

ORDINANCE NO. 2020-13

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE AMENDING CHAPTER 3.04 OF TITLE 3 OF THE MUNICIPAL CODE TO ENABLE THE COLLECTION OF SALES TAX FROM REMOTE SALES

RECITALS:

WHEREAS, the Town of Mountain Village, Colorado, (the “Town”), is a home rule municipality, organized and existing under Article XX, Section 6 of the Colorado Constitution, and the Town of Mountain Village Charter; and

WHEREAS, pursuant to Article XX, Section 6 of the Colorado Constitution, the right to enact, administer and enforce sales taxes is clearly within the constitutional grant of power to the Town and is necessary to raise revenue with which to conduct the affairs and render the services performed by the Town; and

WHEREAS, pursuant to such authority, the Town has adopted and enacted a Sales Tax Code (the “Sales Tax Code”) codified as Chapter 3.04 of the Town of Mountain Village Municipal Code, under which Town sales tax is levied on all sales and purchases of tangible personal property or taxable services at retail unless prohibited, as applicable to the provision of this Ordinance, under the Constitution or laws of the United States; and

WHEREAS, the United States Supreme Court in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), overturned prior precedent and held that a State is not prohibited by the Commerce Clause from requiring a retailer to collect sales tax based solely on the fact that such retailer does not have a physical presence in the State (“Remote Sales”); and

WHEREAS, based upon such decision, the retailer’s obligation to collect Remote Sales is no longer based on the retailer’s physical presence in the jurisdiction by the Constitution or law of the United States, and the Town’s Sales Tax Code needs to be amended to clearly reflect such obligation consistent with said decision; and

WHEREAS, the delivery of tangible personal property, products, or services into the Town relies on and burdens local transportation systems, emergency and police services, waste disposal, utilities and other infrastructure and services; and

WHEREAS, the failure to tax remote sales creates incentives for businesses to avoid a physical presence in the State and its respective communities, resulting in fewer jobs and increasing the share of taxes to those consumers who buy from competitors with a physical presence in the State and its municipalities; and

WHEREAS, it is appropriate for Colorado municipalities to adopt uniform definitions within their sales tax codes to encompass marketplace facilitators, marketplace sellers, and multichannel sellers that do not have a physical presence in the Town, but that still have a taxable connection with the Town;

WHEREAS, the goal of adopting this ordinance is to join in on the simplification efforts of all the self-collecting home rule municipalities in Colorado; and

WHEREAS, this Ordinance provides a safe harbor to those who transact limited sales within the Town; and

WHEREAS, absent such amendment, the continued failure of retailers to voluntarily apply and remit sales tax owed on remote sales exposes the municipality to unremitted taxes and permits an inequitable exception that prevents market participants from competing on an even playing field; and

WHEREAS, the Town adopts this ordinance with the intent to address tax administration, and, in connection with, establish economic nexus for retailers or vendors without physical presence in the State and require the retailer or vendor to collect and remit sales tax for all sales made within the marketplace.

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

Section 1. Amendment of Title 3, Chapter 3.04 of the Municipal Code

The Town Council hereby approves the amendments to Chapter 3.04 of Title 3 of the Town of Mountain Village Municipal Code as set forth in Exhibit A.

Section 2. Ordinance Effect

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.

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 the Ordinance.

Section 4. Effective Date

This Ordinance shall become effective thirty (30) days after passage of this Ordinance on Second Reading.

Section 5. Public Hearing

A public hearing on this Ordinance was held on the 16th day of July 2020, via virtual meeting held via phone and the zoom conferencing platform due to the Coronavirus Pandemic.

INTRODUCED, READ AND REFERRED to public hearing before the Town Council of the Town of Mountain Village, Colorado, on the 18th day of June 2020.

TOWN OF MOUNTAIN VILLAGE

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

By: 
Laila Benitez, Mayor

ATTEST:


Susan Johnston, Town Clerk

HEARD AND FINALLY ADOPTED by the Town Council of the Town of Mountain Village, Colorado this 16th day of July 2020.

TOWN OF MOUNTAIN VILLAGE

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

By: 
Laila Benitez, Mayor

ATTEST:


Susan Johnston, Town Clerk

Approved as To Form:


Jim Mahoney, Town Attorney

I, Susan Johnston, 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.2020-13 ("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 June 18, 2020, 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 | X | | | |
| Patrick Berry | X | | | |
| Natalie Binder | | | X | |
| Peter Duprey | | | X | |
| Jack Gilbride | X | | | |
| Marti Prohaska | X | | | |

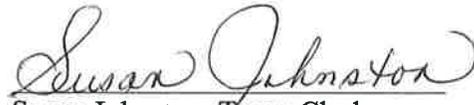
3. After the Council's approval of the first reading of the Ordinance, notice of the public hearing, containing the date, time and location of the public hearing and a description of the subject matter of the proposed Ordinance was posted and published in the Telluride Daily Planet, a newspaper of general circulation in the Town, on Wednesday June24, 2020 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 July 16, 2020. 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 | X | | | |
| Patrick Berry | X | | | |
| Natalie Binder | X | | | |
| Peter Duprey | X | | | |
| Jack Gilbride | X | | | |
| Marti Prohaska | 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 16th day of July 2020.


Susan Johnston, Town Clerk

(SEAL)

