

**RESOLUTION OF THE TOWN OF MOUNTAIN VILLAGE ESTABLISHING
POLICIES AND PROCEDURES FOR CONDUCTING PUBLIC HEARINGS DURING
VIRTUAL (ELECTRONIC) MEETINGS**

NO. 2020-0514-10

WHEREAS, the State of Colorado, San Miguel County and the Town of Mountain Village all made disaster declarations related to Covid-19 and the public health crisis.

WHEREAS, the Town Council of the Town of Mountain Village enacted certain policies pursuant Resolution 2020-0319-07, authorizing the Town Council and other Town Boards and Commissions to conduct virtual meetings by electronic means during the Covid-19 declared disaster.

WHEREAS, the Town Council desires to require and establish guidelines for conducting public hearings on quasi-judicial matters and related votes to ensure conformance with the requirements of the Charter, the Community Development Code and general legal requirements of due process.

WHEREAS, the Town Council finds that this Resolution establishes guidelines to ensure that public hearings may continue during prolonged emergencies or disasters in an open and impartial manner, that the public has the ability to hear or view the proceedings in real time, that allows interested parties to provide testimony, and allows an opportunity for the Town Council to give fair consideration to all issues presented at the public hearing.

WHEREAS, the Town Council finds that the guidelines established by this Resolution are necessary and appropriate to promote the efficient and orderly conduct of municipal business, to ensure the validity of municipal proceedings, and to protect the health, safety, and welfare of the public.

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

1. Application. This Resolution provides policies and procedures for the conduct of public hearings for quasi-judicial matters including all noticed public hearings and any work sessions which proceed quasi-judicial matters. All other provisions of applicable Town Laws, including but not limited to the community development code, and applicable Colorado state statutes will apply to a public hearing held pursuant to this Resolution to the extent not in conflict with this Resolution. References to the “body” means the Town Council or applicable board or commission. As social distancing and group gathering restrictions are relaxed the Town may elect to have a hybrid virtual and in person meeting setting according to the procedures set forth in this Resolution and any additional procedures necessary as determined by the Town Manager and Director of Planning and Development Services for hybrid meetings. Town Councilors may participate and vote virtually in either completely virtual meetings or hybrid meetings.

2. Applicant Agreement. Except for any public hearing held which is initiated by the Town or based on an appeal of an action initiated by the Town, each applicant must request in writing at the time of submitting the application for new applications and at any time for existing pending applications that a public hearing be conducted pursuant to this Resolution in a virtual setting as set forth herein. Each request shall be evaluated by the Director of Planning and Development Services, the Town Attorney, Town Manager and, the Mayor shall evaluate the appropriateness and ability to hold the hearings required for such application in a virtual setting within ten (10) days of receiving such request and prior to deeming an application complete for new applications. For applications which have already been submitted and deemed complete prior to the adoption of this resolution the Mayor shall not evaluate the request for a virtual hearing in order to uphold the quasi-judicial procedural integrity. The applicant shall also sign a consent upon a form provided by the Town without condition that, the applicant: a) acknowledges that holding a quasi-judicial hearing by virtual means presents legal risks and involves an area of legal uncertainty and that the applicant has reviewed this Resolution and all policies and procedures contained herein; b) agrees that the applicant assumes all risk of conducting the quasi-judicial hearing by virtual means; and c) agrees to defend indemnify and hold the Town harmless in any action arising from or in connection with any alleged deficiency in the conduct of the hearing as a result of the use of virtual means. If the request for a virtual hearing is either not provided or not deemed appropriate or the required consent is not provided, no public hearing will be held until in-person meetings resume and the applicant acknowledges and consents to a delay in the processing of related application and the timing of the public hearing.

3. Special Notice Required. In addition to any notice required by law, the following notice requirements apply:

a. Any agenda including a public hearing that will be conducted virtually must be published and posted as required by law (on town website and posting locations) at least 3 business days before the hearing (e.g., for a hearing on Monday, the agenda must be posted by Wednesday) and shall include:

i. Materials to be presented by the Town and the applicant during the hearing (except for rebuttal materials).

ii. Information about how the hearing will be conducted and how the public can access, observe, and provide testimony for the hearing (including registration requirements).

The agenda notice will be part of the record. Agendas may be amended up and until twenty-four hours prior to the conduct of the hearing. This does not modify the notice requirements of the Community Development Code and will not be deemed jurisdictional.

b. For all new applications received after the effective date of this Resolution, all mailed, and on site notices (as required by the Community Development Code) for the public hearing shall include a notification that the public hearing may be conducted virtually, that advance registration for testifying will be required, and that information for participation will be provided in the published agenda. For any previously issued notice the applicant shall supplement such previous notice to comply with this Resolution with such supplement provided at least five business days prior to the existing hearing date for such application.

4. Public Testimony – Advance Submission or Registration. Testimony other than by the applicant, its consultants, and Town staff and agents during the public hearing will be limited to written testimony submitted in advance and oral testimony from previously-registered participants, as follows:

a. For written testimony, such testimony shall be submitted by mail, email to mvclerk@mtnvillage.org or to cd@mtnvillage.org for planning matters, or through a web-based portal established by the Town or as identified in the agenda. All written testimony must be received by no later than forty-eight hours prior to the agendaized public hearing as set forth in the Town's Public Comment Policy, Resolution 2018-0614-12. Written testimony received or submitted late will not be entered into the record. The clerk or secretary of the body will amend the published materials specific to the matter to include all timely-received written testimony.

b. For oral testimony, all those wishing to testify must register by either sending an email to either mvclerk@mtnvillage.org for all Town Council public hearings or to cd@mtnvillage.org for any other planning matters. All persons wishing to testify must register by at least one hour prior to the agendaized hearing time on the day of the hearing. Persons who do not register on time will not be permitted to testify. Speakers must have a reliable phone or internet connection and respond when called upon to testify. Persons who submit written testimony may also provide oral testimony. The clerk or secretary will provide a list of registered persons to the chair and will provide speakers with information on connecting to the hearing and providing testimony.

c. An applicant's written presentation materials and exhibits must be submitted at least 5 business days before the meeting to be included in the record.

d. No presentations or exhibits other than rebuttal exhibits from the applicant or the Town will be accepted during the Public Hearing by the applicant or any registered speaker.

e. All other provisions of the Town's Public Comment Policy, not inconsistent with the provisions of this Resolution remain in full force and effect.

5. Oral Testimony by Applicant & Public. This section's use of technological terms shall be interpreted according to the capabilities and features of the platform used to conduct the public hearing.

a. The applicant shall appear by video with audio unless only an audio connection is viable and the body consents to an audio-only appearance. The public hearing should be continued in the absence of such consent or if the applicant's connection does not allow the applicant to hear or respond to questions or if the body cannot hear the applicant's presentation.

b. Registered speakers may be limited to audio presentations unless a video connection is technologically feasible and secure. If disconnected or if the connection limits the speaker from being heard, the speaker will forfeit their opportunity to speak unless the body votes to allow the speaker to attempt to re-connect or to continue the public hearing. Registered speakers may not provide exhibits other than by written testimony in the manner provided for herein.

c. All presented exhibits by the Applicant and all testimony and questions must be clearly audible and visible (for those using video connections) to the body, Town staff, the applicant, and to the public.

d. The applicant and registered speakers must remain muted, with any video disabled, until recognized to speak. Any person who fails to remain muted or uses video, without being recognized, and as a result, disrupts or interferes with the meeting, will forfeit the opportunity to speak and will be disconnected.

e. Once recognized to speak, a registered speaker must promptly state their name, affiliation with the Town of Mountain Village if any and provide their testimony. If the speaker does not promptly begin, the chair may direct the clerk or secretary to mute and disable the video of the speaker and the speaker will forfeit their opportunity to speak. Once a speaker's testimony is concluded or time is expired, the clerk or secretary will mute the speaker and disable the speaker's video.

f. Due to the virtual format and time constraints in managing the virtual meetings Registered speakers may only speak for up to three minutes and may not aggregate the time of multiple speakers.

g. The chair may direct the clerk or secretary to mute, disable, or disconnect any speaker whose time has expired or who violates applicable rules of this Resolution of the Public Comment Policy.

h. A member of the public may only speak once during the public hearing.

6. Limitation. The Town Manager may choose to vacate any public hearing to be conducted pursuant to this Resolution and hold the matter in abeyance if the Town Manager determines it is not possible or prudent to hold the public hearing by virtual means.

7. Severability. If any provision of this Resolution or the application thereof to any person or circumstances shall be found to be invalid by a court, such invalidity shall not affect the remaining portions or applications of the Resolution that can be given effect without the invalid portion or applications, provided such remaining portions or applications are not determined by the court to be inoperable.

ADOPTED AND APPROVED by the Town Council of the Town of Mountain Village, Colorado, at a special meeting held on the 14th day of May, 2020.

TOWN OF MOUNTAIN VILLAGE, COLORADO, a
home rule municipality

By: _____


Laila Benitez, Mayor

ATTEST:

By: _____


Susan Johnston, Town Clerk

APPROVED AS TO FORM:

By: _____


James Mahoney, Town Attorney