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**M E M O R A N D U M**

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

**\*STAFF RECOMMENDS TABLING THIS ISSUE IN ORDER TO HOLD A WORK SESSION ON  
JUNE 12, 2024\***

**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.*

**From:** [Susan Johnston](#)  
**To:** [Kim Schooley](#)  
**Subject:** FW: LLC Voting Related Ordinance  
**Date:** Wednesday, April 10, 2024 12:52:35 PM

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**Susan Johnston**  
Town Clerk, Town of Mountain Village

Office | [970-369-6429](tel:970-369-6429) | Mobile | [970-729-3440](tel:970-729-3440)

[sjohnston@mtnvillage.org](mailto:sjohnston@mtnvillage.org)

[455 Mountain Village Blvd., Ste. A, Mountain Village, CO 81435](#)



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**From:** Harvey Mogenson <[hmogenson@mtnvillage.org](mailto:hmogenson@mtnvillage.org)>  
**Sent:** Wednesday, April 10, 2024 11:23 AM  
**To:** Susan Johnston <[SJohnston@mtnvillage.org](mailto:SJohnston@mtnvillage.org)>  
**Subject:** Fwd: LLC Voting Related Ordinance

Susan

Attached is a public comment.

Harvey

Begin forwarded message:

**From:** Nigel Cooper <[nigelco2@icloud.com](mailto:nigelco2@icloud.com)>  
**Subject:** LLC Voting Related Ordinance  
**Date:** April 9, 2024 at 8:15:36 PM MDT  
**To:** [hmogenson@mtnvillage.org](mailto:hmogenson@mtnvillage.org), [spearson@mtnvillage.org](mailto:spearson@mtnvillage.org)

Caution: External Message - Please be cautious when opening links or attachments in email.

I understand that Mountain Village Town Council might postpone a vote to allow ALL Mountain Village Home Owners the right to have a say in what goes on in the town, including those whose property is in the name of a Trust or LLC. I am one of these owners. I have had a property in Mountain Village since 2014 and would like to have the ability to vote on all issues that affect my property and my interests. I spend several months enjoying and contributing to the lifestyle there and want to have my voice heard. Please support the proposal to allow all owners to have their due rights.

Nigel & Kate Cooper  
The Cooper 2014 Exempt Trust  
601 Mountain Village Blvd  
Unit 8  
Mountain Village, CO 81435

**From:** [Harvey Mogenson](#)  
**To:** [mvclerk](#)  
**Subject:** Fwd: 115 Rocky Rd LLC  
**Date:** Wednesday, April 10, 2024 1:22:00 PM

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Attached is a public comment.  
Harvey

Begin forwarded message:

**From:** Kyle Matthews <kyle.matthews@matthews.com>  
**Subject:** 115 Rocky Rd LLC  
**Date:** April 9, 2024 at 3:31:11 PM MDT  
**To:** "hmogenson@mtnvillage.org" <hmogenson@mtnvillage.org>, "spearsen@mtnvillage.org" <spearsen@mtnvillage.org>

**Caution:** External Message - Please be cautious when opening links or attachments in email.

Harvey & Scott,

My name is Kyle Matthews and I am the owner of the home located at 115 Rocky Rd in Mountain Village.

I support the proposed LLC Voting Ordinance that will allow all Mountain Village homeowners to vote.

Best Regards,

**Kyle B. Matthews**

Chairman & CEO | Matthews REIS™

**Direct +1 615 216 5999**

Main +1 866 889 0550 | Fax +1 310 388 0788

[kyle.matthews@matthews.com](mailto:kyle.matthews@matthews.com)

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**From:** [Harvey Mogenson](#)  
**To:** [mvclerk](#)  
**Subject:** Fwd: Voting Ordinance  
**Date:** Wednesday, April 10, 2024 1:22:49 PM

---

Attached is a public comment.  
Harvey

Begin forwarded message:

**From:** Graham Zug <[grahamfzug@gmail.com](mailto:grahamfzug@gmail.com)>  
**Subject:** **Voting Ordinance**  
**Date:** April 9, 2024 at 6:56:23 PM MDT  
**To:** [hmogenson@mtnvillage.org](mailto:hmogenson@mtnvillage.org)

**Caution:** External Message - Please be cautious when opening links or attachments in email.

Harvey,  
I support the proposed LLC voting ordinance allowing all property owners in Mountain Village to vote.  
Sincerely,  
Graham Zug  
317 Fairway Drive, Mountain Village, CO.

**From:** [Harvey Mogenson](#)  
**To:** [mvclerk](#)  
**Subject:** Fwd: Right to vote  
**Date:** Wednesday, April 10, 2024 1:37:21 PM

---

Attached is a public comment.  
Harvey

Begin forwarded message:

**From:** David Koitz <dkoitz@gmail.com>  
**Subject:** **Right to vote**  
**Date:** April 10, 2024 at 12:57:48 PM MDT  
**To:** hmogenson@mtnvillage.org  
**Cc:** Gretchen Koitz <gkoitz@gmail.com>

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Harvey...

Two years ago we put our Mountain Village home in a trust to avoid future probate issues. For many years, we have spent 6 months or more out there as primary or second homeowners, and prior to the trust's creation we could vote in MV. Our presence in the community has not changed, and the legal trust we created does not make us any "less" a MV homeowner or taxpayer. It seems only fair that we should have the right to vote.

David and Gretchen Koitz

Sent from my iPad



**From:** [Susan Johnston](#)  
**To:** [mvclerk](#)  
**Subject:** FW: LLC Voting Related Ordinance  
**Date:** Wednesday, April 10, 2024 10:38:04 AM

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Packet materials for the April 25, 2024 TC packet re: the second reading on charter amendments.



**Susan Johnston**  
Town Clerk, Town of Mountain Village

Office | [970-369-6429](tel:970-369-6429) | Mobile | [970-729-3440](tel:970-729-3440)

[sjohnston@mtnvillage.org](mailto:sjohnston@mtnvillage.org)

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---

**From:** Harvey Mogenson <[hmogenson@mtnvillage.org](mailto:hmogenson@mtnvillage.org)>  
**Sent:** Wednesday, April 10, 2024 10:23 AM  
**To:** Susan Johnston <[SJohnston@mtnvillage.org](mailto:SJohnston@mtnvillage.org)>  
**Subject:** Fwd: LLC Voting Related Ordinance

Susan;  
The following is a public comment I received.  
Harvey

Begin forwarded message:

**From:** Gary Sowyrda <[gjsowyrda@gmail.com](mailto:gjsowyrda@gmail.com)>  
**Subject:** LLC Voting Related Ordinance  
**Date:** April 8, 2024 at 8:42:57 PM MDT  
**To:** [hmogenson@mtnvillage.org](mailto:hmogenson@mtnvillage.org), [spearson@mtnvillage.org](mailto:spearson@mtnvillage.org)

**Caution:** External Message - Please be cautious when opening links or

attachments in email.

Greetings. My wife and I just wanted to pass along our support for the LLC Voting Ordinance.

We have owned our property on Polecat for 13 years now. Ownership is an LLC with the only partners being each of us and our three sons. We take the community very seriously and have always been very disappointed in us not being allowed to vote. Telluride properties are expensive investments and lend themselves to LLC's for a number of reasons. NOT allowing owners such as us to vote seems to be some archaic rule and really does not make a lot of sense to us. Between our entire family, someone is in our house more than 5 months a year.

Thank you!

gary & susan sowyrda

**From:** [Susan Johnston](#)  
**To:** [Kim Schooley](#)  
**Subject:** FW: 2nd Homeowner Vote  
**Date:** Wednesday, April 10, 2024 12:52:40 PM

---



**Susan Johnston**  
Town Clerk, Town of Mountain Village

Office | [970-369-6429](tel:970-369-6429) | Mobile | [970-729-3440](tel:970-729-3440)

[sjohnston@mtnvillage.org](mailto:sjohnston@mtnvillage.org)

[455 Mountain Village Blvd., Ste. A, Mountain Village, CO 81435](#)



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**From:** Harvey Mogenson <[hmogenson@mtnvillage.org](mailto:hmogenson@mtnvillage.org)>  
**Sent:** Wednesday, April 10, 2024 11:23 AM  
**To:** Susan Johnston <[SJohnston@mtnvillage.org](mailto:SJohnston@mtnvillage.org)>  
**Subject:** Fwd: 2nd Homeowner Vote

Susan;  
Attached is a public comment.  
Harvey

Begin forwarded message:

**From:** <[beerallen@myyahoo.com](mailto:beerallen@myyahoo.com)>  
**Subject:** 2nd Homeowner Vote  
**Date:** April 10, 2024 at 9:11:38 AM MDT  
**To:** <[hmogenson@mtnvillage.org](mailto:hmogenson@mtnvillage.org)>, <[spearson@mtnvillage.org](mailto:spearson@mtnvillage.org)>

**Caution:** External Message - Please be cautious when opening links or attachments in email.

Councilmembers,

I support the proposed Voting Ordinance that will allow all Mountain Village homeowners to vote. Owning the minimum of 50% of a home in the name of a legal trust or LLC should not limit the owner's ability to participate in the body politic of TOMV.

Sincerely,

Allen Watson  
Owner in Mountain Village  
[beerallen@myyahoo.com](mailto:beerallen@myyahoo.com)  
713-854-9215

**From:** [Harvey Mogenson](#)  
**To:** [mvclerk](#)  
**Subject:** Fwd: Voting Ordinance  
**Date:** Sunday, April 14, 2024 7:36:56 AM

---

Another public comment.  
Harvey

Begin forwarded message:

**From:** Ed Healy <eghealy@gmail.com>  
**Subject:** **Voting Ordinance**  
**Date:** April 11, 2024 at 8:50:14 PM EDT  
**To:** spearson@mtnvillage.org, hmogenson@mtnvillage.org

Caution: External Message - Please be cautious when opening links or attachments in email.

Hi Harvey and Scott,

I support the proposed LLC Voting Ordinance that will allow all Mountain Village homeowners to vote.

Ed and Mary Healy

Sent from my iPad