



TO: Honorable Mayor Laila Benitez and Councilmembers
FROM: Paul Wisor, Town Attorney;
 Michelle Haynes, Planning and Development Services Director
RE: Your Equity Support Work Session
DATE: May 20, 2021

SUMMARY: Housing prices in Mountain Village continue to escalate which increases affordability challenges for persons who desire to live in Mountain Village. The Comprehensive Plan identifies a deed restrictions as one method by which Mountain Village could promote affordability and the help permanent residents purchase a home in Mountain Village. A deed restriction purchase program also expands the permanent pool of housing for full-time residents. Mountain Village has a substantial stock of multi-family housing which presents greater opportunities for creating more Community Housing stock compared to constructing new Community Housing projects.

This report outlines the background behind deed restricted purchase programs, including the Vail InDeed program, discusses the provisions of a proposed Mountain Village Deed Restricted Program and outlines policy considerations for Council. Council input and direction is requested.

BACKGROUND: Since the end of the Great Recession, jobs and population have been growing much more rapidly than housing inventory. With the San Miguel County Adjusted Median Income (“AMI”) currently at \$67,000, the median price for a home in Mountain Village, nearly all housing options within Mountain Village exceed what most San Miguel County residents can afford. Given the disparity between income levels and housing costs, full-time residents have difficulty finding affordable housing, employers have difficulty in filling job vacancies, and many employees choose housing in down valley communities which results greater commute times.

The Town of Mountain Village Comprehensive Plan sets forth the goal of achieving a diverse range of housing densities, styles and types, including rental and for sale, to serve all segments of the population. Comprehensive Plan specifically identifies a deed restriction program as a strategy to maintain attainable market rate housing at affordable rates.

VAIL IN-DEED PROGRAM: In 2017, the Town of Vail created its own deed restriction purchase program known as Vail InDeed (“InDeed”). Under the InDeed program, the Town of Vail pays owners a portion of a home’s value in exchange for a deed restriction which restricts future use of the unit. In the case of the InDeed, the deed restriction provides the home must be occupied by people who work at least an annual average of 30 hours per week in Vail or Eagle County. In roughly its first two years the InDEED program acquired 153 deed restrictions at a total cost of approximately \$10.5 million.

Under the InDeed program, a typical applicant applies to the Town for funding the purchase of a new home. The Town of Vail will provide funding between 15% and 18% of the purchase price of the home to be acquired. The average amount provided to an applicant by the Town of Vail through the InDeed program has been \$67,300. However, per Town of Vail policy, the Town of Vail may purchase a restriction for as much as \$200,000. Typically, these funds are used by the applicant for a down payment on a home, but in some cases applicants use the money for home improvements. There are, however, no restrictions on the use of funds once the funds are wired to the applicant at closing.

In addition to providing funding in connection with the acquisition of a new home, a current homeowner can apply to have their home placed into the InDeed program. If the Town of Vail determines it is in the Town’s best interest to have the unit available only to Eagle County employees, the Town of Vail will purchase a deed restriction under the same parameters outlined

above.

Mountain Village staff has discussed the InDeed program at length with Town of Vail staff as well as lenders, mortgage brokers, real estate agents, appraisers, applicants and attorneys, and believes the Town of Vail has established an excellent model for Mountain Village to follow.

FINANCIAL CONSIDERATIONS: The Mountain Village 2021 budget estimates there is approximately \$2.6 million dollars available for affordable housing purposes in the Affordable Housing Fund. Some or all of these funds could be dedicated towards a Mountain Village Deed Restriction Program, and as needed, the Town Council could always elect to transfer funds from the General Fund now or in the future. For context, the Town of Vail has dedicated \$2.5 million in its 2021 budget to go towards deed restriction purchases through the InDeed program.

PROPOSED MOUNTAIN VILLAGE DEED RESTRICTION PROGRAM: Based off of the InDeed model, Staff has compiled all the documentation necessary to begin an Mountain Village Deed Restriction Program, including an Application, Staff Application Evaluation Deed Restriction Purchase Agreement, Deed Restriction, Subordination Agreement, and Closing Instructions.

The Mountain Village Deed Restriction Program documentation provides any San Miguel County Employee, an employee working in San Miguel County thirty hours a week, may apply to place their property in the deed restriction program. Businesses that own a property within Mountain Village and who operate in San Miguel County and rent their property to its employees who are San Miguel County Employees are also eligible to apply.

After applying to the program, the applicant negotiates with the Town as to the value of the deed restriction. Once a price is determined, the applicant and the Town execute a Deed Purchase Agreement for the amount of the deed restriction as well as the deed restriction. Under the proposed form deed restriction, there is no price appreciation cap. In addition, the owner may occupy the home or rent it to other individuals so long as one or more San Miguel County Employees occupy the residence. However, short term rentals and use of the property as a second home is prohibited.

The property may not be sold or otherwise transferred to anyone other than a San Miguel County Employee or an San Miguel County business renting to San Miguel County Employees. The seller must notify the Town it intends to sell its deed restricted unit, and the Town must confirm the proposed buyer is eligible to purchase under the terms of the deed restriction. It is important to remember the deed restriction survives the transfer and remains with the property forever.

Among other things, an owner is in default under the deed restriction in the event the owner conveys the property to an individual not eligible to own the property under the deed restriction, transferring the property prior to obtaining the Town's certification of the transfer, failing to rent the property in accordance with the deed restriction or failing to make applicable mortgage payments. In the event Staff finds an owner in default under the deed restriction, the owner has sixty-five (65) days to cure the default, and may appeal to Town Council. The Town may pursue specific performance and other remedies at law in the event of default, and the owner will be subject to liquidated damages of \$300 for each day the owner is in violation of the deed restriction.

In the event an owner defaults on their mortgage and the lender initiates foreclosure proceedings, the Town may make payments on behalf of the owner to avoid foreclosure. In the event of foreclosure, the deed restriction will remain in place, except if the property is subject to a HUD loan, in which case, pursuant to federal rules and regulations, the deed restriction is extinguished. However, the Town will have the option to purchase the property thirty (30) days after the issuance of the public trustee's deed.

COUNCIL POLICY CONSIDERATIONS: The attached documents provide a basis for a Mountain Village Deed Restriction Program. Several policy considerations are highlighted below for Council's discussion. These documents will be modified to incorporate Council's direction.

Deed Restriction Purchase Price Parameters – As noted above, the Town of Vail has set the market for a deed restriction at 15% to 18% of a home's value. As a practical matter, this range effectively serves as the down payment on the home. The fact that it does not go to the 20% down payment traditionally required for a down payment speaks to the overall expectation applicants put some money in the home. Staff's research indicates that the placement of a deed restriction on a property decrease the resale value on a property anywhere from 5% to 20% due to the decreased pool of eligible buyers. This amount changes based on the value of the home with the impact being less significant on lower priced homes. Therefore, in establishing parameters for a purchase price, Mountain Village needs to consider the current market rate for deed restrictions as well as the financial realities for an applicant contemplating selling a deed restriction to Mountain Village. ***Staff recommends the Town purchase price of a deed restriction should be at 15% to 18% of the purchase price of a home while noting not every applicant need not receive the full 18%.***

Transaction Cap – The Town of Vail has capped the maximum amount at which it will purchase a deed restriction at \$200,000. Given the disparity in budgets as well as market prices, This cap seems appropriate as the Town of Mountain Village has identified the need to provide relief for those below San Miguel County's Adjusted Median Income as well as the "Missing Middle." Although such cap would serve as an 20% down payment on a \$1,000,000 home, it is likely the program would be used for units at lower price points. ***Staff recommends a cap of \$200,000 with an emphasis on basing award on the percentage of the home value with a target of 15%-18%.***

Multiple Properties – As the Mountain Village Deed Restricted Program is currently written, and as InDeed currently operates, it is possible for an individual to apply for funding on multiple properties so long as those properties are rented to San Miguel County Employees. In one respect, there is nothing wrong with this approach as it ensures those properties will always house local residents. Conversely, it seems Mountain Village would be subsidizing an individual's rental business, and there is no guarantee the property is rented at attainable prices. ***Staff recommends limiting participation in the program to one property per individual at a time. Council may desire to allow a Mountain Village based business to purchase multiple residences with deed restrictions for its employees.***

Rentals – As currently written, an owner may rent their property so long as a San Miguel County Employee uses the property as their primary residence. Some have argued the deed restriction should only permit owner- occupied units. While this may be practical initially, at some point the owners of deed restricted properties may wish to move to different homes within the community. In a down economy, a move may be feasibly possible, but selling the property may not make economic sense. So long as the property is being rented to a San Miguel County Employee, the goal of providing local long-term housing is likely being met. ***Staff recommends permitting owners to rent deed restricted properties.***

Short-Term Rentals – It is common for Mountain Village residents to short-term rent rooms within their home, which enables the owners to more easily afford their mortgage payments. This would be prohibited under the current documents. As with applicants applying Town funds to multiple properties, permitting short-term rentals even where the owner occupies the home appears to create a scenario under which the Town is subsidizing a business rather than a long-term housing solution. ***Staff recommends not allowing short- term rentals under any circumstances.***

Buyout Provision – Some potential owners have proposed the deed restriction extinguishes if the owner is unable to sell the property at fair market value, or a to-be-determined percentage of fair market value, after a period of one year. Some lenders have proposed the same approach if the lender takes possession post- foreclosure. Such owners and lenders feel the risk in participating in the program would be reduced if such a provision were in the deed restriction. The purpose of the deed restriction is for the Town to increase housing option throughout the community, not make real estate a safe investment. ***Staff recommends against a buyout provision.***

Right of First Refusal – Under the InDeed approach, the Town of Vail has a right of first refusal if an offer is made on a deed restricted property. This allows the Town of Vail to control the housing stock and direct who occupies some homes. The Town of Mountain Village does not necessarily have the financial capacity to purchase homes. ***Staff recommends having a right of first refusal provision.***

Administering Applications – There are a limited number of deed restrictions the Town can purchase based on available financial resources. Applications can be considered on a first come, first served basis or the Town could establish a lottery. Staff does not anticipate it will receive more applications than it can accommodate and administer. ***Staff recommends processing applications as they are received.***

Subordination Agreement: In the event a current homeowner wishes to place a deed restriction on their home for the purpose of acquiring additional funds for a home improvement or other reasons, the InDeed program requires the lender who provided the mortgage on the original acquisition of the home to sign a Subordination Agreement. This Subordination Agreement essentially acknowledges the deed restriction and places the Town of Vail's interests ahead of the lenders even though the lender did not provide the mortgage with the deed restriction in mind. Larger financial institutions who sell mortgages on the secondary market are unable to sign the Subordination Agreement at the moment; though, small institutions in San Miguel County are will to execute such agreements. Staff is working with secondary mortgage market participants to create an alternative agreement. ***Staff recommends continuing to find a solution for larger financial institutions, but proceed with the program without a solution in place.***

Name: Staff recognizes "Mountain Village Deed Restricted Program" does not have any flow or ring to it. The Mayor Pro-Tem has aptly suggested the Your Equity Support or YES Program.

REQUESTED ACTION: Staff requests direction on the policy areas highlighted above as well as any comments to the documentation provided.