

ORDINANCE NO. ____
SERIES 2022

AN ORDINANCE AMENDING TITLE 12 OF THE VAIL TOWN CODE TO ESTABLISH SETBACKS FROM GORE CREEK AND ITS TRIBUTARIES

WHEREAS, the Town's current stream setback, as established by Ordinance No. 19, Series of 1976, requires a minimum setback of 30 feet from the center of an established creek or stream channel and 50 from the centerline of Gore Creek;

WHEREAS, the Gore Creek Strategic Plan adopted by the Town Council in 2016 identifies loss of riparian vegetation as one of the main causes of declining water quality in Gore Creek; and

WHEREAS, the Town Council wishes to prevent further deterioration of Gore Creek and its named tributaries by enacting a clear, comprehensible, and enforceable set of guidelines for setbacks from Gore Creek and its tributaries.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF VAIL, COLORADO, THAT:

Section 1. Section 12-14-17 of the Vail Town Code is hereby repealed in its entirety.

Section 2. Section 12-21-2 of the Vail Town Code is hereby amended by the addition of the following new definitions, to appear in alphabetical order:

ORDINARY HIGH WATER LINE ("OHWL"): The average two-year flood line on Gore Creek and its named tributaries, as established by the data set adopted by the Town Council by resolution.

Section 3. Chapter 21 of Title 12 of the Vail Town Code is hereby amended by the addition of a new Section 12-21-17, to read as follows:

12-21-17: GORE CREEK SETBACKS:

A. Purpose: The purpose of this Section is to protect the public health, safety and welfare by ensuring the resiliency of Gore Creek and its named tributaries and by mitigating hazards associated with the deterioration of Gore Creek and its named tributaries.

B. Applicability: This Section shall apply to all property located within twenty-five (25) feet of the OHWL, in whole or in part; provided that this Section shall not apply to any stream tract already protected by Chapter 14 of Title 5 of this Code.

C. Setbacks:

1. No mowing, landscaping, grading or other disturbance shall be permitted within ten (10) feet of the OHWL, other than:

a. Removal of noxious weeds pursuant to Section 5-1-6 of this Code;

b. With prior approval of the Vail Fire Department, removal of vegetation for purposes of fire mitigation;

c.. With prior approval of the Design Review Board, the installation and maintenance of one access path per lot or parcel, of up to four (4) feet in width, consisting of permeable materials including without limitation native soils, sand and gravel, or flagstone set in a permeable base;

d. Public roadways, bridges, recreational paths and trails and public parks and open spaces;

e. Utility infrastructure within utility easements;

f. With prior approval of the Design Review Board, erosion control measures and stream grade-control structures that conform with bank stabilization best management practices; and

g. Buildings, structures, fences, walls, patios, walkways, landscaping features, furniture or and similar improvements lawfully existing on the effective date of the ordinance codified in this Section, which improvements shall be subject to Chapter 18 of this Title.

2. No building or structure shall be located within twenty-five (25) feet of the OHWL, other than:

a. With prior approval of the Design Review Board, architectural projections, decks, balconies, steps and bay windows described in Section 14-10-4 of this Code;

b. Buildings and structures lawfully existing on the effective date of the ordinance codified in this Section, which improvements shall be subject to Chapter 18 of this Title.

D. Correction Requests: When a property owner wishes to correct the location of a designated OHWL affecting such property owner's property, the following procedures shall apply:

1. The applicant shall file a written application with the Department of Community Development, requesting a hearing before the

Planning and Environmental Commission. The application shall include the property owner's delineation of the Ordinary High Water Mark ("OHWM"), which delineation shall comply with standards adopted by the United States Army Corps of Engineers. The application shall also include a letter from Army Corps of Engineers attesting that the OHWM delineation has been verified.

2. The Planning Commission shall consider the application at a public hearing within thirty (30) days after the Town deems the application complete.

3. At the hearing, the applicant shall be given a reasonable opportunity to present evidence and testimony in support of the application. It shall be the applicant's burden to establish by clear and convincing evidence that the property owner's delineation of the OHWM should be used to change the location of the OHWL.

4. Following the hearing, the Planning and Environmental Commission shall either order that the OHWL be relocated or order that the OHWL remain in its existing location. The decision of the Planning and Environmental Commission shall be subject to appeal as provided in Section 12-3-3 of this Code.

E. Violation and Penalty:

1. It is unlawful for any person to violate any provision of this Section.

2. It is unlawful for any person to re-channel or modify Gore Creek or any of its named tributaries so as to avoid application of this Section.

3. Each separate act in violation of this Section and each and every day or portion thereof during which any separate act in violation of this Section is committed, continued or permitted shall be deemed a separate offense.

4. Violations of this Section shall be punishable as provided in Chapter 4 of Title 1 of this Code.

Section 4. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not effect the validity of the remaining portions of this ordinance; and the Council hereby declares it would have passed this ordinance, and each part, section, subsection, sentence, clause or phrase thereof, regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

Section 5. The Town Council hereby finds, determines and declares that this ordinance is necessary and proper for the health, safety and welfare of the Town and the inhabitants thereof.

Section 6. The amendment of any provision of the Vail Town Code as provided in this ordinance shall not affect any right which has accrued, any duty imposed, any violation that occurred prior to the effective date hereof, any prosecution commenced, nor any other action or proceeding as commenced under or by virtue of the provision amended. The amendment of any provision hereby shall not revive any provision or any ordinance previously repealed or superseded unless expressly stated herein.

Section 7. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are repealed to the extent only of such inconsistency. This repealer shall not be construed to revise any bylaw, order, resolution or ordinance, or part thereof, theretofore repealed.

INTRODUCED, READ ON FIRST READING, APPROVED, AND ORDERED PUBLISHED ONCE IN FULL ON FIRST READING this ____ day of _____, 2022 and a public hearing for second reading of this Ordinance set for the ____ day of _____, 2022, in the Council Chambers of the Vail Municipal Building, Vail, Colorado.

Kim Langmaid, Mayor

ATTEST:

Tammy Nagel, Town Clerk

READ AND APPROVED ON SECOND READING AND ORDERED PUBLISHED this ____ day of _____, 2022.

Kim Langmaid, Mayor

ATTEST:

Tammy Nagel, Town Clerk