

ORDINANCE NO. 2024-__

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE
AMENDING SECTIONS 17.4.2, 17.4.3, 17.6.1, AND 17.8.1 OF THE MOUNTAIN VILLAGE
MUNICIPAL CODE REGARDING WETLAND REGULATIONS**

WHEREAS, the Town of Mountain Village (“Town”) is a home rule municipality duly organized and existing under Article XX of the Colorado Constitution and the Town of Mountain Village Home Rule Charter of 1995, as amended (“Charter”); and

WHEREAS, the Town has adopted zoning and subdivision regulations codified at Title 17 of the Mountain Village Municipal Code and referred to as the Community Development Code (the “CDC”); and

WHEREAS, the CDC Section 17.6.1 includes regulations regarding the preservation and protection of wetlands; and

WHEREAS, the issuance of the United States Supreme Court decision in *Sackett v. Environmental Protection Agency* has created ambiguity and inconsistency in the scope of wetlands subject to regulation under the CDC; and

WHEREAS, Town Council now desires to amend the CDC’s definition of “wetlands” and other relevant portions of CDC Chapter 17.4 and Section 17.6.1.

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

Section 1. Recitals. The above recitals are hereby incorporated as findings of the Town Council in support of the enactment of this Ordinance.

Section 2. Amendment of CDC Sec. 17.8.1. The Town Council hereby amends CDC Section 17.8.1 of the Code as follows, with added language in **bold** and underlined typefaces and removed language ~~stricken~~.

Wetlands. An area where water is at, near or above the land surface long enough to support aquatic or hydrophytic vegetation and which has soils indicative of wet conditions. ~~Determination of wetlands area boundaries shall be according to the United States Army Corps of Engineers delineation requirements.~~

Section 3. Amendment of CDC Sec. 17.6.1. The Town Council hereby amends CDC Section 17.6.1.B. of the Code as follows, with added language in **bold** and underlined typefaces and removed language ~~stricken~~.

B. Wetland Regulations.

...

2. Standards

d. The review authority shall only allow for wetland disturbance or fill if it is demonstrated that there is not a practicable alternative to avoiding such activities and if the following criteria are met:

...

iii. ~~the United States Army Corps of Engineers ("USACE") has reviewed the proposed wetland disturbance or fill and has either recommended approval or has approved the required federal permits~~ **all state and federal permits related to the disturbance or fill applicable within home rule municipalities (if any) have been approved.**

...

f. All development applications for lots that contain wetlands or that are in close to proximity of wetlands on adjoining lots shall, as a part of the applicable development application, submit a wetlands **report and** delineation performed by a USACE qualified **wetlands** consultant **or other appropriate professional.** **The wetlands report required by this section must have been prepared within 5 years of the date of the development application and shall include an analysis of whether the wetlands are subject to any federal or state wetland permitting process in effect as of the date of the development application.**

i. ~~Written verification of the delineation from the USACE is required prior to the review authority issuing the final CDC required development approval.~~

(a) ~~The review authority may also, as a condition of the final approval, require the submission of the USACE wetland delineation verification prior to the issuance of a development permit.~~

(b) ~~ACE written approval of wetland delineations typically expire after five (5) years. A new wetland delineation approval letter from the USACE shall be submitted if the original wetland delineation approval has expired.~~

...

i. Any development application that proposes wetland fill **to a wetland that is subject to federal and/or state regulation** shall be referred to the USACE **appropriate state or federal agency** in accordance with the Referral and Review Process to ensure compliance with the federal **and state** wetland permitting process.

j. Through a Class 5 application, whether as a standalone application or in conjunction with another land use application, an applicant may request from Town Council a waiver of the Wetland Regulations. Town Council may, after weighing the public benefits to be gained by the subject application and the purpose and intent of these Wetland Regulations, grant the waiver in whole or in part and with or without conditions. Town Council shall be the sole review authority with authorization to grant a waiver from these Wetland Regulations.

Section 4. Amendment of CEC Sec. 17.4.2.B. Town Council hereby amends "Table 4-1 Development Application Classes" set forth in CDC Section 17.4.2.B to include the language in **and underlined** under the "Subdivision" portion of Table 4-1:

| Development Application Type | Application Class | Review Authority |
|--|-------------------|------------------|
| <u>Wetland Regulations Waiver under CDC Sec. 17.6.1.B.2.j</u> | Class 5 | Town Council |

Section 5. Amendment of CDC Sec. 17.4.3.J.5. The Town Council hereby amends CDC Section 17.6.1.B. of the Code as follows, with added language in **bold** and underlined typefaces and removed language ~~stricken~~.

17.4.3. Development Review Procedures

...

J. Step 10: Review Authority Public Hearing or Meeting.

...

5. *Other Class 5 Applications.* Minor subdivision, **requests for waiver of Wetland Regulations under CDC Section 17.6.1.B.2.j,** and other class 5 development applications do not require a public hearing.

Section 6. Effect of Ordinance. Those provisions on the Code not expressly amended by this Ordinance shall remain unchanged and in full force and effect.

Section 7. Severability. If any portion of this Ordinance is found to be void or ineffective, it shall be deemed severed from this Ordinance and the remaining provisions shall remain valid and in full force and effect.

Section 8. Safety Clause. The Town Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the Town, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 9. Effective Date. This Ordinance shall become effective on fourteen (14) days after final publication pursuant to Section 4.3 of the Town Charter and shall be recorded in the official records of the Town kept for that purpose and shall be authenticated by the signatures of the Mayor and the Town Clerk.

Section 10. Public Hearing. A public hearing on this Ordinance was held on the ____ day of _____, 2024, in the Town Council Chambers, Town Hall, 455 Mountain Village Blvd., Mountain Village, Colorado 81435.

Section 11. Publication. The Town Clerk or Deputy Town Clerk shall post and publish notice of this Ordinance as required by Article V, Section 5.9 of the Charter.

INTRODUCED, READ, AND REFERRED to public hearing before the Town Council of the Town of Mountain Village, Colorado on the ____ day of _____ 2024.

TOWN OF MOUNTAIN VILLAGE:

TOWN OF MOUNTAIN VILLAGE, COLORADO, a Home-Rule Municipality

By: _____
Martinique Prohaska, Mayor

ATTEST

By: _____
Susan Johnston, Town Clerk

HEARD AND FINALLY ADOPTED by the Town Council of the Town of Mountain Village, Colorado this ____ day of _____ 2024.

TOWN OF MOUNTAIN VILLAGE:

TOWN OF MOUNTAIN VILLAGE, COLORADO, a Home-Rule Municipality

By: _____
Martinique Prohaska, Mayor

ATTEST

By: _____
Susan Johnston, Town Clerk

Approved as to Form:

By: _____
David McConaughy, 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. 2024-____ (the "Ordinance") is a true, correct, and complete copy thereof.

2. The Ordinance was introduced, read by title, approved on first reading 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 _____, by the affirmative vote of a quorum of the Town Council as follows:

| Council Member Name | "Yes" | "No" | "Absent" | "Abstain" |
|------------------------------|-------|------|----------|-----------|
| Marti Prohaska, Mayor | | | | |
| Scott Pearson, Mayor Pro Tem | | | | |
| Jack Gilbride | | | | |
| Peter Duprey | | | | |
| Harvey Morgenson | | | | |
| Tucker Magid | | | | |
| Huascar Gomez | | | | |

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 _____ in accordance with Section 5.2(d) of the Town of Mountain Village Home Rule Charter.

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 _____. 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" |
|------------------------------|-------|------|----------|-----------|
| Marti Prohaska, Mayor | | | | |
| Scott Pearson, Mayor Pro Tem | | | | |
| Jack Gilbride | | | | |
| Peter Duprey | | | | |
| Harvey Morgenson | | | | |
| Tucker Magid | | | | |
| Huascar Gomez | | | | |

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 ____ day of _____ 2024.

By: _____
Susan Johnston, Town Clerk (SEAL)