

ORDINANCE ADOPTING
TOWN OF MOUNTAIN VILLAGE EMPLOYEE HOUSING RESTRICTION
ORDINANCE NO. 1997-05

AN ORDINANCE ADOPTING THE TOWN OF MOUNTAIN VILLAGE EMPLOYEE HOUSING RESTRICTION.

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

SECTION 1: ADOPTION

I. TOWN OF MOUNTAIN VILLAGE EMPLOYEE HOUSING RESTRICTION

The following Town of Mountain Village Employee Housing Restriction (the "EHR") shall be imposed on each parcel of real property designated as "Employee Apartment" or "Employee Dormitory" on the Town of Mountain Village Official Lot List as recorded in the records of the San Miguel County Clerk and Recorder and as may be subsequently amended from time to time (the "Official Town Lot List"). The EHR shall replace and supercede the County R-1 Housing Deed Restriction on all such property.

A. Employee Housing Restriction

Subject Property: (Legal Description) ("the Property")

The use and occupancy of the Property is hereby limited exclusively to such employees who are employed or can show intent to be employed within the Telluride R-1 School and their spouses and children.

The foregoing restriction on use and occupancy 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 and covenant 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 Employee Housing Restriction

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

II. GUIDELINES, RULES AND REGULATIONS GOVERNING AFFORDABLE HOUSING IN THE TOWN OF MOUNTAIN VILLAGE

C. Purpose

This Ordinance shall govern the ownership, use and occupancy of Affordable Housing in the Town, including all "Employee Apartment" and "Employee Dormitory" dwelling units (defined on the Official Town Lot List).

D. Definitions

1. Acknowledgment of Employee Housing Restriction shall mean that document executed by the Owner of Affordable Housing in which the Owner acknowledges and agrees to comply with the EHR.

2. Affordable Housing shall mean residential lots and dwelling units restricted by the EHR to use and occupancy by Employees and their spouses and children.

3. Certificate of Qualification shall mean that document in which the Town Council or its designee certifies an Occupant as an Employee according to the EHR.

4. Employee shall mean a person who is employed or can show intent to be employed within the Telluride R-1 School District and maintains Residence in the Town. The Town Council or its designee shall determine whether a person qualifies as an Employee based on criteria including evidence of income earned 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 R-1 School District community. A person not otherwise meeting the definition of Employee may be qualified as an Employee by staff if that person is more than sixty (60) years of age and has been employed in the Telluride R-1 School District. Determination of Employee eligibility by the staff may be appealed to the Town Council or its designee.

5. Owner shall mean any person, group, organization, agency or other entity holding fee title to Affordable Housing. Notwithstanding the lack of limitation on ownership of Affordable Housing, the use and occupancy of Affordable Housing shall be limited to Employees and their spouses and children.

6. Property shall mean the real estate subject to the EHR and the improvements thereon.

7. 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 therefrom, regardless of the duration of such absence. A Residence is a permanent building, or part thereof, including a house, condominium, Employee Apartment or Employee Dormitory.

E. Procedure for Qualifying Affordable Housing

Property becomes designated as Affordable Housing when the Town Council or its designee and the Owner of the Property execute and record with the Office of the Clerk and Recorder of San Miguel County a final plat containing the EHR or a separately recorded document imposing the EHR on the Property. Prior to the issuance of a Certificate of Occupancy for each "Employee Apartment" and "Employee Dormitory" unit, the Owner shall subject the unit to the EHR through proper execution and recordation of that document, as described in this Section.

F. Ownership, Use and Occupancy Regulations

1. The terms of this EHR shall constitute covenants running with the Property, as a burden thereon, for the benefit of, and shall be specifically enforceable by, the Town Council or its designee, by any appropriate legal action including but not limited to specific performance, injunction, eviction of non-complying owners and/or occupants, and/or by any of the enforcement and remedy provisions of this EHR.

2. Any person, group, organization, agency or other entity may own one or more Affordable Housing units. Ownership of Affordable Housing units shall be subject to the Owner limiting occupancy to qualified Employees. On or prior to assuming ownership of an Affordable Housing unit, the Owner shall execute and record an Acknowledgment of Employee Housing Restriction in the property records of San Miguel County.

3. Prior to occupancy of Affordable Housing by an Owner, the Owner must submit a standard application on forms provided by the Town Council or its designee, plus an application fee in an amount set by the Town Council or its designee.

G. Rental Regulations

1. Prior to occupancy of Affordable Housing by an Employee, the Employee must submit a standard application on forms provided by the Town Council or its designee, plus an application fee in an amount set by the Town Council or its designee.

2. A signed copy of the lease or other occupancy agreement must be provided to the Town Council or its designee prior to occupancy by an Employee, pursuant to this Section.

3. Nothing herein shall be construed to require the Town Council, its designee or any other entity to protect or indemnify an Owner against any loss attributable to rental, including but not limited to non-payment of rent or damage to Affordable Housing.

nor shall the Town Council, its designee or any other entity be responsible for locating an Employee to occupy Affordable Housing in the event that no Employee occupant is found by the owner.

H. Procedure for Selling Affordable Housing

1. In the event an Owner desires to sell Affordable Housing, the Owner may sell the unit himself or list and sell the unit through a real estate broker licensed in the State of Colorado.

2. As part of all sales and other transfers of Affordable Housing, an Acknowledgment of Housing Use and Occupancy, in which the Owner acknowledges and agrees to abide by all terms and conditions of the EHR shall be executed and recorded in the Office of the Clerk and Recorder of San Miguel County (in addition to recordation of the EHR on the appropriate plat for the Subject Property).

I. Violations

1. The Town Council or its designee may require at any time that an Owner verify within five (5) days of such request by the Town Council or its designee that:

- a. If Owner occupied, that the Owner is a qualified Employee; or
- b. Any particular tenant is a qualified Employee.

2. In the event an occupant of Affordable Housing does not or no longer qualifies as an Employee, the Town Council or its designee may require that occupant to:

- a. Vacate rental Affordable Housing within sixty (60) days, or requalify as an Employee within that period; or
- b. Vacate Affordable Housing he owns.

3. In the event a violation is discovered, the Town Council 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 Town Council or its designee within the fifteen (15) day period to determine the merits of the allegations.

J. Remedies

There is hereby reserved to the Town Council 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 this Ordinance for violation of this Ordinance or any of its terms. In the event of litigation with respect to any or all

provisions of this Ordinance, the prevailing party in such litigation shall be entitled to recover damages and costs, including reasonable attorney's fees.

K. Foreclosure

The use and occupancy restrictions contained herein shall terminate in the event of foreclosure by the holder of the promissory note secured by a first deed of trust on the respective Affordable Housing and subject to the issuance of a public trustee's or sheriff's deed to the holder of the promissory note or governmental agency guaranteeing, insuring or acquiring the promissory note from the holder.

L. Notices

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

Address for the Town Council:

Town of Mountain Village, Town Council
P.O. Box 11162
Telluride, CO 81435

M. 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 EHR. However, the party for whose benefit a condition is inserted shall have the unilateral right to waive such condition.


SECTION 2: 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 27th DAY OF MAY, 1997.


WILLIAM A. HANLEY, III, Mayor

ATTEST:


LINDA L. CHECK, Town Clerk