

ORDINANCE NO. 2019-08

AN ORDINANCE AMENDING COMMUNITY DEVELOPMENT CODE SECTIONS 17.1.1 COMMUNITY DEVELOPMENT DEPARTMENT 17.3.3 USE SCHEDULE, 17.4.2 OVERVIEW OF DEVELOPMENT PROCESSES and 15.5.1(E) VENDING REGULATIONS TO ACCOMPLISH THE FOREGOING.

RECITALS

- A. The Town of Mountain Village (the “Town”) is a legally created, established, organized and existing Colorado municipal corporation under the provisions of Article XX of the Constitution of the State of Colorado (the “Constitution”) and the Home Rule Charter of the Town (the “Charter”).
- B. Pursuant to the Constitution, the Charter, the Colorado Revised Statutes and the common law, the Town has the authority to regulate the use and development of land and to adopt ordinances and regulations in furtherance thereof.
- C. The Town Council may amend the CDC from time to time due to changing circumstances or for general housekeeping purposes. Such an update of the CDC has become necessary for technical corrections, clarifications and consistency.
- D. Removing the vending regulations from the CDC is consistent with the Town of Mountain Village Comprehensive Plan by creating greater vending flexibility in the Village Center.

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

Section 1. Amendment of Community Development Code

- A. The Town of Mountain Village Community Development Code, Title 17 is hereby amended and replaced as set forth in Exhibit A which is attached hereto and incorporated herein.
- B. The Planning Division is directed to codify the amendments in Exhibit A into the CDC.
- C. The Planning Division may correct typographical and formatting errors in the amendments or the adopted CDC.

Section 2. Ordinance Effect

- A. This Ordinance shall have no effect on pending litigation, if any, and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances repealed or amended as herein provided and the same shall be construed and concluded under such prior ordinances.
- B. All ordinances, of the Town, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed, replaced and superseded to the extent only of such inconsistency or conflict.

Section 3. Severability

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

Section 4. Effective Date

This Ordinance shall become effective on November 16, 2019

Section 5. Public Hearing

A public hearing on this Ordinance was held on the 17th day of October 2019 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 September, 2019

TOWN OF MOUNTAIN VILLAGE:

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

By: 
Laila Benitez, Mayor

ATTEST:


Jackie Kennefick, Town Clerk

HEARD AND FINALLY ADOPTED by the Town Council of the Town of Mountain Village, Colorado this 17th day of October, 2019.

TOWN OF MOUNTAIN VILLAGE:

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

By: 
Laila Benitez, 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. 2019-08 ("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 September 19, 2019, by the affirmative vote of a quorum of the Town Council as follows:

Council Member Name	"Yes"	"No"	Absent	Abstain
Laila Benitez, Mayor	X			
Dan Caton, Mayor Pro-Tem	X			
Peter Duprey	X			
Marti Prohaska	X			
Patrick Berry	X			
Natalie Binder	X			
Jack Gilbride	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 September 25, 2019 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 October 17, 2019. 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:

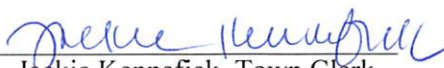
Council Member Name	"Yes"	"No"	Absent	Abstain
Laila Benitez, Mayor	X			
Dan Caton, Mayor Pro-Tem	X			
Peter Duprey	X			
Marti Prohaska	X			
Patrick Berry	X			
Natalie Binder			X	
Jack Gilbride	X			

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 October 2019.



(SEAL)


 Jackie Kennefick, Town Clerk

(SEAL)

EXHIBIT A

17.1.1 Community Development Department

- A. *The Community Development Department is charged with the duty of enforcing the CDC.*
- B. *It shall be the duty of the Director of Community Development or his/her designee to ensure all proposed development and land use comply with the CDC. The Director of Community Development shall also submit recommendations for any needed changes in the CDC.*
- C. *Planning Division staff shall have the following powers and duties under the CDC related to the review of development applications:*
 - 1. Minor revisions;
 - 2. Renewals;
 - 3. Certain density transfers;
 - 4. Certain Design Review Process development applications;
 - 5. Certain special event development applications;
 - 6. ~~Vending cart development applications;~~
 - 7. Plaza uses development applications;
 - 8. Certain subdivision development applications;
 - 9. Minor PUD amendments;
 - 10. Planning Division review and approval of building permits;
 - 11. Oversight of conditions for development projects in the town to ensure on-going compliance;
 - 12. Oversight of development agreements to ensure on-going compliance; and
 - 13. Zoning enforcement.

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17.1.2 Use Schedule

- A. *The Town of Mountain Village Land Use Schedule ("Use Schedule"), Table 3-1, establishes specific permitted, accessory, conditional and not permitted land uses for each zone district.*
 - 1. The Use Schedule lists the following notations:
 - P = permitted use;
 - A = accessory use;
 - C = conditional use;
 - PM = permitted with Planning and Building division staff approval of construction mitigation plan (Staff may classify to conditional use based on impacts and extent of construction staging);
 - PT = permitted use in Town Hall Plaza only;

Use/Zone	C L A S S 1 A O S	C L A S S 2 A O S	C L A S S 3 A O S	C L A S S 4 A O S	C L A S S 5 A O S	P O S	SF, SFCI	MF	MPW	CV	VC
Commercial (Sale of Goods)											

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17.4.2 Overview of Development Review Processes

B. Table 4-1 summarizes the types of development applications that fall under each class of application and associated review authority:

Development Application Type	Application Class	Review Authority

Vending Permits	Class 1	Planning Division Staff

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17.5.15 Commercial, Ground Level and Plaza Area Design Regulations.

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C. Odor Control and Outdoor Barbeques and Grills

1. Due to the mixed-use nature of the Village Center, odor created from food service establishments that may conflict with residential uses is prohibited. Trash areas, grease trap clean-outs and restaurant vents shall be located away from pedestrian flow and residential entrances and windows to the extent possible.
2. Outdoor barbecues or grills are prohibited for use in commercial operations within the Village Center and plaza areas with the exception of (1) Town-approved special events provided, however, the outdoor barbeque(s) or grill(s) are approved as part of the special event application **or a barbeque integrated into a vending apparatus approved by the Town's plaza vending committee.; or (2) a barbeque integrated into a vending cart as allowed by these regulations.**

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E. ~~Vending Regulations~~

~~The seasonal deadlines for applications to be considered shall be March 1st for the upcoming summer season and September 1st for the winter season. All applications filed after such deadlines shall not be accepted.~~

- a. ~~Diversity (in town and between vendors) of offered food, goods, wares, merchandise, services and hours of operation;~~
- b. ~~The number of summer and/or winter seasons the applicant has vended on public property in the town;~~
- c. ~~Appearance, quality, safety and attractiveness of the vending operation and display apparatus;~~
- d. ~~Compliance and performance with vending cart regulations;~~
- e. ~~It shall be the burden of the applicant to demonstrate that submittal material and the proposed vending business substantially comply with the Vending Regulations; and~~
- f. ~~The Vending Committee will have sole and absolute discretion in granting a vending permit and will base its decision on the town's needs for vending at that time.~~

2. ~~General Standards~~

- a. **~~Location and Number.~~** ~~The number of vending carts and associated vending permits in plaza areas shall be limited as follows:~~
 - i. ~~*Up to four (4) on Heritage Plaza; and*~~
 - ii. ~~*One (1) on Sunset Plaza.*~~
- b. **~~Additional Vending Carts.~~** ~~The Town Council may permit additional vending carts on plaza areas, in its sole discretion.~~
- c. **~~Vending Cart Season.~~** ~~Vending carts are allowed throughout the year with no limitation on season, but with required operations vending carts as follows:~~
 - i. ~~***Summer Season:*** *Vending carts shall operate a minimum of four (4) days per week, four (4) hours per day from Memorial Day through Labor Day unless otherwise approved by the Vending Committee.*~~
 - ii. ~~***Winter Season:*** *Vending carts shall operate a minimum of five (5) days per week, four (4) hours per day from the ski area opening until ski area closing unless otherwise approved by the Vending Committee.*~~
- d. **~~Required Hours of Operation.~~** ~~Hours of operation are as follows:~~
 - i. ~~*Vending hours shall be consistent throughout each season and shall meet the minimum requirements as set forth in section c above.*~~
 - ii. ~~*Applicants shall submit a plan for the hours and days of operations to be approved by the Vending Committee as part of the approval process. Any change in the scheduled days and/or hours of operation for approved vending operations, other than minor, temporary changes due to weather and sick days, shall be approved by the*~~

Vending Committee.

- e. **Vending Cart Required.** Vending is only allowed from an approved vending cart. Vending cart must meet all applicable design standards per the Plaza Design Regulations.
 - f. **Vending Permit Required.** No person shall stage, operate or have present a vending cart within the town without a valid vending permit issued in accordance with this section.
 - g. **Limits on the Hours of Operation.** The Town may set hours of operation, limitations on and similar measures for vending activities to ensure no adverse impacts to residents and guests.
 - h. **Amplified Music Prohibition.** Amplified music for vending is prohibited.
 - i. **Special Event Vending.** A vending permit is not required for vending that is approved as a special event pursuant to the provisions regulating Special Events.
 - j. **License Agreement Required.** The vending permittee shall enter into a license agreement with the Town for the vending operation in such form, manner and content as determined by the Town.
 - i. *A license agreement having a term of more than one (1) year shall be reviewed annually by the Vending Committee.*
 - ii. *License agreements may be issued for a term of up to three (3) years at the discretion of the Vending Committee.*
 - iii. *Notwithstanding any other provisions therein, a vending cart license agreement shall provide for indemnification of the Town from any liability for damages resulting from the operation of the vending business and for general liability insurance in such amounts as determined by the Town and naming the Town as an additional insured.*
 - k. **Required Documentation.** Once the Vending application has been approved by the Town, but prior to the issuance of a vending permit, the applicant shall submit the following prior to the commencement of operations:
 - i. *Proof of insurance satisfactory to the Town;*
 - ii. *Town business license;*
 - iii. *Colorado sales tax license;*
 - iv. *For prepared food, San Miguel Environmental Department permit;*
 - v. *Cash security deposit with the Town in an amount determined by the Town for the purpose of guaranteeing the repair of any damage to plaza areas caused by the vending operation; and*
 - vi. *Executed license agreement as required by this regulation.*
3. **Non-transferable.** The vending permit shall not be transferable or assignable.
4. **Non-interference.** No person engaged in vending shall make any unnecessary sounds or noise, nor obstruct any pathway or other public property, nor disturb or impede other persons or otherwise create any public nuisance. The use of radios, stereos or any other audio systems in connection with any vending is prohibited.
5. **Vehicles.** Private vehicles for vending are prohibited in the plaza areas for any

purpose unless the Town has issued a plaza area access permit pursuant to the Municipal Code.

6. **Area Maintenance.** Vending permittee shall maintain both the permitted area, the immediate area surrounding the permitted area, the plaza area surface (washing-down pavers, clean pavers, etc.) and the vending cart in a neat, clean and hazard free condition and to the town's satisfaction.
7. **Cleaning.** Vending permittee shall clean the areas of the designated vending cart location that are covered by the permit by removing debris, trash, sweeping and washing down the location as needed to the satisfaction of the Town. The cleaning shall be conducted as frequently as each day, if necessary, to prevent debris or trash from being blown or scattered around the plaza area.
8. **Repair of Damage.** Vending permittee shall, to the satisfaction of the Town, repair and/or replace any damage to any portion of the permitted vending cart area only to the extent any damages shall be caused by or in connection with permittee's use thereof, including without limitation the placement of personal property on the plaza area.
 - a. All costs for such repair or replacement shall be the responsibility of the permittee.
 - b. The Town, in its sole discretion, shall determine when the vending area is in need of repair or replacement due to the activities of permittee and/or its customers in the vending area.
 - c. The Town may suspend a vending permit for failure to pay for damage or the payment of a required damage deposit.
9. **Snow Removal.** The vending permittee shall move the vending cart per request of the Town for snow removal and/or plaza maintenance when necessary.
10. **Recycling and Trash.** Trash removal fees for public trash generated by the vending permittee are included in the monthly permit fee as established in the fee resolution for Vending Carts. All back-of-house trash must be removed daily by the permittee.
11. **Public Seating Areas.** The vending permittee must make every reasonable effort to ensure their customers utilize the public seating area and do not take food items into the seating areas of neighboring restaurants.
12. **Monthly Vending Fees.** The vending permittee shall remit the monthly vending fee as set forth in the fee resolution, with such fee to be due and payable on the first of each month. Vending fees shall be prorated for partial months in each season.
13. **Plaza Location.** The Town has the right to relocate the site of the carts of vending permit holders within all of the designated plaza areas. The vending permit administrator shall notify the vending permittee three (3) days prior to any vending cart relocation.
14. **No Encroachment.** Vending permittee shall have the obligation to prevent encroachment of the vending cart or any related vending equipment or permittee property onto areas of the plaza outside the designated vending cart location except for any approved storage location shown in the required license agreement.
15. **Abandon/Surrender.** A permittee without written authorization from the Town acknowledging extenuating circumstances, who fails to conduct vending operations during the required hours of operation for a period of two (2) consecutive weeks during the designated season, will be considered to have surrendered and abandoned his or her vending permit. The Town shall have the right to reassign

that space to another applicant. The Town has the right to refuse to authorize an absence. The Town shall send written notice of the surrender and abandonment of the permit to the permittee.

16. **Utility Fees.** The Town may require a vending cart operator to pay utility fees if the vending cart operation uses electric utilities. The use of generators is prohibited.

17. **Revocation and Suspension.**

a. Any vending permit issued hereunder may be revoked or suspended by the Town Manager for a violation or breach of a term or condition of the permit, including, but not limited to:

- i. *Operation of a vending cart in a location other than that approved or outside the permitted area;*
- ii. *Failure to pay monthly vending cart fee;*
- iii. *Failure to clean areas of the designated vending cart location to town satisfaction;*
- iv. *Failure to remain in operation during the minimum number of business hours or days;*
- v. *Failure to maintain the design of a vending cart or vending cart signs in the condition as represented in the development application;*
- vi. *Failure to pay for the repair and/or replacement of any damage to any portion of the permitted vending cart area caused by or in connection with permittee's use thereof;*
- vii. *Changing the use of the vending cart that does not comply with the approved application;*
- viii. *Failure to remove vending cart from designated location as required by the vending permit;*
- ix. *Permittee violates any provision of this CDC or other ordinance of the Town governing the activities permitted by the vending permit;*
- x. *The permittee obtained the vending permit by fraud or misrepresentation; and/or*
- xi. *The permittee is convicted of an offense that would create a danger to the public health, safety and welfare following issuance of the vending permit.*

b. ~~No permittee whose vending permit has been revoked may receive a refund of any part of the permit fee paid.~~

c. ~~Upon revocation or expiration of any vending permit, the permittee shall remove all structures or improvements from the permit area and storage area and restore the area to its condition existing prior to issuance of the permit within forty-eight (48) hours of revocation or expiration of permit. If the vending permit is revoked, the permittee may not apply for the same type of permit for one (1) year after the effective date of the revocation~~

17.8

DEFINITIONS

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~~**Permittee:** The person, business or entity issued a vending permit that will be operating the vending activity pursuant to the Vending Regulations.~~

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Vending: The act of selling or offering for sale goods, merchandise, food, wares or services from a vending apparatus from an exterior location outside of a building.

Vending Apparatus: The required ~~cart~~ structure for the conduct of a vending activity that is designed and operated in accordance with the Plaza Use Design Standards and regulations set forth by the plaza vending committee.

Vending Regulations: The regulations applicable to vending as adopted by Town Council and administered by the plaza vending committee ~~in Chapter 5.~~

Vending Committee: The committee appointed by the Town ~~Manager~~ to administer the requirements of the Vending Regulations.

~~**Vending Permit** A permit issued by the Town for vending cart operation on a plaza area as set forth in the Vending Regulations as set forth in Chapter 5.~~

~~**Vending Permit Administrator:** The person or Town department appointed by the Town Manager to administer the requirements of the Vending Regulations.~~