:

1. Projects of the Town or the Town Housing Authority.
2. Projects with a valuation of \$20,000 or less annually, with one exemption per property per calendar year. If a Project does not meet this exemption, the Project's full Valuation will be used to determine the Town Use Tax, and no deduction is made for the first \$20,000.
3. Projects with renewable energy systems, with only the Valuation of such renewable systems exempt from the Valuation of the overall Project costs.
4. The storage, use, or consumption of any Construction or Building Materials the sale of which is subject to a retail sales tax imposed by the Town.
5. The storage, use, or consumption of any Construction or Building Materials where such does not meet the definition of a Project.
6. The storage, use, or consumption of Construction or Building Materials by the United States government, or the State of Colorado, or its institutions, or its political subdivision in their governmental capacities only.
7. Fire mitigation or forestry management projects. If any new plantings are a part of the Project, Valuation over \$20,000 is subject to the Town Use Tax.
8. Any transaction which the Town is prohibited from taxing under the Constitution and laws of the United States of America, or under the Constitution of the State of Colorado.

D. Administration of Town Use Tax

The Administration of the Town Use Tax is hereby vested in the Community Development Director or another Town employee or agent appointed by the Town Manager, who may prescribe forms and promulgate rules and regulations for proper administration and enforcement of the Town Use Tax, and who may delegate to any person the power and authority necessary for the proper administration and enforcement of the Town Use Tax.

E. Required Record Keeping

1. Every Person, Contractor or Property Owner liable to the Town for any Town Use Tax shall maintain all books, records, reports, invoices and receipts which were

used to determine the Town Sales Tax liability for a period of 90 days following the issuance of a final certificate of occupancy or a certificate of completion by the Town.

2. All such books, records, reports, invoices and receipts shall be open for examination at any time by the Director of Community Development.

F. Violations and Penalty

1. It is a violation of the Town Use Tax regulations as established under this ordinance, Ordinance 1996-15 and Ordinance Number 2007-13 for any person subject to such use tax to:
 - a. Submit any false or fraudulent use tax information to the Town;
 - b. Make any false statement on any document used to calculate taxes due;
 - c. Fail or refuse to make payment of any taxes dues;
 - d. Evade the payment of any taxes due; or
 - e. Aid or abet another in any attempt to evade the payment of any taxes due.
2. Any person who violates the Town Use Tax regulations shall be punished as provided for in Section 1-08-010 of the Town Municipal Code.

Section 4. Ordinance Effect

- A. This Ordinance shall not have any effect on existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances repealed or amended as herein provided and the same shall be construed and concluded under such prior ordinances.
- B. This Ordinance does not repeal Ordinance Numbers 1996-15 or 2007-13 and does not increase or otherwise modify the use tax established pursuant to these ordinances except to clarify the terms and conditions of these ordinances as expressly stated herein.
- C. To the extent there is any conflict between this Ordinance and Ordinance Numbers 1996-15 and 2007-13, the following sections of this Ordinance shall supersede and prevail over the provisions of Ordinance Numbers 1996-15 and 2007-13:
 1. Section 1: Definitions
 2. Section 2: Town Use Tax General Provisions
 3. Section 3: Collection, Administration and Enforcement
- D. All ordinances, orders, bylaws and resolutions of the Town, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed to the extent only of such inconsistency or conflict.

Section 5. Severability

The provisions of this ordinance are severable and the invalidity of any section, phrase, clause or portion of the ordinance as determined by a court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of the ordinance.

Section 6. Effective Date

This ordinance shall become effective upon March 17, 2012.

Section 7. Public Hearing

A public hearing on the ordinance was held on the 16th day of February, 2012 in the Town Council Chambers, Town Hall, 455 Mountain Village Blvd, Mountain Village, Colorado 81435.

INTRODUCED, READ AND REFERRED to public hearing before the Town Council of the Town of Mountain Village, Colorado on the 19th day of January, 2012.

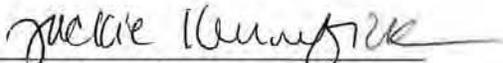
TOWN OF MOUNTAIN VILLAGE

**TOWN OF MOUNTAIN VILLAGE,
COLORADO, A HOME-RULE
MUNICIPALITY**

By: _____

Robert H. Delves, Mayor

ATTEST:

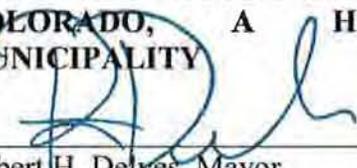


Jackie Kennefick, Town Clerk

HEARD AND FINALLY ADOPTED by the Town Council of the Town of Mountain Village, Colorado this 16th day of February, 2012.

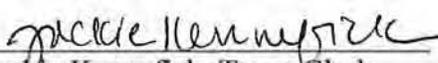
TOWN OF MOUNTAIN VILLAGE

**TOWN OF MOUNTAIN VILLAGE,
COLORADO, A HOME-RULE
MUNICIPALITY**

By: 

Robert H. Delves, Mayor

ATTEST:


Jackie Kennefick, Town Clerk

Approved As To Form:


Jim Mahoney, Assistant Town Attorney

I, Jackie Kennefick, the duly qualified and acting Town Clerk of the Town of Mountain Village, Colorado ("Town") do hereby certify that:

1. The attached copy of Ordinance No.2012-01 ("Ordinance") is a true, correct and complete copy thereof.
2. The Ordinance was introduced, read by title, approved on first reading with minor amendments and referred to public hearing by the Town Council the Town ("Council") at a regular meeting held at Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado, on January 19, 2012, by the affirmative vote of a quorum of the Town Council as follows:

| Council Member Name | "Yes" | "No" | Absent | Abstain |
|------------------------------|--------------|-------------|---------------|----------------|
| Bob Delves, Mayor | x | | | |
| Richard Child, Mayor Pro-Tem | x | | | |
| Jonette Bronson | x | | | |
| John Howe | x | | | |
| Dan Jansen | x | | | |
| Cath Jett | x | | | |
| Dave Schillaci | x | | | |

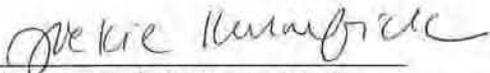
3. After the Council's approval of the first reading of the Ordinance, notice of the public hearing, containing the date, time and location of the public hearing and a description of the subject matter of the proposed Ordinance was posted and published in the Telluride Daily Planet, a newspaper of general circulation in the Town, on January 24th, 2012 in accordance with Section 5.2b of the Town of Mountain Village Home Rule.

4. A public hearing on the Ordinance was held by the Town Council at a regular meeting of the Town Council held at Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado, on February 16, 2012. At the public hearing, the Ordinance was considered, read by title, and approved without amendment by the Town Council, by the affirmative vote of a quorum of the Town Council as follows:

| Council Member Name | "Yes" | "No" | Absent | Abstain |
|------------------------------|--------------|-------------|---------------|----------------|
| Bob Delves, Mayor | x | | | |
| Richard Child, Mayor Pro-Tem | x | | | |
| Jonette Bronson | x | | | |
| John Howe | x | | | |
| Dan Jansen | x | | | |
| Cath Jett | | | x | |
| Dave Schillaci | x | | | |

5. The Ordinance has been signed by the Mayor, sealed with the Town seal, attested by me as Town Clerk, and duly numbered and recorded in the official records of the Town.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Town this 17th day of February, 2012.



Jackie Kennefick, Town Clerk

(SEAL)

