

## ORDINANCE NO. 2020-12

### AN ORDINANCE OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO, CORRECTING ERRORS, PROVIDING CLARIFICATIONS, AND MAKING MINOR AMENDMENTS TO TITLE 17 OF THE COMMUNITY DEVELOPMENT CODE (CDC); CHAPTERS 17.3 ZONING AND LAND USE REGULATIONS, 17.4 DEVELOPMENT REVIEW PROCEDURES, AND 17.5 DESIGN REGULATIONS

#### 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.

#### 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any, and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the Ordinances repealed or amended as herein provided and the same shall be construed and concluded under such prior Ordinances.
- B. All Ordinances, of the Town, or parts thereof, inconsistent or in conflict with this Ordinance, are hereby repealed, replaced and superseded to the extent only of such inconsistency or conflict.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 July 25, 2020

**Section 5. Public Hearing**

A public hearing on this Ordinance was held on the 18<sup>th</sup> day of June 2020 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 21<sup>st</sup> day of May 2020.**


**TOWN OF MOUNTAIN VILLAGE:**

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

ATTEST:

By:

  
Laila Benitez, Mayor

  
Susan Johnston, Town Clerk

**HEARD AND FINALLY ADOPTED by the Town Council of the Town of Mountain Village, Colorado this 18<sup>th</sup> day of June 2020.**

**TOWN OF MOUNTAIN VILLAGE:**

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

ATTEST:

By:

  
Laila Benitez, Mayor

  
Susan Johnston, Town Clerk

Approved As To Form:



Jim Mahoney, Assistant 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. 2020-12 ("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 May 21, 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, Mayor Pro-Tem	X			
Marti Prohaska	X			
Peter Duprey	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 May 27, 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 June 18, 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, Mayor Pro-Tem	X			
Marti Prohaska	X			
Peter Duprey			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 18<sup>th</sup> day of June 2020.



*Susan Johnston*  
Susan Johnston, Town Clerk

## EXHIBIT A

(Language stricken is deleted; underlined language is new.)

### A.1: CDC § 17.3.11 is amended as follows:

#### Chapter 17.3 ZONING AND LAND USE REGULATIONS

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##### 17.3.11: BUILDING HEIGHT

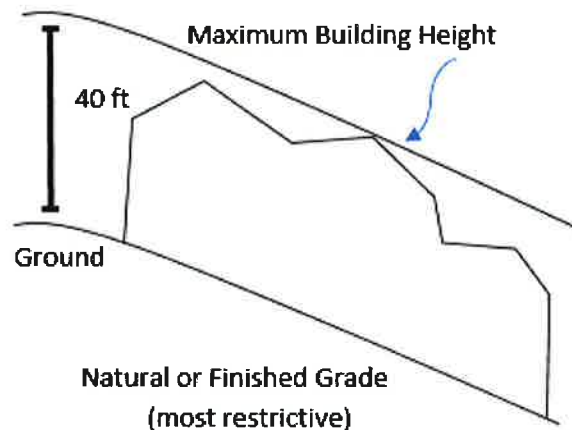
###### A. General

The Town requires a Building Height and an Average Building Height calculation. The building height requirements of this section shall apply unless other building heights are specified in an approved PUD development agreement or on a recorded plat.

###### B. Method for Measuring Building Height.

1. The Building Height shall be measured vertically at a right angle to the horizon line from any point on a proposed or existing roof or eave from the highest point on the rooftop, roof ridge, parapet, or topmost portion of the structure (including but not limited to the roofing membrane) to the natural grade or finished grade, whichever is more restrictive, located directly below said point of the highest point of the structure. roof or eaves. A building height calculation is produced for each of the four (4) architectural elevations.
2. On complex buildings with multiple heights and/or buildings with multiple heights on sloping sites, the building height shall also be demonstrated relative to a plane parallel to and measured vertically from the natural grade or finished grade, whichever is most restrictive, to the maximum building heights established in Table 3-3 of the CDC. No portion of the building may exceed this parallel plane or slope except as otherwise permitted within the CDC. See Figure 3-2-5 below.

Figure 3-2-5. Parallel Plane or Slope Diagram for Single Family Home



3. If the existing pre-construction grade has been disturbed prior to development, the Director of Community Development may accept an estimation of pre-development topography prepared by a registered land surveyor or civil engineer. The Director may require additional historical documentation, technical studies, reports or other information to establish the natural grade.
4. If the Planning Division determines that there are minor irregularities in the natural grade, these areas shall not be used in determining compliance with the building height limitation set forth herein, and the surrounding typical natural grade shall be used.
5. Window wells and similar building appurtenances installed below grade that extend out five (5) feet or less (as measured from the outside of retaining wall) shall not be counted as the finished grade for the purposes of calculating building height if such features do not add to the perceived height of a building.

C. Method for Measuring the Maximum Average Building Height.

1. The Maximum Average Building Height shall be measured from the natural grade or the finished grade, whichever is more restrictive, to a the point on the roof plane midway between the eave and ridge the highest point on the rooftop, roof ridge, parapet or topmost portion of the structure. An average building height calculation is produced for each of the four (4) architectural elevations. The four (4) height calculations are then averaged to derive the Average Building Height.
2. On complex buildings with multiple heights and/or buildings with multiple heights on sloping sites, the maximum average building height calculation shall be determined by taking the average of heights at equal intervals around the perimeter of a building. Those intervals shall be no more than twenty (20) feet. When multiple roofs occur within any interval, the height for that interval shall be measured from the finished grade or natural grade (whichever is most restrictive) to the highest point on the rooftop, roof ridge, parapet or topmost portion of the structure ~~a point on the highest primary roof midway between the eave and the ridge.~~ For purposes of determining the maximum average height on complex buildings, a roof shall have a horizontal projection of at least ten (10) feet. This definition does not intend to allow strategies to circumvent the intention of the maximum average height limitation through such relationships as high-rise structures surrounded by low secondary roofs.

C. Plan Submittal Requirements

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1. All development applications subject to the building height limits established by this CDC shall submit the following information to ensure the requirements set forth herein are met:

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d. Elevation drawings of all facades of a proposed building or structure that show:

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vi. Parallel Plane or Slope Analysis as applicable.

**A.2: CDC § 17.3.22 is created and inserted as follows:**

17.3.22 Right of Way and Town-Owned Access Tract Encroachment Agreement Requirements.

1. For any new development on a privately owned lot that includes ancillary and associated improvements proposed to be located on or projecting into and/or over right-of-way or Town-owned access tracts, the review authority shall first review, and if approved, require the lot owner to enter into a Revocable Encroachment Agreement with the Town that includes indemnification for the Town from liability that may arise from such encroachments.
2. The Planning Division shall be responsible for referring development applications with ancillary or associated improvement encroachments into the right-of-way or Town-owned access tracts to the Town Public Works Department and Fire Department, as applicable. If it is determined by Town staff that the encroachment is insubstantial, then the Planning Division shall finalize the Revocable Encroachment Agreement with the applicant. If the encroachments are determined to be substantial by Town Staff, the Lot owner shall request approval from Town Council, as a Class 5 application, to allow the encroachments to be approved and for the Lot owner to enter into a Revocable Encroachment Agreement with the Town.
3. The encroachment agreement shall be in form and manner set forth by the Town and shall be recorded in the San Miguel County Clerk and Recorder's Office at the applicant's expense.
4. The encroachment agreement shall be executed and recorded prior to the Final Planning Inspection for any building permit or development permit.
5. In the event the encroachment is pre-existing absent an encroachment agreement, the Town will follow the same procedure outlined in 17.3.22.(2) above.

**A.3: CDC § 17.4.3 is amended as follows:**

Chapter 17.4 DEVELOPMENT REVIEW PROCEDURES

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17.4.3 DEVELOPMENT REVIEW PROCEDURES

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G. Step 7: Schedule Review Authority Public Hearing

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2. Class 3, 4 and 5 Applications

- a. A public hearing shall be scheduled with the review authority in accordance with this section if the Planning Division determines that a class 3, 4 or 5 development application has met the following public hearing threshold requirements:

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- iv. For Class 3 applications, an Initial Architecture and Site Review hearing has been scheduled prior to the scheduled date for the Final Review public hearing.-

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K. Step 11: Review Authority Action on a Development Application

1. Class 1 or Class 2 Applications.

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- b. The Planning Division's action on class 1\_or 2 development applications shall be based on a finding of compliance with the specific requirements of this CDC for the type of development application under review and shall be for approval, conditional approval or denial.

- 2. Class 3 Applications. The following options are available to the review authority when acting on class 3 development applications:

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- b. Final Review. After the DRB approves the Initial Architecture and Site Review application a public hearing shall be held on a subsequent agenda. The DRB shall have the following options for action:
  - i. Approval. The DRB shall approve a proposed Class 3 development application if it determines that it meets the applicable requirements and criteria of the CDC.
    - a. The DRB's ~~recommendation~~ of approval of a class 3 development application shall be made by motion, approved by a majority vote of the DRB and recorded in the DRB summary of motions.

**A.4: CDC § 17.4.9 is amended as follows:**

Chapter 17.4 DEVELOPMENT REVIEW PROCEDURES

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17.4.9.D.6: Rezoning Limitations

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- a. Zoning designations assigned to density within the density bank may be changed to another zoning designation during the Rezoning Process when it is being transferred to a lot.
- b. Workforce housing density may not be rezoned to free market units except with the WHR is lost as provided for in the Zoning and Land Use Regulations.
- c. Workforce housing density assigned to a lot or property has specific requirements as set forth in the workforce housing requirements.
- d. Lots or units subject to the workforce housing restriction may only request a rezoning to change the zoning designation to either: (1) employee apartment, employee single-family, employee condominium or employee dorm; or (2) for whole lots only, the PUD Zone District to allow for a mix of workforce housing and free-market dwellings.
- e. Single-family zoning designations within the density bank may be rezoned to any zoning designation as a part of a rezoning and density transfer development application where the density is being transferred from the density bank to a lot.
- f. Lodge, efficiency lodge, hotel and hotel efficiency zoning designations may not be rezoned to condominium zoning designations.
- g. Rezoning of a condominium unit from residential to commercial, or vice-versa, whether or not there is any change to the exterior of the building, requires a rezoning of the affected unit(s).
- h. Lots outside the Village Center rezoning to any zoning designation with multifamily dwellings may be required to have a transportation plan and may be required to provide certain amenities on site, such as outdoor spa facilities,

playgrounds, fitness facilities and/or a common area gathering place as conditions of approval.

- i. In development applications that propose removing density from a Village Center and multi-family lot, the applicant must prove the existence of a practical difficulty that prohibits the build out of the platted density. Financial hardship or expense shall not be considered a practical difficulty for the purpose of this section.
- j. Commercial and industrial density and/or zoning designations shall not be rezoned or converted to any other density ~~since such a~~ unless the change ~~would increase~~ does not result in an increase to the overall Density Limitation.

**A.5: CDC § 17.4.11 is amended as follows:**

Chapter 17.4 DEVELOPMENT REVIEW PROCEDURES

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17.4.11: Design Review Process

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E. General Standards:

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6. DRB Compliance Inspection. No owner, lessee or their agent or assignee shall apply for a certificate of occupancy (CO), temporary certificate of occupancy (TCO), final building approval or other similar occupancy approvals from the Building Division unless the applicant has received final inspections for compliance conducted by the Planning Division staff, and staff has signed the Building Division inspection card.
  - a. In the event that paving and/or landscaping cannot be constructed without unreasonable delay, a TCO or CO may be issued, if the applicant complies with the landscape completion policy in the Design Regulations.

**A.6: CDC § 17.5.6 is amended as follows:**

17.5.6.C.3: Roof Material

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- c. Permitted roof material outside the Village Center include:
  - i. Metal roof material limited to the following: rusted, black or gray standing seam, bonderized or corrugated metal (not reflective);
  - ii. Zinc;
  - iii. Minimum 1/2" slate; and
  - iv. Copper;
    - (a) Copper shall only be considered when it is proposed with a brown patina finish.
    - (b) The brown patina finish shall be completed prior to issuing a certificate of occupancy.
  - v. Synthetic roofing material that accurately emulates wood shake, concrete and slate tile or any other roofing material permitted or existing in Mountain Village.
    - (a) Synthetic roofing material shall be:
      - (i) Durable;
      - (ii) High strength, both material and shape;



- (iii) Low absorption or permeability
  - (iv) High freeze/thaw damage resistance;
  - (v) Color throughout the tile (not surface applied); and high quality design that fits within the architectural context of the building and the architectural context of the surrounding area.
- d. The following roofing material outside of the Village Center shall be approved by the DRB as a specific approval that is processed as a class 3 development application if the DRB finds the roofing material is consistent with the town design theme and the applicable Design Regulations:
- i. Solar roof tiles so long as they are contextually compatible in design, color, theme and durability (non-reflective).
  - ii. Earthen / Landscaped Green Roofs
- e. Village Center roofing material will require a class 3 development application and building specific design review. The following roof materials shall be approved by the DRB if the DRB finds the roofing material is consistent with the town design theme and applicable Design Regulations:
- i. Burnt sienna concrete tile.
  - ii. Earth tones compatible with burnt sienna concrete tile in color and texture.
  - iii. Brown patina copper
  - iv. ~~Standing seam or bonderized metal (dark grey or black) (not rusted)-~~ Metal roof material limited to the following: black or gray standing seam, bonderized (not reflective);
  - v. Zinc
  - vi. Solar roof tiles so long as they are contextually compatible in design, color, theme and durability (non-reflective).
  - vii. Some variation of roof material color is permissible by specific DRB approval as long as it is contextually compatible in design, color, theme and durability.
- f. Modification to roof materials on dormers and secondary roof forms in the Village Center may be reviewed as a class 1 development application.
- i. Permitted roof materials are listed in e.i-vii above.
  - ii. ~~bevel edged-~~ Rusted metal and/or corrugated ~~(not rusted)-~~ metal may be approved so long as it is contextually compatible in design, color, theme and durability.
- g. The following requirements are applicable to all roofing:
- i. Metal roofing surface shall not reflect an excessive amount of light when viewed against direct sunlight.
  - ii. ~~Unless the DRB grants a specific approval for a non-rusted metal roof, corrugated and standing seam~~ All rusted metal roofing materials shall be pre-treated to produce rusting ~~prior to placement on the roof, and prior to the issuance of a certificate of occupancy-~~
- h. The installation or re-installation of wood shakes, glazed tile and asphalt shingles is prohibited, except for the repair or replacement of roof areas that are 25% or less of the total roof surface area.
- i. Roof flashing, Gutters Downspouts and Similar Hardware:
- i. In the Village Center, all exposed metal flashing, gutters, downspouts and other roof hardware shall be copper except when structural requirements dictate the use of stronger materials such as for snow fences. The DRB may grant specific approval to allow for metal

flashing, gutters, downspouts and other roof hardware as long as its contextually compatible in design, color, theme, material and durability as the approved roofing materials.

- ii. In all other areas, other metal guttering besides copper may be approved by the review authority to allow it to match roofing material, such as the use of rusty steel guttering on a rusty metal roof.
- iii. When steel or iron are used, they shall be either rusted to match the roof or finished with a baked-on enamel paint or, subject to the prior approval of the review authority, a silicon modified alloy or special epoxy paint system of a color approved by the review authority.

**A.7: CDC § 17.5.9 is amended as follows:**

Chapter 17.5 DESIGN REGULATIONS

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17.5.9 Landscaping Regulations

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D. General Landscaping Design Requirements

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1. Landscape Completion Policy

- a. For all development, no certificate of occupancy shall be issued for a project until the landscape and paving are completed in accordance with the approved plans and all construction debris, equipment, material, trailers, fencing and any other construction related items are removed from the site to the satisfaction of the Planning Division, except as expressly provided for herein.
- b. ~~A temporary certificate of occupancy ("TCO")~~ The Community Development Director, at their sole discretion, may allow the Building Division to issue a Temporary Certificate of Occupancy (TCO) ~~may be issued for a project conditioned upon:~~
  - i. The developer has executed the Town provided development agreement on the property that stipulates the TCO will be revoked if the required improvements are not completed by a date certain, along with acknowledgment from the owner that the Town may levy a daily fine of \$5,000 per day for each day the improvements continue to be incomplete if they are not completed by the date stipulated in the development agreement.
  - ii. All grading, landscaping and paving in the approved landscape plan being completed on or before the next occurring October 1<sup>st</sup> or such other date approved by the Town, that follows the issuance of such TCO;
  - iii. All other conditions for issuance of a TCO have been met as determined by the Planning and Building Divisions; and
  - iv. A site being cleaned to the satisfaction of the Planning and Building Divisions.
- c. If the grading, landscaping and paving have not been completed before the next occurring October 1<sup>st</sup>, or such other time period approved by the town, the Building Division has the right to revoke the TCO. The owner will be in non-compliance with this CDC and subject to the enforcement provisions contained herein.

- d. The following requirements shall be met for single-family development ~~prior to the issuance of a TCO~~ requesting the issuance of the CO without the completion of landscaping or paving:
- i. The developer has executed the Town provided development agreement on the property that stipulates ~~stipulated~~ ~~the TCO will be revoked if the required improvements are not~~ shall be completed by a date certain, along with acknowledgment from the owner that the Town may levy a daily fine of \$5,000 per day for each day the improvements continue to be incomplete if they are not completed by the date stipulated in the development agreement. The Community Development Director may require developer provided a cash financial guarantee deposited with the Town in an amount equal to 1 ½ times the amount of the contract price for completion of landscaping and paving.
  - ii. The developer has provided such other information as the Planning Division may reasonably require
- e. The following requirements shall be met for multi-family, mixed use, commercial or other non-single-family development prior to the issuance of a TCO:
- i. The developer has provided a signed contract between the contractor and the developer or lot owner for the installation of the landscape and paving in accordance with the approved plans. The contract shall provide a start date and a completion date for the landscaping and paving and shall reference that all work is to be completed in accordance with the approved plans;
  - ii. The developer has provided a cash financial guarantee deposited with the Town in an amount equal to 1 ½ times the amount of the contract price for completion of landscaping and paving;
  - iii. The developer has provided an executed improvements agreement;
  - iv. The developer has provided such other information as the Planning Division may reasonably require; and
  - v. No TCO shall be issued until the required contracts, financial guarantee, improvements agreements and other required information have been received, reviewed and approved by the Planning Division with the finding that the contract prices generally reflect typical construction prices in the area.