

**ORDINANCE ADOPTING  
TOWN OF MOUNTAIN VILLAGE AFFORDABLE HOUSING RESTRICTION  
ORDINANCE NO. 2006-07**

**AN ORDINANCE ADOPTING THE TOWN OF MOUNTAIN VILLAGE AFFORDABLE  
HOUSING RESTRICTION.**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF MOUNTAIN VILLAGE, the following:

**Section I: Purpose and Effect**

1. Purpose. The purpose of this Ordinance is to create and maintain housing which is affordable for Employees, the need for which is created by development within the Town of Mountain Village, hereinafter referred to as the Town.
2. Effect. As of the Effective Date of this Ordinance, this Ordinance shall govern the ownership, use and occupancy of Affordable Housing Units and Affordable Housing Lots (as defined in Sections II.3.a. and 3.b., respectively) in the Town, which are created or purchased (with the buyer's agreement) after the Effective Date. This Ordinance shall also apply to all development which has contractually agreed to abide by the regulations contained herein.

**Section II: Definitions**

1. Acknowledgment of Affordable Housing Restriction (AHR) shall mean that document executed by the Owner(s) of an Affordable Housing Unit or an Affordable Housing Lot in which the Owner(s) acknowledges and agrees to comply with the AHR.
2. Affordable Housing shall mean Affordable Housing Units and Affordable Housing Lots, restricted as to use and occupancy by *the AHR*.
- 3.a Affordable Housing Unit (AHU) shall mean any or all units in the Town including all Employee Apartment, Employee Dormitory, Employee Condominium, and Employee Single Family dwelling units which are subject to this Ordinance.
- b Affordable Housing Lot (AHL) shall mean any or all unimproved properties, referred to as lots, in the Town that are zoned solely for one Affordable Housing Unit, which lots are subject to this Ordinance. Any dwelling unit constructed on an Affordable Housing Lot shall be considered an Affordable Housing Unit.
4. Certificate of Qualification shall mean that document in which the Housing Authority or its designee certifies an Occupant and/or Owner as an Employee according to the AHR.

5. Deed Restriction shall mean the restriction document recorded against the Affordable Housing Unit or Affordable Housing Lot to apply the AHR and insure compliance with this Ordinance. The Deed Restriction shall incorporate, as an Exhibit, an Option to Purchase, in order to clearly provide for procedures whereby the Town may acquire the AHU or AHL in the event of a foreclosure or a deed in lieu of foreclosure.
6. Domestic Partner shall mean a person who is neither married nor related by blood or marriage to the Employee; it is the Employee's sole spousal equivalent; lives together with the Employee in the same residence and intends to do so indefinitely; is responsible with the Employee for each other's welfare. A domestic partner relationship may be demonstrated by any three of the following types of documentation: a) a joint mortgage or lease; b) designation of the domestic partner as beneficiary for life insurance; c) designation of the domestic partner as primary beneficiary in the employee's will; d) domestic partnership agreement; e) powers of attorney for property and/or health care; and f) joint ownership of either a motor vehicle, checking account or credit account.
7. Effective Date shall mean the date when this Ordinance goes into effect; which shall be thirty (30) days from the approval of the second reading of the Ordinance by the Town of Mountain Village Town Council.
8. Employee shall mean a natural person who is able to document eligibility according to the criteria, to occupy and/or own, as provided in Section IV., F., Qualifications to Purchase Affordable Housing. The Housing Authority, or its designee, shall determine whether a person qualifies as an Employee based on said criteria.
9. Household shall mean a person or group of people occupying a single dwelling.
10. Housing Authority shall mean the Town of Mountain Village Housing Authority established by the Town of Mountain Village Town Council or its successors.
11. HUD shall mean the US Department of Housing and Urban Development.
12. Owner shall mean any person holding fee title to an Affordable Housing Unit or Affordable Housing Lot. The ownership of an Affordable Housing Unit or Affordable Housing Lot shall be limited according to Section III. A. Affordable Housing Restriction (AHR) on Ownership, Use and Occupancy.
13. Property shall mean the real property subject to the AHR and the improvements thereon.

14. Residence shall mean that home or place of abode in which a person's habitation is fixed and to which he, whenever absent, has the present intention of returning after a departure or absence there from, regardless of the duration of such absence. A Residence is a permanent building, or part thereof, including an Employee Single Family home, Employee Condominium, Employee Apartment, or Employee Dorm.
15. Retiree shall be a person of Retirement Age who no longer works at least 1560 hours per year within the boundaries of the R-1 School District.
16. Retirement Age shall be at least sixty (60) years of age.

### **SECTION III: ADOPTION OF THE TOWN OF MOUNTAIN VILLAGE AFFORDABLE HOUSING RESTRICTION**

As of the Effective Date of this Ordinance, the following Town of Mountain Village Affordable Housing Restriction (the "AHR") shall be imposed on each parcel of real property within the Town of Mountain Village which is newly zoned or where employee housing density is rezoned to add the following Zoning Designations to the real property: Employee Apartment, Employee Dormitory, Employee Condominium or Employee Single Family.

#### **A. Affordable Housing Restriction (AHR) on Ownership, Use and Occupancy**

The ownership of an Affordable Housing Unit or an Affordable Housing Lot is hereby limited exclusively to Employees and their spouses or Domestic Partners and children while residing with the Employee. The use and occupancy of an Affordable Housing Unit is hereby limited exclusively to Owners and their spouses or Domestic Partners and children or other dependents while residing with the Employee.

The forgoing restriction, as defined by Town of Mountain Village Ordinance 2006-\_\_\_\_, constitutes a covenant that runs fifty (50) years from the date of recordation with the title to the Property as a burden thereon and shall be binding on the Owner, and on the heirs, personal representatives, assigns, lessees and licensees and any transferee of the Owner. The duration of this restriction and covenant shall extend for an initial period of fifty (50) years, and at the option of the Town Council of the Town, or its designee, may be extended for an additional period of fifty (50) years after public hearing and comment on the proposed extension. This restriction, as defined by Town of Mountain Village Ordinance 2006\_\_ shall be administered by the Town Council, or its designee, and shall be enforceable by any appropriate legal or equitable action including but not limited to specific performance, injunction, abatement or eviction of non-complying Owners, users or occupants, or such other remedies and penalties as may be provided by Colorado law or the Ordinances of the Town.

## **B. Limitation on Amendments to Affordable Housing Restriction**

Although this Ordinance may be amended from time to time, the AHR recorded against a particular Affordable Housing Unit or Affordable Housing Lot may not be amended without the consent of the Owner and the Town Council of the Town or its designee. Subsequent amendments to this Ordinance that are less restrictive than those in effect at the time when the AHR was recorded against a particular Affordable Housing Unit or Affordable Housing Lot shall apply to such Affordable Housing. Subsequent amendments to this Ordinance that are more restrictive than those in effect at the time when the AHR was recorded against a particular Affordable Housing Unit or Affordable Housing Lot shall not be applied against the Affordable Housing without the written consent of the then Owner, and upon such consent shall be recorded as an amendment to the AHR for the subject Affordable Housing Unit or Affordable Housing Lot.

## **SECTION IV: ADOPTION OF RULES AND REGULATIONS GOVERNING AFFORDABLE HOUSING IN THE TOWN OF MOUNTAIN VILLAGE**

### **A. Deed Restriction**

1. The developer of any newly constructed Affordable Housing Unit that is subject to this Ordinance must execute and deliver an original recorded copy of a Deed Restriction on the Housing Authority's standard form prior to issuance of a certificate of occupancy for the Affordable Housing Unit. The Deed Restriction and any amendments thereto must be recorded in the property records of San Miguel County
2. The owner of any Affordable Housing Lot that is subject to this Ordinance must execute and deliver an original recorded copy of a Deed Restriction on the Housing Authority's standard form prior to issuance of a building permit for the construction of a dwelling unit on the Affordable Housing Lot. Any dwelling unit constructed on an Affordable Housing Lot shall be deemed an Affordable Housing Unit and subject to all the requirements of an Affordable Housing Unit. The Deed Restriction and any amendments thereto must be recorded in the property records of San Miguel County
3. For any developments that have contractually agreed to abide by this Ordinance, the developer or owner of such property shall record a Deed Restriction on the Housing Authority's standard form in accordance with the conditions and restrictions set forth in the contractual agreement between the developer/owner and the Town.
4. Subsequent purchasers of Affordable Housing units must execute an Acknowledgment of Deed Restriction prior to closing the purchase of an Affordable Housing unit
5. The Deed Restriction shall contain a provision which requires the Deed Restriction to be canceled by the Town of Mountain Village in the event of a foreclosure by a financial institution holding a first position purchase money deed of trust on the Affordable Housing Unit. The Deed Restriction is not subject to

cancellation in connection with seller or private party financing of an Affordable Housing Unit.

6. An Option to Purchase shall be granted by all lenders to the Town of Mountain Village to redeem the Affordable Housing Unit in the event of default by purchasing the unit from the holder of the trustee's deed at the redemption price plus reasonable costs of the holder. If the Town does not exercise this Option within 30 days after issuance of the Trustee's Deed, the Deed Restriction shall be canceled by the Town of Mountain Village.

## **B. Initial Sales of Affordable Housing**

1. The initial sales prices for Affordable Housing Units sold shall be limited as set forth below:
  - a. The initial sales price of Affordable Housing Units sold by the multi unit developer shall be no greater than \$250 per square foot. The Town of Mountain Village Town Council may adjust this initial per square foot sales price annually at its discretion. Square footage shall be measured from the interior demising walls.
  - b. The initial sales price of an Affordable Housing Unit constructed by an individual Owner on deed restricted land shall be based on the actual land and construction costs, as provided to the Town of Mountain Village Building Department for a building permit, plus ten (10) percent of the construction costs.
  - c. Resale of Affordable Housing Units shall be governed by Section C of this Ordinance. At the closing of the sale, the seller shall pay to the Housing Authority, or its designee, an administrative processing fee of \$300. The Housing Authority, or its designee, may instruct the Title Company to pay such fees out of the funds held for the seller at closing. The Housing Authority, or its designee, may waive the fee, or a portion thereof, in its sole discretion, to promote affordable housing.
2. The initial sales prices for Affordable Housing Lots sold shall be set by the Housing Authority at such time as the zoning designation is rezoned. Resale of Affordable Housing Lots shall be governed by Section C of this Ordinance. At the closing of the sale, the seller shall pay to the Housing Authority, or its designee, an administrative processing fee of \$300. The Housing Authority, or its designee, may instruct the Title Company to pay such fees out of the funds held for the seller at closing. The Housing Authority, or its designee, may waive the fee, or a portion thereof, in its sole discretion, to promote affordable housing.

## **C. Resale of Affordable Housing Including Appreciation Limits**

1. Owner must provide written notice of intent to sell and request for maximum resale price calculation at least 15 days prior to offering the Affordable Housing for sale.
2. Resale of Affordable Housing Units and Affordable Housing Lots shall be to qualified buyers as governed by Section F of this Ordinance.

3. The sales price for resale of an Affordable Housing Unit or Affordable Housing Lot shall be calculated by allowing a 3% appreciation, compounded annually, of the initial purchase price paid by the Owner, from the purchase date by the Owner.
4. The 3% appreciation will be prorated to the day when the notice of intent to sell the unit is received by the Housing Authority or its designee.
5. Allowable Home Improvements:
  - a. Home improvements must be documented and approved by the Housing Authority, or its designee, in writing prior to construction of these improvements. Home improvement costs may be added to the Affordable Housing Unit value as determined by Section 4.C.3 at the time the home improvement is completed. The total home improvement costs may not exceed 10% of the original purchase price. The Housing Authority, or its designee, may grant variances for improvements that exceed 10% of the original purchase price of the Ownership unit, prior to the construction of these improvements when determined by the Housing Authority to benefit the purpose of this Ordinance, such as when the improvements increase the AHU's capacity to house additional Employees.
  - b. Home improvements exclude the following:
    - c. General maintenance and repair costs;
    - d. Appliance replacements; and
    - e. Capital improvements due to normal wear and tear.
    - f. Landscape plantings.
6. At the closing of a resale, the seller shall pay to the Housing Authority, or its designee, a Deed Restriction Administration Fee of \$750. The Housing Authority, or its designee, may instruct the Title Company to pay such fees out of the funds held for the seller at closing. The Housing Authority, or its designee, may waive the fee, or a portion thereof, in its sole discretion, to promote affordable housing.

#### **D. Lotteries held to Purchase an Affordable Housing Unit**

1. The Housing Authority, or its designee, shall operate a lottery for the sale of Affordable Housing Units and Affordable Housing Lots (both the initial sale and any subsequent sales). Lottery applications may be obtained from the Housing Authority, or its designee.
  - a. There is a \$50 application fee to enter the lottery process.
  - b. Qualified applicants will be placed into a lottery that will be held within a reasonable amount of time following the deadlines for the bids. The results of the lottery will determine the applicant's place in the bid process; i.e., if the applicant draws number one in the lottery, that applicant will be the first to negotiate the offer on the Affordable Housing Unit or Affordable Housing Lot.
2. If the terms of the proposed purchase contract, as initially presented to the Owners of the Affordable Housing Unit, are unacceptable to the Owner, then there shall be a mandatory negotiation period of three days. During this period, the Owner and potential buyer shall endeavor to reach an agreement regarding said terms, including, but not limited to, the closing date and financing

contingencies. If the Owner and buyer have not reached an agreement at the end of the negotiation period, the next in order of the lottery selection will make an offer to the Owner for consideration. A new three-business day negotiating period will begin. All follow up qualified bids will be processed in like fashion until the unit is sold or all bids are rejected. If the Owner rejects all bids, a new lottery will be held as provided for in this Ordinance.

#### **E. Development of Affordable Housing Units**

1. All Affordable Housing Units that are constructed shall meet the following size requirements.
  - a. Studio Affordable Housing Units shall be constructed within the livable square footage size ranging from 400 to 700 square feet.
  - b. One (1) bedroom Affordable Housing Units shall be constructed within the livable square footage size ranging from 600 to 900 square feet.
  - c. Two (2) bedroom Affordable Housing Units shall be constructed within the livable square footage size ranging from 850 to 1,100 square feet.
  - d. Three (3) bedroom Affordable Housing Units shall be constructed within the livable square footage size ranging from 1,000 to 1,900 square feet.
  - e. Employee Single Family/Detached Condominium Units (as defined in the Town of Mountain Village Land Use Ordinance) Affordable Housing Units shall be constructed within the livable square footage size ranging from 1,100 to 1,900 square feet.

#### **F. Qualifications to Purchase Affordable Housing**

To qualify and to be eligible to purchase an Affordable Housing Unit, a natural person or household must meet the following criteria. The Housing Authority, or its designee, shall determine whether an applicant qualifies as an Employee based on the criteria after considering evidence, including but not limited to, documentation of hours worked within the Telluride R-1 School District, place of voter registration, place of automobile registration, drivers' license address, income tax records, and public service involvement within the Telluride R1 School District community,

1. Employment: Is employed an average of at least 1560 hours per year within the boundaries of the Telluride R-1 School District; upon purchase, must maintain the work requirement until retirement age as defined by this Ordinance.

A person not meeting the employment requirement but meeting all other criteria may be qualified as an Employee by the Housing Authority, or its designee, if that person is more than sixty (60) years of age and has been an Employee in the Telluride R-1 School District for a period of at least 5 years immediately prior to retirement or is handicapped or disabled and who has been a Resident within the

boundaries of the Telluride R-1 School District for at least 12 months immediately prior to the closing date of a sale.

2. Residence: Upon purchase of the Affordable Housing Unit shall maintain Residence in the Town and occupy the Affordable Housing Unit as the primary Residence.
3. Household Income: The household's total annual income must not exceed 250% of area median income (AMI) for San Miguel County as defined by HUD for any of the previous three years. In addition, no more than 25% of household income may be from non-employment sources.
4. Household Net Worth: The household will not have a net worth that exceeds three (3) times the purchase price of the Affordable Housing Unit. Net worth is defined as the sum of the value of real estate and other investments, cash, vehicles, etc. minus liabilities such as real estate and credit card debt. (401K and qualified retirement plans are excluded from the net worth calculation).
5. Property Ownership Restriction:
  - a. Ownership of Affordable Housing Units or Affordable Housing Lots is restricted to either one Affordable Housing Unit or one Affordable Housing Lot per Household.
  - b. Notwithstanding Section IV.F.5.a, above, a Household may apply to the Housing Authority for an exception to own two (2) Affordable Housing Units or one (1) Affordable Housing Unit and one (1) Affordable Housing Lot for a period to not exceed two (2) years to allow for the sale of an already owned Affordable Housing Unit or the construction of an Affordable Housing Unit on an Affordable Housing Lot. An Application for Exception to the Affordable Housing Restriction must be submitted with a \$250 fee.
6. Assets Disposition: Any applicant who has assigned, conveyed, transferred or otherwise disposed of assets within the last two years without fair consideration in order to meet the net worth limitations shall be considered unqualified and ineligible to purchase an Affordable Housing Unit.
7. Compliance: An Applicant, upon purchase, must maintain compliance with the Affordable Housing Restriction as set forth in this Ordinance. Any individual or household who is under review for a possible non-compliance issue may not enter any new lotteries until the non-compliance issue has been resolved to the satisfaction of the Housing Authority or its designee.



## **G. Initial Qualification to Purchase**

1. To determine if a person or household attempting to purchase an Affordable Housing Unit meets all of the criteria set forth above, the Housing Authority, or its designee, will review and have on file specific documentation that provides proof of: residency, employment and income. The Housing Authority, or its designee, may request any or all of the documentation set forth in this Ordinance. All information and documentation received will remain confidential.
2. Applicants for an Affordable Housing Unit shall certify on the application that all information provided is true and accurate. If any of the information is determined to be inaccurate or non-verifiable, as determined by the Housing Authority or its designee, the applicant may be subject to disqualification by the Housing Authority from the application and/or approval process.

## **H. Maintaining Eligibility for Ownership of Affordable Housing**

There is not a re-qualification requirement to meet income guidelines for persons who have purchased and own an Affordable Housing Unit or Affordable Housing Lot. The individual or household must remain a qualified Employee and continue to occupy the Affordable Housing Unit as his/her primary Residence as defined in this Ordinance or to continue to own an Affordable Housing Lot. It shall be a requirement for an Owner to provide documentation of employment in the R-1 School District every two (2) years. A retiree, as defined in this Ordinance, must provide proof of having been an Employee within the R-1 School District for at least five (5) years immediately prior to retirement.

## **I. Enforcement of Ownership Units**

The Housing Authority, or its designee, may randomly audit all Owners of Affordable Housing Units and Affordable Housing Lots in order to establish compliance with this Ordinance.

Housing Authority Responsibilities:

1. The Housing Authority, or its designee, may require each household to re-qualify in regards to the qualified Employee requirement at a minimum of every two years, if not sooner by random audit.
2. The Housing Authority, or its designee, may request of Owner(s) to provide documentation to the Housing Authority showing employment history of the household occupants.
3. The Housing Authority, or its designee, may mail a letter and a form to be completed by the Owner(s) requesting employment verification and tax returns of the household occupants.
4. There will be a \$30 fee for this re-qualification paid by the Owner(s).
5. Once the documentation is received, the Housing Authority, or its designee, may review each file for compliance.
6. Should the Owner(s) be in non-compliance with this Ordinance, a second letter may be sent to the Owner(s) stating the reasons of non-compliance, as determined by the Housing Authority, or its designee, and requesting immediate

action for the Owner(s) to list their unit for sale under the procedures detailed in this document.

**Owner's Responsibilities:**

1. Once the Owner(s) receives the letter from the Housing Authority, or its designee, the Owner(s) will provide to the Housing Authority the required form and requested documentation.
2. If the Owner(s) do(es) not submit the information or contact the Housing Authority in the time allotted, the appreciation for his/her unit will be suspended. Should the Owner(s) be found in non-compliance or in violation of this Ordinance, the Owner(s) will be required to begin sales proceedings for the Affordable Housing Unit with the Housing Authority as defined by this Ordinance.
3. There are life circumstances that may be beyond the control of the Owner(s). The Owner(s) has/have the opportunity to request a special review by the Housing Authority.

**J. Home Owner's Association Dues**

1. If an Affordable Housing Unit is developed as part of a mixed free market/affordable housing development project for sales purposes, then the initial monthly dues for the Affordable Housing Unit(s) shall be approved by the Town of Mountain Village Housing Authority or its designee. Future increases in the monthly dues for the Affordable Housing Unit(s) shall be no greater than the percentage increase applied to the market rate units in the development.

**K. Exceptions**

Exceptions may be granted to the criteria contained in Section IV(F) on a case by case basis by the Housing Authority, provided the Housing Authority finds such exception will promote the provision of affordable housing. Employees who wish to apply for an exception may do so by stating their case in writing and paying a \$25 application fee to the Housing Authority.

**L. Violations**

1. The Housing Authority, or its designee, may require at any time that an Owner verify within ten (10) days of such request by the Housing Authority, or its designee, that the Owner is a qualified Employee.
2. In the event an Owner of an Affordable Housing Unit or Affordable Housing Lot does not or no longer qualifies as an Employee, the Housing Authority, or its designee, may require that occupant to:
  - a. Re-qualify as an Employee within sixty (60) days: or
  - b. Sell the Affordable Housing Unit he/she owns within sixty (60) days by following the procedures set forth herein.

3. In the event a violation is discovered, the Housing Authority, or its designee, shall provide a written notice of violation to the Owner detailing the nature of the violation and allowing the Owner fifteen (15) days from the date of such written notification to remedy such violation. Said notice shall state that the Owner may request a hearing before the Housing Authority within the fifteen (15) day period to determine the merits of the allegations.

4. In the event that an Affordable Housing Unit is sold, transferred and/or conveyed without compliance with this Ordinance, such sale, transfer and/or conveyance shall be wholly null and void and shall confer no title whatsoever upon the purported transferee.

## **M. Remedies**

There is hereby reserved to the Housing Authority, or its designee, any and all remedies provided by law, by the Home Rule Charter for the Town of Mountain Village, by the general Ordinances of the Town and by the Ordinance for violation of this Ordinance or any of its terms and the laws of the State of Colorado. In the event of litigation with respect to any or all provisions of this Ordinance, prevailing party in such litigation shall be entitled to recover damages and costs, including reasonable attorney's fees.

## **N. Notices**

Any notice, consent or approval required under this Ordinance shall be provided in writing by certified mail, return receipt requested, properly addresses and with postage fully prepaid, to the Housing Authority or its designee at the address provided below or to the Owner at an address provided by that Owner at the time of qualifying for Affordable Housing.

Town of Mountain Village Housing Authority  
411 Mountain Village Boulevard  
Mountain Village, CO 81435

Any change in address shall be promptly communicated to the Housing Authority or its designee.

## **O. General Provisions**

1. Further Actions. The parties to any Agreement contemplated under this Ordinance shall execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Ordinance or any agreement or document relating hereto or entered into in connection herewith.
2. Gender and Number. Whenever the context so requires in this Ordinance, the neuter gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.
3. Non-discrimination. No Employee shall be discriminated against on the basis of race, national origin, sex, color, creed, or physical infirmity.

4. Personal Liability. The Owner shall be personally liable for any violations of the provisions of this Ordinance.
5. Severability. Whenever possible, each provision of this Ordinance shall be interpreted in such a manner as to be valid under applicable law; however, if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition without invalidating any remaining provision.
6. Waiver. No claim of waiver, consent or acquiescence with respect to any provision of this Ordinance shall be valid against any party hereto, except on the basis of a written instrument executed by the parties to the AHR. However, the party for whose benefit a condition is inserted shall have the unilateral right to waive such condition.

**SECTION V: CERTIFICATION**

**THE TOWN CLERK SHALL PUBLISH NOTICE OF THIS ORDINANCE IN COMPLIANCE WITH THE HOME RULE CHARTER FOR THE TOWN OF MOUNTAIN VILLAGE.**

**PASSED BY THE TOWN COUNCIL AFTER PUBLIC HEARING AND SIGNED THIS \_\_\_ DAY OF AUGUST 2006.**

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**Davis D. Fansler, Mayor**

**ATTEST:**

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**Bernadette Ervin, Town Clerk**