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MEMORANDUM

TO: Mountain Village Town Council  
FROM: David McConaughy  
RE: **Charter Amendments – Proposed Ordinance**  
DATE: March 15, 2024

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**SUMMARY**

This ordinance would set an election on July 9, 2024, for the consideration of five Charter Amendments.

- 1) Allowing property owners holding property in LLCs or other entities to vote like other non-resident property owners
- 2) Moving the regular election from June to July
- 3) Clarifying the effective dates of ordinances
- 4) Allowing publication of ordinances via the Town website rather than by newspaper
- 5) Reconciling a conflict between the Town Code and the Charter regarding DRB terms

**PROPOSED CHARTER AMENDMENTS**

1. Voting

Mountain Village is unique in Colorado by allowing non-resident property owners to vote in municipal elections. As a resort community, Mountain Village was always expected to include a significant number of second homes that would be owned by non-residents. Charter Section 2.3 therefore allows non-resident property owners to vote if they have owned property for at least 30 days. Where property is jointly owned (such as by a husband and wife), each owner of at least 50% of the property may vote.

It has become common for people to own properties in a family limited liability company (LLC) or other similar entity for estate administration purposes. If one member of the LLC dies, the member's asset is still part of his or her taxable estate, but the title remains in the LLC. LLC members can include provisions in the LLC Operating Agreement about transfer of LLC interests to other family members or the surviving members without triggering a real estate transfer. This can avoid a costly and lengthy probate process in court to determine inheritance and how to transfer all the assets of an estate. For similar reasons, property may be owned by a trust that designates a surviving spouse, children, grandchildren or others as beneficiaries. Presently, owners who take advantage of these common approaches are not able to vote in Mountain Village elections.

The proposed ordinance would restore voting rights to non-residents who own their properties in LLCs or similar entities to be consistent with voting rights for direct ownership. It would allow no more than two LLC members to vote, subject to the same 50% ownership rule that now applies for individual owners. For property owned by a trust, the trustee could designate one person to vote.

## 2. Election Date

The Charter presently sets municipal elections for the last Tuesday of June in odd-numbered years. The proposed change would move that to the last Tuesday in July. The Town conducts municipal elections by mail. Ballots are mailed approximately 22 days before the election to the address on file with the voter registration list. For 2025, the last Tuesday in June is June 24. The idea of moving the election date to July is to encourage greater participation in municipal elections and avoid having ballots mailed during off-season or when people may be traveling.

## 3. Procedures for Ordinances

The Charter requires two readings of ordinances but is silent as to when ordinances become effective. Where the Charter is silent, Colorado statutes should control. C.R.S. § 31-16-105 provides that ordinances shall not become effective until 30 days after publication. Similarly, C.R.S. § 31-11-105 provides that ordinances shall not become effective until 30 days after publication and provides for a citizen's right of referendum within that time period. If a referendum is filed, then the effective date is delayed until an election on the referendum occurs.

The statutes cited above apply to statutory towns where only one reading of an ordinance is required, so ordinances are only published one time. Under the Charter, Mountain Village requires two readings of ordinances, and the ordinance must be published after first reading. However, the Charter requires publication after second reading only if there are changes on second reading. The Charter would benefit from provisions clarifying the effective date regardless of whether or not changes occur on second reading.

An ordinance should not go into effect until after the referendum date expires. Otherwise, an ordinance might conceivably go into effect for several days or weeks only to be suspended pending an election, and then it may or may not go back into effect depending on the election result. As an example, imagine if the Council passed a "Be Like Alta" ordinance prohibiting snowboarding. The ordinance goes into effect for 5 days before a referendum petition is filed, and then it is soundly defeated at the election. In the meantime, the police issue a ticket to a snowboarder caught during the 5-day period when the ordinance was effective. Does he have to pay the fine?

The proposed amendment would clarify that ordinances must *always* be re-published following second reading and then take effect 14 days later, whether there are changes or not. This would provide a consistent effective date for all ordinances. The amendment would also clarify that the referendum deadline would be the day before the effective date, so the Constitutional referendum right would be preserved, and the "now it applies/now it doesn't" scenario outline above would be avoided. Especially if Proposed Amendment #4 is approved to publish ordinances via the website, re-publication after second reading should be easy to provide a clear and consistent rule on the effective date and the referendum deadline.

4. Publication by Website

Many Colorado cities and towns publish their ordinances and public notices on their official websites rather than in printed newspapers. The Charter presently requires publication by newspaper. This requires additional effort by the Town Clerk and payment of publication costs to the newspaper. Publication by newspaper also causes delay, especially when there may be no local newspaper that publishes a daily edition. The drafters of the Charter may not have anticipated the evolution of the Internet to its modern form.

Publication via the Town's official website would save time and money, provide more immediate notice to the citizens of the Town, and bring Mountain Village in line with other municipalities.

5. Design Review Board

In 2022, the Town Council amended the Municipal Code to change the terms of DRB members from 2-year terms to 4-year terms to benefit from the experience and institutional knowledge of DRB members. That change conflicts with the Charter, which provides for 2-year terms. The proposed amendment would delete the 2-year term requirement in the Charter and provide that terms for DRB members shall be set by ordinance.

Note that, as of now, no decision of the DRB should be impacted by the conflict because it has been less than two years since adoption of the 2022 ordinance making this change to the municipal code.

**PROPOSED MOTION**

*I move to approve on first reading an ordinance of the Town Council of the Town of Mountain Village, Colorado, calling a special election for July 9, 2024, and submitting ballot questions to the qualified electors at the special election to amend the Town of Mountain Village Home Rule Charter.*

**ORDINANCE NO. 2024-\_\_**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, COLORADO CALLING A SPECIAL ELECTION FOR JULY 9, 2024, AND SUBMITTING BALLOT QUESTIONS TO QUALIFIED ELECTORS AT THE SPECIAL ELECTION TO AMEND THE TOWN OF MOUNTAIN VILLAGE HOME RULE CHARTER**

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, pursuant to section 2.2(b) of the Charter, the Town Council may call a special election at least 60 days in advance of the election by ordinance, which sets forth the special purpose of such election; and

WHEREAS, pursuant to section 11.8 of the Charter, the Charter may be amended at any time in the manner provided in C.R.S. § 31-2-210, as amended; and

WHEREAS, Section 2.1 of the Charter provides that elections shall be governed by the Colorado Municipal Election Code of 1965 (the “Municipal Election Code”); and

WHEREAS, the Town Council finds and determines that the Town was designed as a resort community and, as such, it was known that there would be a significant proportion of the homes therein owned as “second homes,” which is why the Charter provides that, in addition to residents of the Town, owners of property including second homes may vote in municipal elections; for various reasons since the Town’s founding it has become common to own a home through a limited liability company (“LLC”) or similar entities; that said form of home ownership is very popular in the Town today, but this form of ownership precludes voting in municipal elections in the Town; and that it is the best interests of the Town, its residents, and owners of real property therein to establish voting rights to homeowners with indirect ownership; and

WHEREAS, the Town Council find and determines that because the Town is a resort community and there are a significant number of second homes, many eligible electors are not present for regular municipal elections occurring on the last Tuesday of June in odd-numbered years; and that to ensure as many eligible voters as possible are able to participate in municipal elections, it is in the best interests of the Town and all eligible electors to change the date of regular municipal elections to the last Tuesday in July in odd-numbered years; and

WHEREAS, the Charter is silent as to the effective date of an ordinance; under Colorado statutes applicable to statutory towns with only one reading of an ordinance the effective date depends on the date of publication; the Charter requires two readings of an ordinance, but the Charter’s requirements for publication differ based on whether or not changes are approved on second reading; as a result, there is potential for confusion concerning the effective dates of ordinances; and the Council finds that it is in the best interests of the Town and the public to clarify when ordinances become effective; and

WHEREAS, the Colorado Constitution and the Charter provide citizens with a right of referendum, and because the effective date of an ordinance may be suspended until the outcome of a referendum election, the Charter should be clear that the deadline for a referendum should fall before the effective date of any such ordinance; and

WHEREAS, the Town Council finds and determines that the internet has become a common and convenient source of information for the public and that Section 5.9 of the Charter, which requires publishing ordinances and notices in a newspaper, requires unnecessary costs and delay and should be replaced to authorize publication via the Town’s official website; and

WHEREAS, Article XII of the Charter provides for the establishment of the Design Review Board, and Section 12.1(b)(2) addresses the terms of Design Review Board Members; and

WHEREAS, the Town Council has previously determined in the enactment of Ordinance 2022-03 that the Town would benefit from the experience and institutional knowledge of members of the Design Review Board and that terms of Board Members should be four years, and the Council therefore finds that it would be in the best interests of the Town to amend Section 12.1(b)(2) to provide Council with the power and flexibility to establish and amend the length of terms by Ordinance; and

WHEREAS, the Town Council finds and determines that it is in the best interests of the Town and the public to call a special election to submit ballot questions to eligible electors to amend the Charter to address these issues as set forth herein.

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. Election Call. The Town Council hereby calls a special election of qualified electors to be conducted on Tuesday, July 9, 2024, pursuant to the authority and requirements of the Charter and C.R.S. § 31-2-210.

Section 3. Proposed Amendments. At the July 30, 2024, special election, questions shall be submitted to the qualified electors of the Town that will allow said electors to determine whether to: (1) amend Section 2.3 of the Charter to establish voting rights in municipal elections to homeowners with indirect ownership, i.e., ownership via a corporate entity or trust; (2) amend Section 2.2 of the Charter to change the date of the regular municipal election from the last Tuesday in June to the last Tuesday in July of odd-numbered years; and (3) amend Section 5.2 of the Charter to establish that ordinances become effective 14 days after publication following second reading and amend Section 5.4 of the Charter to clarify when the referendum deadline would be based on that effective date. These proposed amendments to the Charter are as follows (with material to be amended shown in redline):

**Section 2.3. VOTER QUALIFICATIONS**

**c) Qualifications of Non-resident Property Owners.** Natural persons owning real property located within the boundaries of the Town who are not legal residents of the Town may become registered electors

of the Town and as such shall be qualified to vote for a municipal candidate, and on any municipal issue at any Town election, so long as they:

- 1) register with the Town Clerk, or the San Miguel County Clerk if they are residents of San Miguel County, at least twenty-nine (29) days prior to any Town election;
- 2) have been owners of record of real property within the Town for at least thirty (30) consecutive days immediately prior to the date of the election;
- 3) have during that time owned a minimum of fifty percent (50%) of the fee title interest in the subject real property; and
- 4) will be at least eighteen (18) years of age at the time of the election.

Owners of real property located within the boundaries of the Town that are not natural persons, including but not limited to corporations, limited partnerships, limited liability companies, and trusts, may designate at least one but no more than two natural persons, regardless of how many separate parcels may be owned by such owner, to act on behalf of such owner as registered electors of the Town and be qualified to vote for a municipal candidate and on any municipal issue at any Town election, so long as:

- 1) The designated natural person(s) must register with the Town Clerk at least twenty-nine (29) days prior to the date of the election; and
- 2) The owner must be an owner of record of at least a 50% interest in the real property within the Town for at least thirty (30) consecutive days immediately prior to the date of the election, provided that if two entities meet this requirement for a single parcel then each may only designate one natural person to vote; and
- 3) Each natural person designated by such owner must have owned at least a 50% interest in the entity that is the owner for at least thirty (30) consecutive dates immediately prior to the date of the election, or if the owner is a trust then the trustee or trustees may designate only one natural person for each qualifying trust; and
- 4) Each natural person so designated must be at least eighteen (18) years of age at the time of the election.

Any real property will qualify for the purposes described above regardless of whether it is intended for residential or commercial use. The fee ownership in such property shall include, without limitation, ownership interest in any platted parcel of land, or townhome, or condominium unit, as well as ground leasehold real estate interests. Such property interest shall not, however, include Ownership of parking spaces, religious or other charitable facilities, hotel units, roads, or common areas intended for non-profit use. In the case of condominium, townhome, and similar common interest ownership regimes, the commonly owned areas shall not be deemed property interests separate from the ownership interests to which they may be appurtenant, and no person owning, or belonging to, any association, partnership or other entity formed for the purposes of managing or owning such common areas shall, because of that fact

alone, become a registered elector. To be an “owner of record” there must be a deed or other instrument recorded with the San Miguel Clerk and Recorder reflecting such ownership.

**f) Only One Vote Per Person.** No person shall be entitled to cast more than one vote in any election, regardless of whether or not he or she may be a qualified legal resident and/or own one or more parcels of qualified real property and/or be designated by a property owner that is not a natural person.

## **Section 2.2. DATES AND TIMES FOR ELECTION.**

**a) Regular Municipal Elections** of the Town shall be held on the last Tuesday in July of odd-numbered years.

## **Section 5.2. PROCEDURE FOR ORDINANCES.**

**f)** Any ordinance may be amended at any time before it is finally approved by the Town Council. The Ordinance shall be published in full within seven (7) days after its final passage, unless otherwise provided in this Charter.

**h)** Except for emergency ordinances enacted pursuant to Section 5.8 below, ordinances shall become effective fourteen (14) days after publication following second reading.

## **Section 5.4. PROCEDURE FOR REPEALING ORDINANCES BY REFERENDUM.**

Repeal of an ordinance by referendum shall be initiated according to the procedures set forth in Sections 5.3(a) and (b), except that the referendum petition must be filed with the Town Clerk prior to the date that the subject ordinance becomes effective pursuant to Section 5.2(h). Any other matter recognized by state law as appropriate for referendum shall be initiated according to procedures set forth in Section 5.3(a) and (b).

## **Section 5.9. PUBLICATION OF ORDINANCES AND OTHER PUBLIC NOTICES.**

Ordinances and other public notices as required in this Charter may be published on the official website of the Town or posted in at least three (3) public places within the Town and at the office of the Town Clerk.

## **Section 12.1 DESIGN REVIEW BOARD.**

**b) DRB Membership.**

- 1) The DRB shall consist of seven (7) members, all appointed by the Town Council.
- 2) The terms for members of the DRB shall be as established by Ordinance of the Town Council.

Section 4. Official Ballot Questions. At the July 9, 2024, special election, there shall be submitted to the qualified electors the following ballot questions:

**Ballot Question No. 1**

**Voter Qualification of Non-Natural Persons**

Shall Section 2.3 of the Town of Mountain Village Home Rule Charter be amended to allow owners of real property within the Town that are not natural persons, including corporate entities and trusts, to designate a natural person to act on behalf of such owner as a registered elector and be qualified to vote in municipal elections so long as:

the designated natural person registers with the Town Clerk at least 29 days prior to the date of the election;

the owner is an owner of record of at least a 50% interest in the real property for at least 30 consecutive days immediately prior to the date of the election, provided that if two entities meet this requirement for a single parcel then each may only designate one natural person to vote;

each designated natural person has owned at least a 50% interest in the entity that is the owner for at least 30 consecutive days immediately prior to the date of the election, or if the owner is a trust, then the trustee(s) may designate only one natural person for each qualifying trust; and

each designated natural person is at least 18 years of age at the time of the election?

YES/FOR \_\_\_\_\_

NO/AGAINST \_\_\_\_\_



**Ballot Question No. 2**

**Change Regular Municipal Election to July**

Shall Section 2.2 of the Town of Mountain Village Home Rule Charter be amended to change the date of regular municipal elections from the last Tuesday in June to the last Tuesday in July of odd-numbered years?

YES/FOR \_\_\_\_\_ NO/AGAINST \_\_\_\_\_

**Ballot Question No. 3**

**Clarification of Ordinance Effective Date and Referendum Deadline**

Shall Sections 5.2 and 5.4 of the Town of Mountain Village Home Rule Charter be amended to establish that, except for emergency ordinances enacted pursuant to Section 5.8, ordinances shall become effective 14 days after publication following second reading and that a referendum petition challenging any ordinance must be filed with the Town Clerk prior to the date that the subject ordinance becomes effective?

YES/FOR \_\_\_\_\_ NO/AGAINST \_\_\_\_\_

**Ballot Question No. 4**

**Publication of Ordinances and Public Notices on the Town Website**

Shall Section 5.9 of the Town of Mountain Village Home Rule Charter be amended to authorize publication of ordinances and public notices via the Town's official website rather than a newspaper?

YES/FOR \_\_\_\_\_ NO/AGAINST \_\_\_\_\_

**Ballot Question No. 5**

**Design Review Board**

Shall Section 12.1(b)(2) of the Town of Mountain Village Home Rule Charter be amended to provide that the Town Council shall establish the terms of Design Review Board members by Ordinance?

YES/FOR \_\_\_\_\_ NO/AGAINST \_\_\_\_\_

Section 5. 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 6. 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 7. Effective Date. This Ordinance shall become effective on \_\_\_\_\_, 2024, 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 8. 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 9. 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 21st day of March, 2024.**

**TOWN OF MOUNTAIN VILLAGE:**

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

By: \_\_\_\_\_  
Martinique Prohaska, Mayor

ATTEST:

\_\_\_\_\_  
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:

\_\_\_\_\_  
Susan Johnston, Town Clerk

Approved as to Form:

\_\_\_\_\_  
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-\_\_ (“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 March 21, 2024, by the affirmative vote of a quorum of the Town Council as follows:

Council Member Name	“Yes”	“No”	Absent	Abstain
Martinique Prohaska, Mayor				
Scott Pearson, Mayor Pro-Tem				
Harvey Mogenson				
Peter Duprey				
Jack Gilbride				
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 \_\_\_\_\_, 2024 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 \_\_\_\_\_, 2024. 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
Martinique Prohaska, Mayor				
Scott Pearson, Mayor Pro-Tem				
Harvey Mogenson				
Peter Duprey				
Jack Gilbride				
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.

\_\_\_\_\_  
Susan Johnston, Town Clerk

(SEAL)