

AGENDA

ASPEN PLANNING & ZONING COMMISSION

November 16, 2021

4:30 PM, WebEx Virtual Meeting (See agenda packet for instructions to join the meeting)



I.WEBEX MEETING INSTRUCTIONS

TO JOIN ONLINE:

Go to www.webex.com and click on "Join a Meeting"

Enter Meeting Number: 2551 991 0321

Enter Password: 81611

Click "Join Meeting"

-- OR --

JOIN BY PHONE

Call: 1-408-418-9388

Enter Meeting Number: 2551 991 0321

Enter Password: 81611

II.ROLL CALL

III.COMMENTS

IV.MINUTES

None

V.DECLARATION OF CONFLICT OF INTEREST

VI.PUBLIC HEARINGS

- VIA. Land Use Code Amendment
Resolution - P&Z Recommendation
Single-Family and Duplex Affordable Housing Mitigation
[P&Z Recommendation_Staff memo.pdf](#)
[Exhibit A - Redline Edits.pdf](#)
[EXHIBIT B Clean Draft.pdf](#)
[EXHIBIT C - Review Criteria.docx](#)
[Draft Resolution_11.16.21.docx](#)

VII.OTHER BUSINESS

VIII.ADJOURN

Typical Proceeding Format for All Public Hearings

- 1) Conflicts of Interest (handled at beginning of agenda)
- 2) Provide proof of legal notice (affidavit of notice for PH)
- 3) Staff presentation
- 4) Board questions and clarifications of staff
- 5) Applicant presentation
- 6) Board questions and clarifications of applicant
- 7) Public comments
- 8) Board questions and clarifications relating to public comments
- 9) Close public comment portion of bearing
- 10) Staff rebuttal/clarification of evidence presented by applicant and public comment
- 11) Applicant rebuttal/clarification

End of fact finding.

Deliberation by the commission commences.

No further interaction between commission and staff, applicant or public

- 12) Chairperson identified the issues to be discussed among commissioners.
- 13) Discussion between commissioners*
- 14) Motion*

*Make sure the discussion and motion includes what criteria are met or not met.

Revised January 8, 2021



MEMORANDUM

TO: City of Aspen Planning and Zoning Commission
FROM: Ben Anderson, Principal Long-Range Planner
THROUGH: Amy Simon, Planning Director
MEMO DATE: November 11, 2021
MEETING DATE: November 16, 2021
RE: P&Z Recommendation related to Proposed Land Use Code Changes - Calculation of Single-Family and Duplex Residential Affordable Housing Mitigation

REQUEST OF THE PLANNING AND ZONING COMMISSION:

At a Work Session on July 12, 2021, City Council unanimously directed staff to develop amendments to the Land Use Code (LUC) that would have the effect of increasing required affordable housing mitigation for single-family and duplex residential development. Specifically, the changes would eliminate the credit for existing floor area and use a gross, rather than net Floor Area calculation when assessing affordable housing mitigation requirements on these types of development (and redevelopment).

On November 9, 2021, City Council in a 5-0 vote approved a Policy Resolution that formally begins the Amendment process.

Staff has drafted a Resolution for P&Z's consideration. This Resolution, as drafted, would provide formal recommendation to City Council in support of proposed code changes. P&Z may: 1) approve the Resolution as drafted, 2) deny the Resolution, 3) approve the Resolution with conditions or amendments, or 4) take no action.

First and Second Readings of an Ordinance approving these amendments would come before Council on November 23rd and December 14th.

Staff recommends P&Z approve the Resolution – providing P&Z support for the proposed changes to the Land Use Code.

SUMMARY AND BACKGROUND: As part of an ongoing effort to better coordinate the Land Use Code in support of Council's Affordable Housing Goals and in relationship to discussions with Council about the effectiveness of Aspen's Growth Management Quota System in responding to the current development context, staff has continued to study and analyze a range of related topics. Staff has held several Work Sessions with Council over the last 18 months toward better understanding the issues and in thinking about possible improvements. As part of this work, Council passed a series of targeted code

amendments in May of 2021 – including an update to the Affordable Housing Mitigation Fee-In-Lieu.

The relationship of Growth Management to Affordable Housing Mitigation has long been a part of Aspen’s system of housing the employees generated by different development types. The specific mechanisms within the LUC that have defined this relationship over time have been changed and adjusted numerous times to respond to shifting dynamics in Aspen’s development context. It has become apparent through analysis of our Growth Management Allotment system and issued building permits, that residential development and redevelopment is now the dominant contributor to both the real impacts and perceived pressures that growth creates.

Overtime, technical changes to the LUC have had the effect of reducing the mitigation requirements for single-family and residential development and redevelopment in a way that has not been applied to commercial, lodge and multi-family residential. In the current context, while the construction and other employee generation impacts of single-family and duplex residences has intensified, the mitigation requirements have not kept pace.

The current mitigation requirements for single-family and duplex development are based on a 2015 study by research consultants, RRC. While staff remains confident in the fundamentals of this study – the application and intersection of the findings of this study with other calculation methodologies (particularly Floor Area) has had the effect of significantly reducing required mitigation.

The proposed code changes would do two things in response:

1. Remove the credit for existing Floor Area from the calculation of Affordable Housing Mitigation in redevelopment scenarios when demolition occurs.
2. Use a gross Floor Area calculation, rather than a net calculation, in determining mitigation requirements. The gross Floor Area calculation would include all sub-grade areas, garages, and circulation features for the purposes of AH mitigation only. This new methodology would not affect the calculation of allowable floor area in meeting Zone District dimensional requirements, and residential development rights would be unchanged.

STAFF DISCUSSION:

Single-Family and Duplex Development Affordable Housing Mitigation

Two different AH mitigation calculations apply when the Land Use Code refers to Residential Development. First, and not part of these proposed amendments applies when a subdivision with multiple lots is created, a change of use takes place, or a new multi-family project is developed. These types of projects require the assignment of Growth Management Allotments and require that 30% of the project’s Floor Area (and 60 or 70% of the project’s units) be some balance of deed restricted affordable housing. This requirement could also be called inclusionary zoning in the broader planning world’s

terminology. These projects require a Planning and Zoning review in the final determination of the mitigation requirements.

The second calculation is typically assessed during the building permit review process. Today, this calculation is much more common than the scenario described above. These projects take place on existing residential lots – either as new construction or the redevelopment of an existing home or homes. Different from the above scenario, the mitigation here has been understood as a much more direct impact fee, rather than a form of inclusionary zoning – calculating employee generation on a per square foot basis. No development Growth Management Allotments are required. When a new home is built or square footage is added to an existing home, a 2015 Employee Generation Study established the following mitigation requirements:

- .16 FTE per 1,000 square feet of Floor Area up to 4,500 sf.**
- .36 FTE per 1,000 square feet of Floor Area over > 4,500 sf.**

Per the study, these figures were derived from an estimate of the full-time employees generated during the construction and life span of the property. For example, a new home, on a previously vacant lot, with a Floor Area of 5,500 square feet as measured per the LUC would have the following mitigation requirements:

$$\begin{aligned} 4,500 / 1000 &= 4.5 \times .16 = .72 \text{ FTE} \\ 1000 / 1000 &= 1 \times .36 = .36 \text{ FTE} \\ .72 + .36 &= 1.08 \text{ FTE} \end{aligned}$$

Existing Floor Area Credit

In redevelopment scenarios, the current code allows for the Floor Area of the existing home to be credited against the Floor Area for the new home. Additionally, in situations where a significant remodel that triggers demolition is contemplated, only new, additional floor area is calculated. In both cases, the exemption of the existing floor area is credited, regardless of whether mitigation was ever assessed on the property and regardless of whether the existing Floor Area is renovated or scraped and replaced.

AH mitigation for new residential development became a requirement in the mid-1980s. Depending on the circumstance and the code requirements in effect at the time of the project, on-site units, off-site units, fee-in-lieu, and accessory dwelling units have all been used in meeting mitigation requirements. Because of the change in code requirements over time and the variability of development history on residential properties, simply providing the credit was previously argued as a fair and straightforward response to this issue.

The credit for existing residential floor area, like the previously eliminated credits for existing commercial and lodge development, seems to have its origins in thinking about growth management that came to define the system – that new development is what drives growth. Long-standing, existing development should be exempt, and a new development that mitigates – has provided mitigation forever. Today – it is redevelopment of properties that is driving the growth that the community is experiencing. The whole concept of a credit is undermined by the real impacts to employee generation that redevelopment scenarios are creating.

Since 2015, **approximately 325,000 square feet of existing floor area has been credited in redevelopment and major renovation scenarios**¹. If not credited, the square footage would conservatively translate into 52 FTEs (or approximately \$19.5M of mitigation value based on Cat. 2 FIL). It is also important to note that a similar credit for existing Floor Area for commercial redevelopment was eliminated from the LUC in a 2017 Amendment and the credit for existing Lodge units was recently eliminated by Ordinance No. 13, Series of 2021.

Sub-Grade (Basement) and other Exemptions from gross Floor Area

Under current code Sub-Grade areas (and other areas, like garages and circulation elements) are effectively exempt from the contribution to both Allowable Floor Area and Affordable Housing Mitigation. In essence, a calculation is made based on the percentage of exposed wall area and applied to the gross floor area. As a consequence, unless a project purposely exposes a large percentage of the basement to the surface for light wells or other features, or the property is on a slope that naturally exposes the basement, the vast majority of the gross floor area of basements is exempt.

In the 2015 Employee Generation Study, sub-grade and other exempt areas were discussed as having impacts – but it was determined these areas should remain exempt in consistency with the calculations for Allowable Floor Area in limiting the mass and scale of a house.

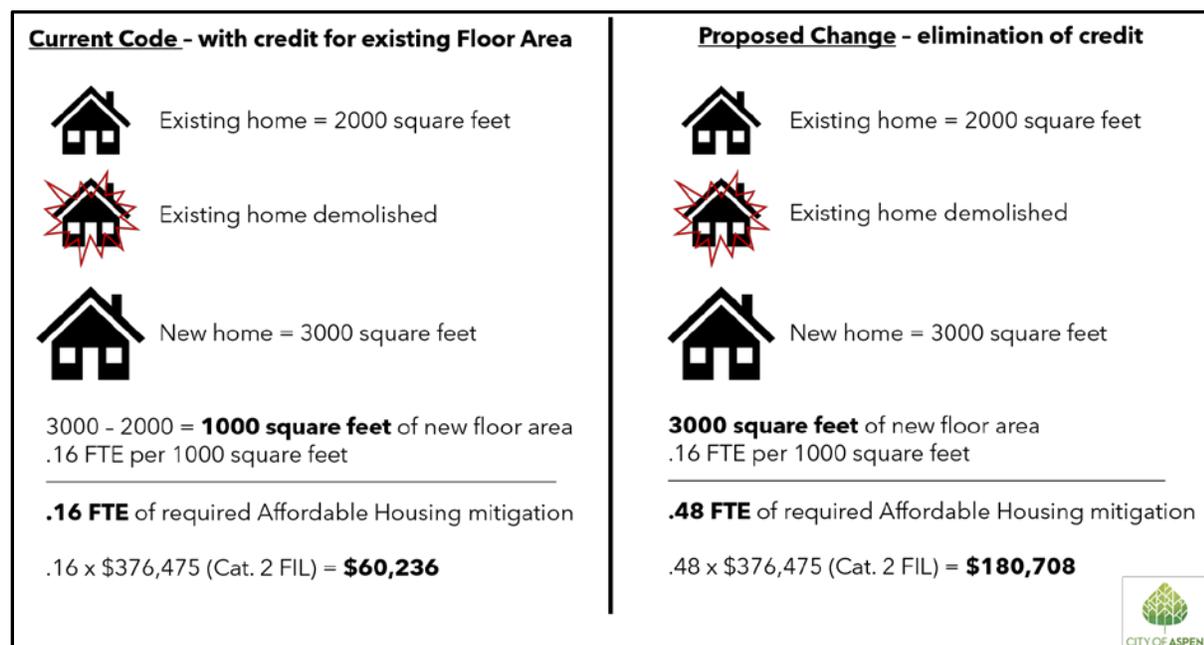


Figure 1: Comparison of a redevelopment project’s mitigation requirements – with and without the credit for existing floor area. The existing credit reduced the required mitigation by .32 FTE.

¹ Calculated though analysis of a spreadsheet that documents impact fees used in zoning review of issued building permits

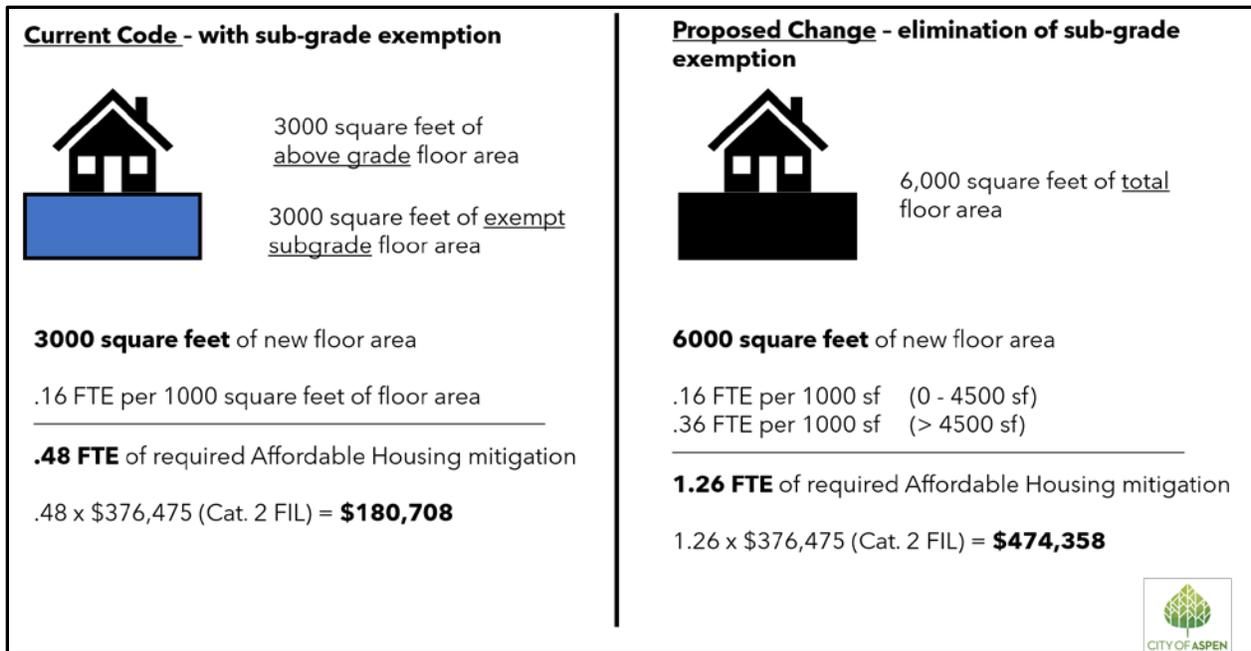


Figure 2: Comparison showing the impacts to AH mitigation created by the Sub-Grade Exemption. In this example, the exemption reduces the mitigation requirements by .78 FTE.

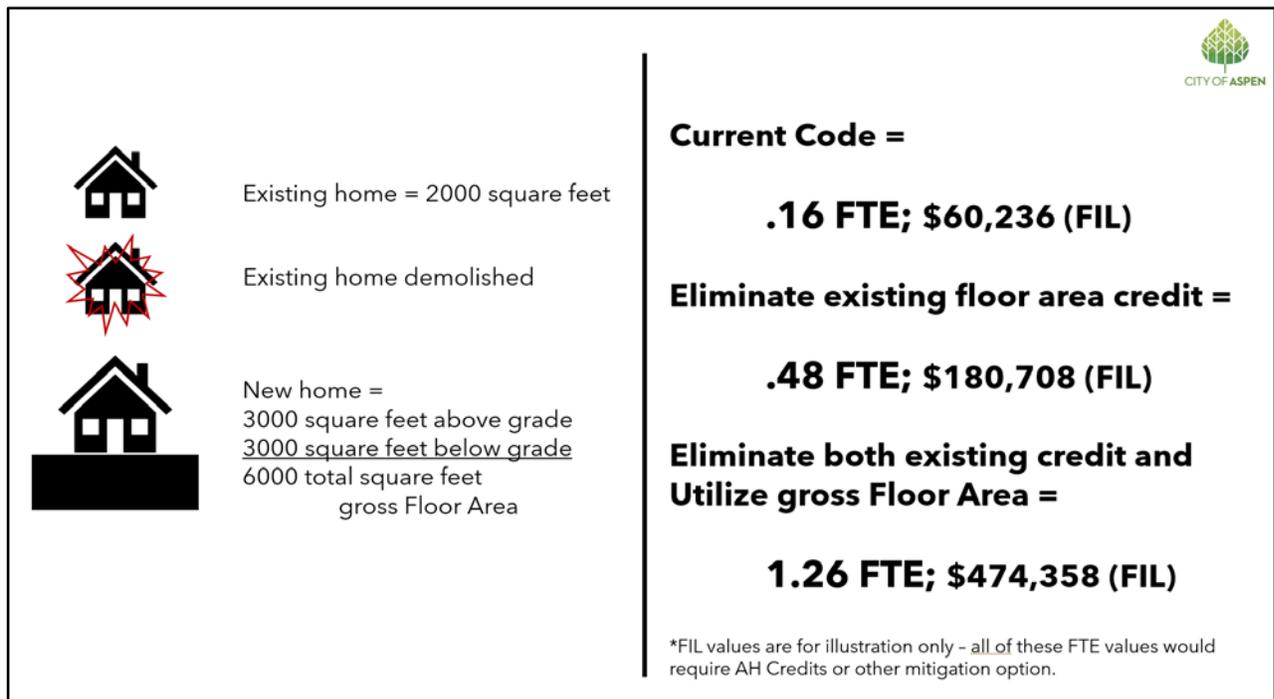


Figure 3: The effect of eliminating both the credit for existing Floor Area and sub-grade exemption.

Staff does not have a calculation to summarize the total amount of sub-grade area that has been exempted from mitigation over time, but the combination of real estate values on a square foot basis and the exemption of basements from Allowable Floor Area calculations has given significant incentive to maximize the size of these spaces. At this time, staff is proposing to include this area in AH mitigation requirements but is not proposing to limit these areas in relationship to calculation for Allowable Floor Area.

Analysis

Staff recognizes the scale of impact that these two changes would have on the current mitigation requirements for single-family and duplex development and re-development. In evaluating these potential impacts, staff analyzed six recent redevelopment projects (See Table 1 on page 7). Of the six, only one (Project 3) is an outlier due to the size of the sub-grade area and the fact that it is technically two, detached dwellings. The others are representative of typical, single-family projects.

What would these changes accomplish?

Staff believes the changes pursued by these amendments would be an effective response to Council and community concerns about affordable housing requirements for residential development and may generate the following outcomes:

1. A more fully responsive mechanism to mitigate for the development activity that is most shaping Aspen's current "growth" context. This includes the continuing trend of increased demand and valuation of single-family and duplex homes, the scale and pace of scrape and replace redevelopment, and the growing role of Short-Term Rentals across our residential zone districts.
2. Assess a mitigation requirement for development that is clearly generating new demand for employees.
3. Create a more equitable mitigation requirement across different types of development – Commercial, Lodge, Residential.
4. Create additional demand within the Affordable Housing Credits program by increasing mitigation requirements which may be met through the purchase of credits from the market. This may result in the development of more AH units by the private sector.

Table 1: Examples of recent, actual single-family development projects depicting the mitigation requirements under current code and the impacts of eliminating the credit for existing floor area and subgrade exemption.

	EXISTING FLOOR AREA (SF)	NEW FLOOR AREA (SF)	TOTAL GROSS (SF)	BASEMENT GROSS (SF)	BASEMENT FLOOR AREA (SF)	MITIGATION CURRENT CODE (FTE AND FIL)	MITIGATION W/O CREDIT FOR EXISTING FA (FTE AND FIL)	MITIGATION WITH GROSS FA (FTE AND FIL)	MITIGATION W/O CREDIT FOR BOTH EXISTING AND GROSS FA (FTE AND FIL)	Δ DIFFERENCE BETWEEN CURRENT CODE AND REMOVING BOTH
PROJECT 1	3,072	5,314	8,797	2,563	12	.52 \$196K	.85 \$320K	1.77 \$666K	2.26 \$851K	+1.74 \$655K
PROJECT 2	4,026	3,237	4,770	1,596	62	0 \$0	.52 \$196K	.21 \$79K	.73 \$275K	+1.73 \$275K
PROJECT 3	0	6,240	17,277	9,846	396	1.62 \$610K	1.62 \$610K	5.04 \$1.9M	5.04 \$1.9M	+3.42 \$1.3M
PROJECT 4	4,300	4,345	5,697	1,905	553	.01 \$4K	.70 \$263K	.46 \$173K	.91 \$343K	+1.9 \$339K
PROJECT 5	2,232	4,330	7,526	2,981	164	.34 \$128K	.70 \$263K	1.45 \$545K	1.8 \$678K	+1.1 \$550K
PROJECT 6	2,969	4,255	9,998	4,954	222	.21 \$79K	.68 \$256K	2.23 \$840K	2.7 \$1M	+2.49 \$921K

Notes: 1) Projects are actual, single-family residential, scrape and replace projects, with building permits issued between 2015 and 2020.
 2) The current Fee-in-Lieu (FIL) value for Category 2 was used in calculating a benchmark for the value of the required mitigation.
 3) On these six projects alone, total employee generation would be increased by 10.38 FTE.

The table shows that each project is different in how these changes would impact the eventual mitigation requirement. Some project financial proformas would be impacted more significantly than others based on the size of the new home’s subgrade area or the size of the existing home (and credit for Floor Area) in relationship to the size of the new home.

<p><u>New Commercial Development</u></p> <p><u>6000 square feet of Net Leasable</u></p> <p>6000/1000 = 6 x 4.7 FTEs =</p> <p>28.2 x .65 (mitigation rate) =</p> <p style="text-align: center;">18.33 FTEs Required AH Mitigation Roughly \$5.5M FIL</p>	<p><u>SF Residential Scrape and Replace</u></p> <p><u>6000 square feet of Floor Area</u></p> <p>4,500/1000 = 4.5 x .16 = .72</p> <p>1,500/1000 = 1.5 x .36 = .54</p> <p>.72 + .54 =</p> <p style="text-align: center;">With proposed code amendments</p> <p style="text-align: center;">1.26 FTEs Required AH Mitigation Roughly \$475K FIL</p> 
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Figure 4. In spite of the significant increase that these changes would make to residential mitigation, the mitigation per square foot would remain well below that of mitigation required for a similarly sized commercial area. Note. The Commercial example calculates as if it were entirely ground floor Net Leasable area.

Changes to the Land Use Code Required to Implement These Changes

While these proposed changes are impactful, they do not require significant changes to the text of the Land Use Code. Four sections of the Code would need to be amended.

- 1) 26.104.100. Definitions. *Floor Area.* Staff proposes a minor change to the definition of Floor Area. This is not a definition that is utilized frequently under the current code regime. In essence the change would clarify a gross Floor Area calculation that would apply to all enclosed areas on a property.
- 2) 26.470.090. Administrative applications. (Growth Management). This is the section (26.470.090.A) that would require the most modification as it describes the employee generation and mitigation requirements for single-family and duplex development. The change would identify the use of gross Floor Area in calculating mitigation requirements and would identify three scenarios for how to calculate employee generation:
 - New construction on an established, vacant lot
 - Redevelopment or renovation that does not trigger “Demolition”
 - Redevelopment or renovation that triggers “Demolition”

Also, the gross floor area methodology was extended to multi-family expansion scenarios in 26.470.090.B to retain consistency.

- 3) 26.470.140. Reconstruction limitations. (Growth Management). This section provides description of the limitations on reconstruction rights following demolition of all types of development. Clarification to the application of this section to single-family and duplex development is needed if the change is made to 26.470.090.
- 4) 26.575.020.D. Measuring Floor Area. No changes are proposed to the text other than underlining “floor area ratio” and “allowable floor area” to emphasize what this section is describing – and providing a note to direct attention to 26.470.090 for the calculation of employee generation and mitigation for single-family and duplex development.

The red line edits and clean drafts of the code changes are included as Exhibits A and B.

Public Outreach

Typically, when ComDev is proposing an amendment to the LUC, we have a public outreach plan in place to gather input and comment in shaping the amendment. On this set of topics however, staff does not believe that traditional public outreach will move the needle in support of these proposals. In staff’s view, removing these long-standing reductions in the required mitigation for residential projects will be unpopular within the development community – and particularly for those that are contemplating redevelopment projects. On the other hand, like many other requirements of the of the LUC that translate into the development of affordable housing – those that may benefit from an additional housing unit being built or those that may generally support additional affordable housing may not be fully engaged in technical aspects of the LUC. Additionally, the context surrounding COVID has made comprehensive outreach efforts challenging.

Staff has posted the process for these potential amendments in two recent editions of the Community Development Newsletter and will continue to do so through Second Reading. Additionally, staff, will conduct direct outreach to members of the development and design community explaining the proposed changes ahead of Second Reading. Any feedback received from this outreach will be summarized for Council consideration.

In thinking about these proposed changes and the nature of public outreach, it should be noted that all required residential mitigation can be deferred if the owner is a full-time, locally working resident under APCHA Guidelines.

2015 Aspen Residential Employment Generation Study

Employment generation studies are essential to the foundation of Aspen’s GMQS system in that they establish the measurable impacts of development. These studies set the clear nexus between a square foot of construction and long-term operations and maintenance and the demand for employees that are being created by the new development.

The RRC (consultant) study from 2015 is built on the assumption that it is measuring the new impacts of residential development for two specific activities – construction and future

maintenance and operations. The current report is applicable to new development on an established vacant lot and redevelopment scenarios. The report also briefly references the inclusion of sub-grade area. On both topics, the report (Credit and Exemption) is responding to these reductions in mitigation as established elements in Aspen's LUC – rather than factors that are driving the impacts of employee generation. RRC has provided recent (November 2021) evaluation of the 2015 employee generation study as it relates to these specific code changes and per that evaluation, staff does not believe that the proposed amendments would undermine the basis of the original study.

Staff raises this topic because of the importance of our mitigation requirements matching the generation studies behind them. If Council were to implement the elimination of the existing floor area credit and utilize gross Floor Area, staff recommends an update to the generation study in 2022 to reflect the new stipulations in the LUC and more fully understand the impact of redevelopment scenarios. This study could additionally be expanded to incorporate analysis of short-term rentals (STRs) and their relationship to residential uses and redevelopment in evaluating employee generation impacts. As the use of residential properties has changed over time with an increasing STR presence and other novel ownership models emerge (example, Pacaso), the occupancy of these units and the services required by STRs have likely changed the employee generation of our residential uses.

CONCLUSION AND NEXT STEPS:

The proposed Amendments under consideration in this Resolution would, in staff's view, be a positive step in further recognizing the impacts of single-family and duplex development and redevelopment on employee generation and the demand for affordable housing. While impactful, the code amendments necessary to achieve this change are minimal in scope and complexity and do not alter underlying development rights.

P&Z's recommendation would be included with the next steps of the amendment process during City Council's review:

- November 23rd – First Reading of Ordinance with Council
- December 14th – Second Reading of Ordinance with Council

RECOMMENDATIONS: Staff recommends the Planning and Zoning Commission approve Resolution XX, providing support for the proposed changes to the Land Use Code.

EXHIBITS:

- A – Red line edits of the proposed code changes**
- B – Clean drafts of the proposed code changes**
- C – Review Criteria for a Land Use Code Amendment**

26.104.100. Definitions

Floor area. The sum total of the gross horizontal areas ~~of each story~~ of the building measured from the exterior walls of the building. (See, Supplementary Regulations — Section 26.575.020, Calculations and measurements).

26.470.090 Administrative applications.

The following types of development shall be approved, approved with conditions or denied by the Community Development Director, pursuant to Section 26.470.060, Procedures for Review, and the criteria described below. Except as noted, all administrative growth management approvals shall not be deducted from the annual development allotments. All approvals apply cumulatively.

A. Single-Family and Duplex Residential Development or Expansion. The following types of free-market residential development shall require the provision of affordable housing in one of the methods described below:

- 1) The development of a single-family, two detached residential units, or a duplex dwelling on a lot in one of the following conditions:
 - a. A lot created by a lot split, pursuant to Subsection 26.480.060.A.
 - b. A lot created by a historic lot split, pursuant to Subsection 26.480.060.B, when the subject lot does not itself contain a historic resource.
 - c. A lot that was subdivided or was a legally described parcel prior to November 14, 1977, that complies with the provisions of Subsection 26.480.020, Subdivision: applicability, prohibitions, and lot merger.

2) The net increase of Floor Area of an existing single-family, two detached residential units on a single lot, or a duplex dwelling, during redevelopment and renovation scenarios when the definition of Demolition is not met, regardless of when the lot was subdivided or legally described, ~~and regardless of whether demolition occurs~~. This type of development shall not require a growth management allocation and shall not be deducted from the respective annual development allotments.

3) Redevelopment or renovation of an existing single-family, two detached residential units on a single lot, or a duplex dwelling, when the definition of Demolition is met. This type of development shall not require a growth management allocation and shall not be deducted from the respective annual development allotments.

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3)4) Affordable housing mitigation requirements for the types of free-market residential development described above shall be as follows. The applicant shall have four options:

- a. Recording a resident-occupancy (RO), or lower, deed restriction on the single-family dwelling unit or one of the residences if a duplex or two detached residences are developed on the property. An existing deed restricted unit does not need to re-record a deed restriction.
- b. Providing a deed restricted one-bedroom or larger affordable housing unit within the Aspen Infill Area pursuant to the Aspen/Pitkin County Housing Authority Guidelines (which may require certain improvements) in a size equal to or larger than 30% of the Floor Area increase to the Free-Market unit. The mitigation unit must be deed-restricted as a "for sale" Category 2 (or lower) housing unit and transferred to a qualified purchaser according to the provisions of the Aspen/Pitkin County Housing Authority Guidelines.
- e. Providing a fee-in-lieu payment or extinguishing a Certificate of Affordable Housing Credit in a full-time-equivalent (FTE) amount based on the following schedule:

Floor Area per dwelling unit	Employment Generation Rate
First 4,500 square feet (Floor Area)	.16 employees per 1,000 square feet of Floor Area.
Above 4,500 square feet (Floor Area)	.36 employees per 1,000 square feet of Floor Area.
<p>Notes:</p> <ul style="list-style-type: none"> — The calculation of the Employment Generation shall be assessed per dwelling unit. Duplex dwelling units do not combine their floor area for one calculation. — An Accessory Dwelling Unit or Carriage House, as defined by and meeting the requirements of this Title, shall be calculated as floor area of the primary dwelling. — When redevelopment of a property adds floor area, the difference between the generation rates of the existing floor area and the proposed floor area shall be the basis for determining the number of employees generated. No refunds shall be provided if Floor Area is reduced. — When demolition is proposed, the redevelopment shall be credited the floor area from the demolished residential dwelling unit. Credit from a demolished dwelling unit cannot be allocated to development on a different lot. - The above generation rates are based on a study of employment generation of Aspen residences, from both initial construction and ongoing operation, performed by RRC Associates of Boulder, Colorado, dated March 4, 2015. - <u>The calculation of Floor Area for the purposes of determining employee generation and required mitigation shall be based on the definition of "Floor Area" in 26.104.100, Definitions: "The sum total of the gross horizontal areas of the building measured from the exterior walls of the building." This calculation is inclusive of all enclosed levels of the buildings on the property – including, basements, crawl spaces, attics with walkable floors, garages, and vertical circulation. This calculation shall not include storage areas of less than 32 square feet, or minimally sized wildlife-resistant trash and recycling enclosures.</u> - <u>See Figure 2, in 26.575.020.D, for a depiction of "Measuring to Face of Framing" in calculating Floor Area from exterior wall.</u> - <u>For new construction on a vacant lot, all Floor Area shall be included in the calculation of employee generation and required mitigation.</u> - <u>For redevelopment or renovation of an existing single-family or duplex that does not meet the requirements of Demolition (26.104.100), only new, additional Floor Area shall be calculated towards employee generation and required mitigation.</u> - <u>For redevelopment or renovation of an existing single-family or duplex that meets the definition of Demolition (26.104.100), all Floor Area (existing and new) shall be calculated toward employee generation and required mitigation.</u> - <u>Demolition that occurs as a result of an act of nature or through any manner not purposefully accomplished by the owner, shall be evaluated</u> 	

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- by Community Development staff, and a credit for existing Floor Area may be issued toward the reconstruction of the home.
- The calculation of the Employment Generation shall be assessed per dwelling unit. Duplex dwelling units do not combine their floor area for one calculation.
- An Accessory Dwelling Unit or Carriage House, as defined by and meeting the requirements of this Title, shall be calculated as floor area of the primary dwelling.
- The above generation rates are based on a study of employment generation of Aspen residences, from both initial construction and ongoing operation, performed by RRC Associates of Boulder, Colorado, dated March 4, 2015.
- All required mitigation using Certificates of Affordable Housing Credits or fee-in-lieu for single-family and duplex development shall be provided at Category 2.

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Affordable housing mitigation must be provided at a Category 2 (or lower) rate. Certificates must be extinguished pursuant to the procedures of Chapter 26.540, Certificates of Affordable Housing Credit. Fee-in-lieu rates shall be those stated in Section 26.470.100 – Calculations; Employee Generation and Mitigation, in effect on the date of application acceptance. Providing a fee-in-lieu payment in excess of .10 FTE shall require City Council approval, pursuant to Section 26.470.110.C.

Example 1: A new home of 3,400 square feet of Floor Area on a vacant lot created by a historic lot split. The applicant must provide affordable housing mitigation for .54 FTEs.

$$3,400 / 1,000 \times .16 = .54$$

In this example the applicant may provide a Certificate of Affordable Housing Credit or request City Council accept a fee-in-lieu payment.

Example 2: An existing home of 4,500 square feet of Floor Area is expanded by 250 square feet of Floor Area. ~~The renovation does not meet the definition of Demolition.~~ The applicant must provide affordable housing mitigation for .097 FTEs. ~~the difference in employee generation of the two house sizes.~~

$$(4,500 / 1,000 \times .16) + (150 / 1,000 \times .36) - (4,400 / 1,000 \times .16) = .07$$

$$(250 / 1000 \times .36 = .09 \text{ FTE})$$

***Note: the mitigation for the additional Floor Area is calculated at .36 FTE/1000sf as the home now crosses the 4,500 square feet threshold identified above.*

In this example the applicant may provide a Certificate of Affordable Housing Credit or a fee-in-lieu payment.

Example 3: An existing home is redeveloped in a fashion that meets the definition of Demolition. The redeveloped home has a Floor Area of 5,700 sf.

$$(4,500 / 1000 \times .16) + (1,200 / 1000 \times .36) = 1.15 \text{ FTE}$$

In this example the applicant may provide a Certificate of Affordable Housing Credit or request City Council accept a fee-in-lieu payment.

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~~In this example the applicant may provide a Certificate of Affordable Housing Credit or a fee in lieu payment.~~

d.c. For property owners qualified as a full-time local working resident, an affordable housing mitigation deferral agreement may be accepted by the City of Aspen subject to the Aspen/Pitkin

County Housing Authority Guidelines. This allows deferral of the mitigation requirement until such time as the property is no longer owned by a full-time local working resident. Staff of the City of Aspen Community Development Department and Staff of the Aspen/Pitkin County Housing Authority can assist with the procedures and limitations of this option.

B. Multi-Family Residential Expansion. The following types of free-market residential development shall require the provision of affordable housing in one of the methods described below:

- 1) The net increase of Floor Area of an existing free-market multi-family unit or structure, regardless of when the lot was subdivided or legally described and provided demolition does not occur. (When demolition occurs, see Section 26.470.100.E, Demolition or redevelopment of multi-family housing.) This type of development shall not require a growth management allocation and shall not be deducted from the respective annual development allotments established pursuant to Section 26.470.040.
- 2) Affordable housing mitigation requirements for the type of free-market residential development described above shall be as follows. The applicant shall have four options:
 - a. Recording a resident-occupancy (RO), or lower, deed restriction on the dwelling unit(s) being expanded. An existing deed restricted unit does not need to re-record a deed restriction.
 - b. Providing a deed restricted one-bedroom or larger affordable housing unit within the Aspen Infill Area pursuant to the Aspen/Pitkin County Housing Authority Guidelines (which may require certain improvements) in a size equal to or larger than 30% of the Floor Area increase to the Free-Market unit(s). The mitigation unit(s) must be deed-restricted as a "for sale" Category 2 (or lower) housing unit and transferred to a qualified purchaser according to the provisions of the Aspen/Pitkin County Housing Authority Guidelines.
 - c. Providing a fee-in-lieu payment or extinguishing a Certificate of Affordable Housing Credit in a full-time-equivalent (FTE) amount based on the following schedule:

Floor Area per dwelling unit	Employment Generation Rate
square feet of expansion (Floor Area)	.18 employees per 1,000 square feet of Floor Area
Notes: <ul style="list-style-type: none"> - <u>The calculation of Floor Area for the purposes of determining employee generation and required mitigation shall be based on the definition of "Floor Area" in 26.104.100. Definitions: "The sum total of the gross horizontal areas of the building measured from the exterior walls of the building." This calculation is inclusive of all enclosed levels of the building on the property – including, basements, crawl spaces, attics with walkable floors, garages, and vertical circulation.</u> - The calculation of the Employment Generation shall be assessed per dwelling unit. Multiple dwelling units do not combine their floor area for one calculation. - When a unit adds floor area, the difference between the generation rates of the existing floor area and the proposed floor area shall be the basis for determining the number of employees generated. No refunds shall be provided if Floor Area is reduced. - When demolition is proposed, please see Section 26.470.100.E – Demolition or Redevelopment of Multi-Family Housing. Projects 	

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- The above generation rates are based on a study of employment generation of Aspen residences, from both initial construction and ongoing operation, performed by RRC Associates of Boulder, Colorado, dated March 4, 2015.

Affordable housing mitigation must be provided at a Category 2 (or lower) rate. Certificates must be extinguished pursuant to the procedures of Chapter 26.540, Certificates of Affordable Housing Credit. Fee-in-lieu rates shall be those stated in Section 26.470.050 – Calculations; Employee Generation and Mitigation, in effect on the date of application acceptance. Providing a fee-in-lieu payment in excess of .10 FTE shall require City Council approval, pursuant to Section 26.470.110.C.

Example 1: A multi-family unit of 1,400 square feet of Floor Area is expanded by 400 square feet of Floor Area. The applicant must provide affordable housing mitigation for .09 FTEs.

$$500 / 1,000 \times .18 = .09$$

In this example the applicant may provide a Certificate of Affordable Housing Credit or a fee-in-lieu payment.

Example 2: A multi-family unit of 1,400 square feet of Floor Area is expanded by 2,600 square feet of Floor Area. The applicant must provide affordable housing mitigation for .47 FTEs, the difference in employee generation of the two unit sizes.

$$2,600 / 1,000 \times .18 = .47$$

In this example the applicant may provide a Certificate of Affordable Housing Credit or request City Council accept a fee-in-lieu payment.

- d. For property owners qualified as a full-time local working resident, an affordable housing mitigation deferral agreement may be accepted by the City of Aspen subject to the Aspen/Pitkin County Housing Authority Guidelines. This allows deferral of the mitigation requirement until such time as the property is no longer owned by a full-time local working resident. Staff of the City of Aspen Community Development Department and Staff of the Aspen/Pitkin County Housing Authority can assist with the procedures and limitations of this option.

26.470.140. Reconstruction limitations.

In reconstruction scenarios, growth management allotments and any other reconstruction rights that this Code establishes, may continue, subject to the following limitations.

A. An applicant may propose to demolish and then delay the reconstruction of existing development for a period not to exceed one (1) year. To comply with this limitation and maintain the reconstruction-right credit, an applicant must submit a complete building permit application for reconstruction on or before the one-year anniversary of the issuance date of the demolition permit. The City Council may extend this deadline upon demonstration of good cause. ~~This time limitation shall not apply to the reconstruction of single family and duplex development. The continuation of growth management allotments in a reconstruction scenario for single family and duplex development are not subject to this time limitation.~~

A-B. Single-family and Duplex development receive no credit for Floor Area in redevelopment scenarios that meet the definition of Demolition – per 26.470.090.A.3. The exception to this is when a single-family or duplex is demolished by an act of nature or through any manner not purposefully accomplished by the owner.

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B.C. Applicants shall verify existing conditions prior to demolition with the City Zoning Officer in order to document any reconstruction rights. An applicant's failure to accurately document existing conditions prior to demolition and verify reconstruction rights with the City Zoning Officer may result in a loss of some or all of the reconstruction rights.

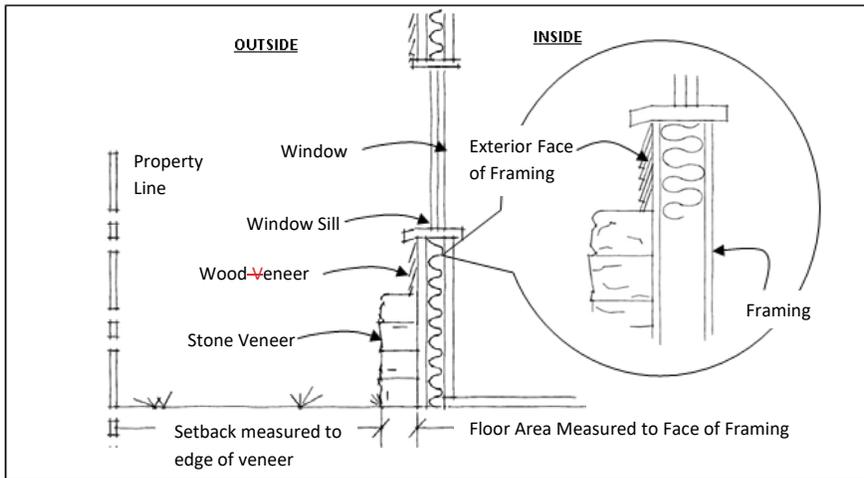
C.D. Reconstructed buildings shall comply with applicable requirements of the Land Use Code, including but not limited to Chapter 26.312, Nonconformities, and Chapter 26.710, Zone Districts.

D.E. Reconstruction rights shall be limited to reconstruction on the same parcel or on an adjacent parcel under the same ownership.

E.F. Residential redevelopment credits may be converted to lodge redevelopment credits by right. The conversion rate shall be three (3) lodge units per each one (1) residential unit. This is a one-way conversion, and lodge credits may not be converted to residential credits.

D. Measuring Floor Area. *In measuring floor areas for floor area ratio and allowable floor area, the following applies:*

- 1. General. Floor area shall be attributed to the lot or parcel upon which it is developed. In measuring a building for the purposes of calculating floor area ratio and allowable floor area, there shall be included all areas within the surrounding exterior walls of the building. When measuring from the exterior walls, the measurement shall be taken from the exterior face of framing, exterior face of structural block, exterior face of straw bale, or similar exterior surface of the nominal structure excluding sheathing, vapor barrier, weatherproofing membrane, exterior mounted insulation systems, and excluding all exterior veneer and surface treatments such as stone, stucco, bricks, shingles, clapboards or other similar exterior veneer treatments. (Also, see setbacks.)*



26.575.020₃ Calculations and Measurements

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D. Measuring Floor Area. In measuring floor areas for floor area ratio and allowable floor area, the following applies:

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1. General. Floor area shall be attributed to the lot or parcel upon which it is developed. In measuring a building for the purposes of calculating floor area ratio and allowable floor area, there shall be included all areas within the surrounding exterior walls of the building. When measuring from the exterior walls, the measurement shall be taken from the exterior face of framing, exterior face of structural block, exterior face of straw bale, or similar exterior surface of the nominal structure excluding sheathing, vapor barrier, weatherproofing membrane, exterior-mounted insulation systems, and excluding all exterior veneer and surface treatments such as stone, stucco, bricks, shingles, clapboards or other similar exterior veneer treatments. (Also, see setbacks.)

Note: In measuring Floor Area for the purposes of calculating employee generation and affordable housing mitigation for single-family and duplex development, please refer to 26.470.090.

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26.104.100. Definitions

Floor area. The sum total of the gross horizontal areas of the building measured from the exterior walls of the building. (See, Supplementary Regulations — Section 26.575.020, Calculations and measurements).

26.470.090 Administrative applications.

The following types of development shall be approved, approved with conditions or denied by the Community Development Director, pursuant to Section 26.470.060, Procedures for Review, and the criteria described below. Except as noted, all administrative growth management approvals shall not be deducted from the annual development allotments. All approvals apply cumulatively.

A. Single-Family and Duplex Residential Development or Expansion. The following types of free-market residential development shall require the provision of affordable housing in one of the methods described below:

- 1) The development of a single-family, two detached residential units, or a duplex dwelling on a lot in one of the following conditions:
 - a. A lot created by a lot split, pursuant to Subsection 26.480.060.A.
 - b. A lot created by a historic lot split, pursuant to Subsection 26.480.060.B, when the subject lot does not itself contain a historic resource.
 - c. A lot that was subdivided or was a legally described parcel prior to November 14, 1977, that complies with the provisions of Subsection 26.480.020, Subdivision: applicability, prohibitions, and lot merger.
- 2) The net increase of Floor Area of an existing single-family, two detached residential units on a single lot, or a duplex dwelling, during redevelopment and renovation scenarios when the definition of Demolition is not met, regardless of when the lot was subdivided or legally described. This type of development shall not require a growth management allocation and shall not be deducted from the respective annual development allotments.
- 3) Redevelopment or renovation of an existing single-family, two detached residential units on a single lot, or a duplex dwelling, when the definition of Demolition is met. This type of development shall not require a growth management allocation and shall not be deducted from the respective annual development allotments.
- 4) Affordable housing mitigation requirements for the types of free-market residential development described above shall be as follows. The applicant shall have four options:
 - a. Recording a resident-occupancy (RO), or lower, deed restriction on the single-family dwelling unit or one of the residences if a duplex or two detached residences are developed on the property. An existing deed restricted unit does not need to re-record a deed restriction.
 - b. Providing a deed restricted one-bedroom or larger affordable housing unit within the Aspen Infill Area pursuant to the Aspen/Pitkin County Housing Authority Guidelines (which may require certain improvements) in a size equal to or larger than 30% of the Floor Area increase to the Free-Market unit. The mitigation unit must be deed-restricted as a "for sale" Category 2 (or lower) housing unit and transferred to a qualified purchaser according to the provisions of the Aspen/Pitkin County Housing Authority Guidelines.
 - c. Providing a fee-in-lieu payment or extinguishing a Certificate of Affordable Housing Credit in a full-time-equivalent (FTE) amount based on the following schedule:

Floor Area per dwelling unit	Employment Generation Rate
First 4,500 square feet (Floor Area)	.16 employees per 1,000 square feet of Floor Area.
Above 4,500 square feet (Floor Area)	.36 employees per 1,000 square feet of Floor Area.
<p>Notes:</p> <ul style="list-style-type: none"> - The calculation of Floor Area for the purposes of determining employee generation and required mitigation shall be based on the definition of “Floor Area” in 26.104.100, Definitions: <i>“The sum total of the gross horizontal areas of the building measured from the exterior walls of the building.”</i> This calculation is inclusive of all enclosed levels of the buildings on the property – including, basements, crawl spaces, attics with walkable floors, garages, and vertical circulation. This calculation shall not include storage areas of less than 32 square feet, or minimally sized wildlife-resistant trash and recycling enclosures. - See Figure 2, in 26.575.020.D, for a depiction of “Measuring to Face of Framing” in calculating Floor Area from exterior wall. - For new construction on a vacant lot, all Floor Area shall be included in the calculation of employee generation and required mitigation. - For redevelopment or renovation of an existing single-family or duplex that <u>does not meet the requirements of Demolition</u> (26.104.100), only new, additional Floor Area shall be calculated towards employee generation and required mitigation. - For redevelopment or renovation of an existing single-family or duplex that <u>meets the definition of Demolition</u> (26.104.100), all Floor Area (existing and new) shall be calculated toward employee generation and required mitigation. - Demolition that occurs as a result of an act of nature or through any manner not purposefully accomplished by the owner, shall be evaluated by Community Development staff, and a credit for existing Floor Area may be issued toward the reconstruction of the home. - The calculation of the Employment Generation shall be assessed per dwelling unit. Duplex dwelling units do not combine their floor area for one calculation. - An Accessory Dwelling Unit or Carriage House, as defined by and meeting the requirements of this Title, shall be calculated as floor area of the primary dwelling. - The above generation rates are based on a study of employment generation of Aspen residences, from both initial construction and ongoing operation, performed by RRC Associates of Boulder, Colorado, dated March 4, 2015. - All required mitigation using Certificates of Affordable Housing Credits or fee-in-lieu for single-family and duplex development shall be provided at Category 2. 	

Affordable housing mitigation must be provided at a Category 2 (or lower) rate. Certificates must be extinguished pursuant to the procedures of Chapter 26.540, Certificates of Affordable Housing Credit. Fee-in-lieu rates shall be those stated in Section 26.470.100 – Calculations; Employee Generation and Mitigation, in effect on the date of application acceptance. Providing a fee-in-lieu payment in excess of .10 FTE shall require City Council approval, pursuant to Section 26.470.110.C.

Example 1: A new home of 3,400 square feet of Floor Area on a vacant lot created by a historic lot split. The applicant must provide affordable housing mitigation for .54 FTEs.

$$3,400 / 1,000 \times .16 = .54$$

In this example the applicant may provide a Certificate of Affordable Housing Credit or request City Council accept a fee-in-lieu payment.

Example 2: An existing home of 4,500 square feet of Floor Area is expanded by 250 square feet of Floor Area. The renovation does not meet the definition of Demolition. The applicant must provide affordable housing mitigation for .09 FTEs.

$$250/1000 \times .36 = .09$$

***Note: the mitigation for the additional Floor Area is calculated at .36 FTE/1000sf as the home now crosses the 4,500 square feet threshold identified above.*

In this example the applicant may provide a Certificate of Affordable Housing Credit or a fee-in-lieu payment.

Example 3: An existing home is redeveloped in a fashion that meets the definition of Demolition. The redeveloped home has a Floor Area of 5,700 sf. The applicant must provide affordable housing for 1.15 FTEs.

$$(4,500/1000 \times .16) + (1,200/1000 \times .36) = 1.15 \text{ FTE}$$

In this example the applicant may provide a Certificate of Affordable Housing Credit or request City Council accept a fee-in-lieu payment.

- d. For property owners qualified as a full-time local working resident, an affordable housing mitigation deferral agreement may be accepted by the City of Aspen subject to the Aspen/Pitkin County Housing Authority Guidelines. This allows deferral of the mitigation requirement until such time as the property is no longer owned by a full-time local working resident. Staff of the City of Aspen Community Development Department and Staff of the Aspen/Pitkin County Housing Authority can assist with the procedures and limitations of this option.

B. Multi-Family Residential Expansion. The following types of free-market residential development shall require the provision of affordable housing in one of the methods described below:

- 1) The net increase of Floor Area of an existing free-market multi-family unit or structure, regardless of when the lot was subdivided or legally described and provided demolition does not occur. (When demolition occurs, see Section 26.470.100.E, Demolition or redevelopment of multi-family housing.) This type of development shall not require a growth management allocation and shall not be deducted from the respective annual development allotments established pursuant to Section 26.470.040.
- 2) Affordable housing mitigation requirements for the type of free-market residential development described above shall be as follows. The applicant shall have four options:
 - a. Recording a resident-occupancy (RO), or lower, deed restriction on the dwelling unit(s) being expanded. An existing deed restricted unit does not need to re-record a deed restriction.
 - b. Providing a deed restricted one-bedroom or larger affordable housing unit within the Aspen Infill Area pursuant to the Aspen/Pitkin County Housing Authority Guidelines (which may require certain improvements) in a size equal to or larger than 30% of the Floor Area increase to the Free-Market unit(s). The mitigation unit(s) must be deed-restricted as a "for sale" Category 2 (or lower) housing unit and transferred to a qualified purchaser according to the provisions of the Aspen/Pitkin County Housing Authority Guidelines.

- c. Providing a fee-in-lieu payment or extinguishing a Certificate of Affordable Housing Credit in a full-time-equivalent (FTE) amount based on the following schedule:

Floor Area per dwelling unit	Employment Generation Rate
square feet of expansion (Floor Area)	.18 employees per 1,000 square feet of Floor Area
<p>Notes:</p> <ul style="list-style-type: none"> - The calculation of Floor Area for the purposes of determining employee generation and required mitigation shall be based on the definition of “Floor Area” in 26.104.100, Definitions: “<i>The sum total of the gross horizontal areas of the building measured from the exterior walls of the building.</i>” This calculation is inclusive of all enclosed levels of the building on the property – including, basements, crawl spaces, attics with walkable floors, garages, and vertical circulation. - The calculation of the Employment Generation shall be assessed per dwelling unit. Multiple dwelling units do not combine their floor area for one calculation. - When a unit adds floor area, the difference between the generation rates of the existing floor area and the proposed floor area shall be the basis for determining the number of employees generated. No refunds shall be provided if Floor Area is reduced. - When demolition is proposed, please see Section 26.470.100.D – Demolition or Redevelopment of Multi-Family Housing. Projects - The above generation rates are based on a study of employment generation of Aspen residences, from both initial construction and ongoing operation, performed by RRC Associates of Boulder, Colorado, dated March 4, 2015. 	

Affordable housing mitigation must be provided at a Category 2 (or lower) rate. Certificates must be extinguished pursuant to the procedures of Chapter 26.540, Certificates of Affordable Housing Credit. Fee-in-lieu rates shall be those stated in Section 26.470.050 – Calculations; Employee Generation and Mitigation, in effect on the date of application acceptance. Providing a fee-in-lieu payment in excess of .10 FTE shall require City Council approval, pursuant to Section 26.470.110.C.

Example 1: A multi-family unit of 1,400 square feet of Floor Area is expanded by 400 square feet of Floor Area. The applicant must provide affordable housing mitigation for .09 FTEs.

$$500 / 1,000 \times .18 = .09$$

In this example the applicant may provide a Certificate of Affordable Housing Credit or a fee-in-lieu payment.

Example 2: A multi-family unit of 1,400 square feet of Floor Area is expanded by 2,600 square feet of Floor Area. The applicant must provide affordable housing mitigation for .47 FTEs, the difference in employee generation of the two unit sizes.

$$2,600 / 1,000 \times .18 = .47$$

In this example the applicant may provide a Certificate of Affordable Housing Credit or request City Council accept a fee-in-lieu payment.

- d. For property owners qualified as a full-time local working resident, an affordable housing mitigation deferral agreement may be accepted by the City of Aspen subject to the Aspen/Pitkin County Housing Authority Guidelines. This allows deferral of the mitigation

requirement until such time as the property is no longer owned by a full-time local working resident. Staff of the City of Aspen Community Development Department and Staff of the Aspen/Pitkin County Housing Authority can assist with the procedures and limitations of this option.

26.470.140. Reconstruction limitations.

In reconstruction scenarios, growth management allotments and any other reconstruction rights that this Code establishes, may continue, subject to the following limitations.

A. An applicant may propose to demolish and then delay the reconstruction of existing development for a period not to exceed one (1) year. To comply with this limitation and maintain the reconstruction right, an applicant must submit a complete building permit application for reconstruction on or before the one-year anniversary of the issuance date of the demolition permit. The City Council may extend this deadline upon demonstration of good cause. The continuation of growth management allotments in a reconstruction scenario for single-family and duplex development are not subject to this time limitation.

B. Single-family and duplex development receive no credit for existing Floor Area for the purposes of determining affordable housing mitigation in redevelopment scenarios that meet the definition of Demolition – per 26.470.090.A.3. The exception to this is when a single-family or duplex is demolished by an act of nature or through any manner not purposefully accomplished by the owner.

C. Applicants shall verify existing conditions prior to demolition with the City Zoning Officer in order to document any reconstruction rights. An applicant's failure to accurately document existing conditions prior to demolition and verify reconstruction rights with the City Zoning Officer may result in a loss of some or all of the reconstruction rights.

D. Reconstructed buildings shall comply with applicable requirements of the Land Use Code, including but not limited to Chapter 26.312, Nonconformities, and Chapter 26.710, Zone Districts.

E. Reconstruction rights shall be limited to reconstruction on the same parcel or on an adjacent parcel under the same ownership.

F. Residential redevelopment credits may be converted to lodge redevelopment credits by right. The conversion rate shall be three (3) lodge units per each one (1) residential unit. This is a one-way conversion, and lodge credits may not be converted to residential credits.

26.575.020. Calculations and Measurements

D. Measuring Floor Area. *In measuring floor areas for floor area ratio and allowable floor area, the following applies:*

1. *General. Floor area shall be attributed to the lot or parcel upon which it is developed. In measuring a building for the purposes of calculating floor area ratio and allowable floor area, there shall be included all areas within the surrounding exterior walls of the building. When measuring from the exterior walls, the measurement shall be taken from the exterior face of framing, exterior face of structural block, exterior face of straw bale, or similar exterior surface of the nominal structure excluding sheathing, vapor barrier, weatherproofing membrane, exterior-mounted insulation systems, and excluding all exterior veneer and surface treatments such as stone, stucco, bricks, shingles, clapboards or other similar exterior veneer treatments. (Also, see setbacks.)*

Note: In measuring Floor Area for the purposes of calculating employee generation and affordable housing mitigation for single-family and duplex development, please refer to 26.470.090.

EXHIBIT C – REVIEW CRITERIA

26.310.050 Amendments to the Land Use Code Standards of review - Adoption.

In reviewing an application to amend the text of this Title, per Section 26.310.020(B)(3), *Step Three – Public Hearing before City Council*, the City Council shall consider:

A. Whether the proposed amendment is in conflict with any applicable portions of this Title.

Staff Response: The term “floor area” is used in many different contexts and with different application as one moves through the Land Use Code. For many years “Floor Area” has been a single calculation that is used for “floor area ratio” (FAR), “allowable floor area” and affordable housing mitigation requirements. This calculation is a “net” floor area that includes exemptions for basements, garages, vertical circulation, etc. and has the effect of significantly reducing the calculated size of a house – from the “gross” calculation of floor area. To implement the policy change of utilizing a gross calculation for affordable housing mitigation, changes needed to be made across three chapters of the code to bring consistency to the topic. **Staff finds this criterion to be met.**

B. Whether the proposed amendment achieves the policy, community goal, or objective cited as reasons for the code amendment or achieves other public policy objectives.

Staff Response: The purpose statement of Chapter 26.470 – Growth Management Quota System (GMQS) is as follows: *The purposes of this Chapter are to: (a) implement the goals and policies for the City and the Aspen Area Community Plan; (b) ensure that new growth occurs in an orderly and efficient manner in the City; (c) ensure sufficient public facilities are present to accommodate new growth and development; (d) ensure that new growth and development is designed and constructed to maintain the character and ambiance of the City; (e) ensure the presence of an adequate supply of affordable housing, businesses and events that serve the local, permanent community and the area's tourist base; (f) ensure that growth does not overextend the community's ability to provide support services, including employee housing, traffic control and parking; and (g) ensure that the resulting employees generated and impacts created by development and redevelopment are mitigated by said development and redevelopment.*

Staff finds that the proposed code changes are a direct response to (a), (e), (f), and (g) stated above. **Staff finds this criterion to be met.**

C. Whether the proposed amendment is compatible with the community character of the City and is in harmony with the public interest and the purpose and intent of this Title.

Staff Response: Per previous discussion with City Council, changes of the type being proposed are consistent with the *Aspen Area Community Plan* and with the intent and purpose of the Growth Management Quota System. The proposed changes are necessary to reflect the nature of the current development context in the City of Aspen, where single-family and duplex redevelopment are driving growth impacts and are currently under mitigating for their impacts to employee generation. **Staff finds this criterion to be met.**

**RESOLUTION NO. XX
(SERIES OF 2021)**

A RESOLUTION OF THE ASPEN PLANNING AND ZONING COMMISSION RECOMMENDING APPROVAL BY CITY COUNCIL OF PROPOSED AMENDMENTS TO THE LAND USE CODE IN CHAPTERS 26.104, GENERAL PROVISIONS; 26.470, GROWTH MANNAGEMENT QUOTA SYSTEM; AND 26.575, MISCELLANEOUS SUPPLEMENTAL REGULATIONS.

WHEREAS, the Community Development Department has held multiple work sessions with City Council on the topic of coordination of the Land Use Code and Council’s affordable housing goals; and,

WHEREAS, at a work session on July 12, 2021, City Council provided direction to Community Development staff to develop Land Use Code amendments related to affordable housing mitigation requirements for single-family and duplex development; and,

WHEREAS, on November 9, 2021, City Council passed Policy Resolution #106, Series of 2021, approving initiation of code amendments; and,

WHEREAS Community Development staff are proposing specific amendments to the Land Use Code; and,

WHEREAS, at a duly noticed public hearing on November 16, 2021, the Planning and Zoning Commission considered the proposed code amendment, reviewed staff’s memo, and received public comment at the hearing, and by a X-X (X-X) vote approves Resolution No. XX, Series of 2021, recommending Council consideration and approval of the proposed amendments.

NOW, THEREFORE BE IT RESOLVED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF ASPEN, COLORADO THAT:

Section 1:

Planning and Zoning Commission recommends Land Use Code Amendments to:

- a. Section 26.104.100 that amends the definition of *Floor Area*.
- b. Section 26.470.090 that amends the employee generation and mitigation calculation for single-family and duplex residential development, and expansion of multifamily development.
- c. Section 26.470.140 that amends *Reconstruction Limitations* to be consistent with the changes made to 26.470.090.
- d. Section 26.575.020.D to bring clarity in measuring Floor Area for “floor area ratio” and “allowable floor area” as differentiated from measuring Floor Area for the calculation of employee generation and mitigation for single-family and duple development.

The proposed language for the Amendments to Land Use Code are attached as **Exhibit A**.

Section 2:

This Resolution shall not affect any existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances repealed or amended as herein provided, and the same shall be conducted and concluded under such prior ordinances.

Section 3:

If any section, subsection, sentence, clause, phrase, or portion of this Resolution is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and shall not affect the validity of the remaining portions thereof.

FINALLY, adopted, passed, and approved this 16th day of November 2021.

Approved as to form:

Approved as to content:

Katherine Johnson, Assistant City Attorney

Spencer McKnight, Chair

Attest:

Cindy Klob, Records Manager

EXHIBIT A: Draft of Proposed Code Language

EXHIBIT A: Proposed Code Language

26.104.100. Definitions

Floor area. The sum total of the gross horizontal areas of the building measured from the exterior walls of the building. (See, Supplementary Regulations — Section 26.575.020, Calculations and measurements).

26.470.090 Administrative applications.

The following types of development shall be approved, approved with conditions or denied by the Community Development Director, pursuant to Section 26.470.060, Procedures for Review, and the criteria described below. Except as noted, all administrative growth management approvals shall not be deducted from the annual development allotments. All approvals apply cumulatively.

A. Single-Family and Duplex Residential Development or Expansion. The following types of free-market residential development shall require the provision of affordable housing in one of the methods described below:

- 1) The development of a single-family, two detached residential units, or a duplex dwelling on a lot in one of the following conditions:
 - a. A lot created by a lot split, pursuant to Subsection 26.480.060.A.
 - b. A lot created by a historic lot split, pursuant to Subsection 26.480.060.B, when the subject lot does not itself contain a historic resource.
 - c. A lot that was subdivided or was a legally described parcel prior to November 14, 1977, that complies with the provisions of Subsection 26.480.020, Subdivision: applicability, prohibitions, and lot merger.
- 2) The net increase of Floor Area of an existing single-family, two detached residential units on a single lot, or a duplex dwelling, during redevelopment and renovation scenarios when the definition of Demolition is not met, regardless of when the lot was subdivided or legally described. This type of development shall not require a growth management allocation and shall not be deducted from the respective annual development allotments.
- 3) Redevelopment or renovation of an existing single-family, two detached residential units on a single lot, or a duplex dwelling, when the definition of Demolition is met. This type of development shall not require a growth management allocation and shall not be deducted from the respective annual development allotments.
- 4) Affordable housing mitigation requirements for the types of free-market residential development described above shall be as follows. The applicant shall have four options:

- a. Recording a resident-occupancy (RO), or lower, deed restriction on the single-family dwelling unit or one of the residences if a duplex or two detached residences are developed on the property. An existing deed restricted unit does not need to re-record a deed restriction.
- b. Providing a deed restricted one-bedroom or larger affordable housing unit within the Aspen Infill Area pursuant to the Aspen/Pitkin County Housing Authority Guidelines (which may require certain improvements) in a size equal to or larger than 30% of the Floor Area increase to the Free-Market unit. The mitigation unit must be deed-restricted as a "for sale" Category 2 (or lower) housing unit and transferred to a qualified purchaser according to the provisions of the Aspen/Pitkin County Housing Authority Guidelines.
- c. Providing a fee-in-lieu payment or extinguishing a Certificate of Affordable Housing Credit in a full-time-equivalent (FTE) amount based on the following schedule:

Floor Area per dwelling unit	Employment Generation Rate
First 4,500 square feet (Floor Area)	.16 employees per 1,000 square feet of Floor Area.
Above 4,500 square feet (Floor Area)	.36 employees per 1,000 square feet of Floor Area.
<p>Notes:</p> <ul style="list-style-type: none"> - The calculation of Floor Area for the purposes of determining employee generation and required mitigation shall be based on the definition of "Floor Area" in 26.104.100, Definitions: "<i>The sum total of the gross horizontal areas of the building measured from the exterior walls of the building.</i>" This calculation is inclusive of all enclosed levels of the buildings on the property – including, basements, crawl spaces, attics with walkable floors, garages, and vertical circulation. This calculation shall not include storage areas of less than 32 square feet, or minimally sized wildlife-resistant trash and recycling enclosures. - See Figure 2, in 26.575.020.D, for a depiction of "Measuring to Face of Framing" in calculating Floor Area from exterior wall. - For new construction on a vacant lot, all Floor Area shall be included in the calculation of employee generation and required mitigation. - For redevelopment or renovation of an existing single-family or duplex that <u>does not meet the requirements of Demolition</u> (26.104.100), only new, additional Floor Area shall be calculated towards employee generation and required mitigation. - For redevelopment or renovation of an existing single-family or duplex that <u>meets the definition of Demolition</u> (26.104.100), all Floor Area (existing and new) shall be calculated toward employee generation and required mitigation. 	

- Demolition that occurs as a result of an act of nature or through any manner not purposefully accomplished by the owner, shall be evaluated by Community Development staff, and a credit for existing Floor Area may be issued toward the reconstruction of the home.
- The calculation of the Employment Generation shall be assessed per dwelling unit. Duplex dwelling units do not combine their floor area for one calculation.
- An Accessory Dwelling Unit or Carriage House, as defined by and meeting the requirements of this Title, shall be calculated as floor area of the primary dwelling.
- The above generation rates are based on a study of employment generation of Aspen residences, from both initial construction and ongoing operation, performed by RRC Associates of Boulder, Colorado, dated March 4, 2015.
- All required mitigation using Certificates of Affordable Housing Credits or fee-in-lieu for single-family and duplex development shall be provided at Category 2.

Affordable housing mitigation must be provided at a Category 2 (or lower) rate. Certificates must be extinguished pursuant to the procedures of Chapter 26.540, Certificates of Affordable Housing Credit. Fee-in-lieu rates shall be those stated in Section 26.470.100 – Calculations; Employee Generation and Mitigation, in effect on the date of application acceptance. Providing a fee-in-lieu payment in excess of .10 FTE shall require City Council approval, pursuant to Section 26.470.110.C.

Example 1: A new home of 3,400 square feet of Floor Area on a vacant lot created by a historic lot split. The applicant must provide affordable housing mitigation for .54 FTEs.

$$3,400 / 1,000 \times .16 = .54$$

In this example the applicant may provide a Certificate of Affordable Housing Credit or request City Council accept a fee-in-lieu payment.

Example 2: An existing home of 4,500 square feet of Floor Area is expanded by 250 square feet of Floor Area. The renovation does not meet the definition of Demolition. The applicant must provide affordable housing mitigation for .09 FTEs.

$$250/1000 \times .36 = .09$$

***Note: the mitigation for the additional Floor Area is calculated at .36 FTE /1000sf as the home now crosses the 4,500 square feet threshold identified above.*

In this example the applicant may provide a Certificate of Affordable Housing Credit or a fee-in-lieu payment.

Example 3: An existing home is redeveloped in a fashion that meets the definition of Demolition. The redeveloped home has a Floor Area of 5,700 sf. The applicant must provide affordable housing for 1.15 FTEs.

$$(4,500/1000 \times .16) + (1,200/1000 \times .36) = 1.15 \text{ FTE}$$

In this example the applicant may provide a Certificate of Affordable Housing Credit or request City Council accept a fee-in-lieu payment.

- d. For property owners qualified as a full-time local working resident, an affordable housing mitigation deferral agreement may be accepted by the City of Aspen subject to the Aspen/Pitkin County Housing Authority Guidelines. This allows deferral of the mitigation requirement until such time as the property is no longer owned by a full-time local working resident. Staff of the City of Aspen Community Development Department and Staff of the Aspen/Pitkin County Housing Authority can assist with the procedures and limitations of this option.

B. Multi-Family Residential Expansion. The following types of free-market residential development shall require the provision of affordable housing in one of the methods described below:

- 1) The net increase of Floor Area of an existing free-market multi-family unit or structure, regardless of when the lot was subdivided or legally described and provided demolition does not occur. (When demolition occurs, see Section 26.470.100.E, Demolition or redevelopment of multi-family housing.) This type of development shall not require a growth management allocation and shall not be deducted from the respective annual development allotments established pursuant to Section 26.470.040.
- 2) Affordable housing mitigation requirements for the type of free-market residential development described above shall be as follows. The applicant shall have four options:
 - a. Recording a resident-occupancy (RO), or lower, deed restriction on the dwelling unit(s) being expanded. An existing deed restricted unit does not need to re-record a deed restriction.
 - b. Providing a deed restricted one-bedroom or larger affordable housing unit within the Aspen Infill Area pursuant to the Aspen/Pitkin County Housing Authority Guidelines (which may require certain improvements) in a size equal to or larger than 30% of the Floor Area increase to the Free-Market unit(s). The mitigation unit(s) must be deed-restricted as a "for sale" Category 2 (or lower) housing unit and transferred to a qualified purchaser according to the provisions of the Aspen/Pitkin County Housing Authority Guidelines.
 - c. Providing a fee-in-lieu payment or extinguishing a Certificate of Affordable Housing Credit in a full-time-equivalent (FTE) amount based on the following schedule:

Floor Area per dwelling unit	Employment Generation Rate
square feet of expansion (Floor Area)	.18 employees per 1,000 square feet of Floor Area
Notes:	

- The calculation of Floor Area for the purposes of determining employee generation and required mitigation shall be based on the definition of “Floor Area” in 26.104.100, Definitions: “*The sum total of the gross horizontal areas of the building measured from the exterior walls of the building.*” This calculation is inclusive of all enclosed levels of the building on the property – including, basements, crawl spaces, attics with walkable floors, garages, and vertical circulation.
- The calculation of the Employment Generation shall be assessed per dwelling unit. Multiple dwelling units do not combine their floor area for one calculation.
- When a unit adds floor area, the difference between the generation rates of the existing floor area and the proposed floor area shall be the basis for determining the number of employees generated. No refunds shall be provided if Floor Area is reduced.
- When demolition is proposed, please see Section 26.470.100.D – Demolition or Redevelopment of Multi-Family Housing Projects.
- The above generation rates are based on a study of employment generation of Aspen residences, from both initial construction and ongoing operation, performed by RRC Associates of Boulder, Colorado, dated March 4, 2015.

Affordable housing mitigation must be provided at a Category 2 (or lower) rate. Certificates must be extinguished pursuant to the procedures of Chapter 26.540, Certificates of Affordable Housing Credit. Fee-in-lieu rates shall be those stated in Section 26.470.050 – Calculations; Employee Generation and Mitigation, in effect on the date of application acceptance. Providing a fee-in-lieu payment in excess of .10 FTE shall require City Council approval, pursuant to Section 26.470.110.C.

Example 1: A multi-family unit of 1,400 square feet of Floor Area is expanded by 400 square feet of Floor Area. The applicant must provide affordable housing mitigation for .09 FTEs.

$$500 / 1,000 \times .18 = .09$$

In this example the applicant may provide a Certificate of Affordable Housing Credit or a fee-in-lieu payment.

Example 2: A multi-family unit of 1,400 square feet of Floor Area is expanded by 2,600 square feet of Floor Area. The applicant must provide affordable housing mitigation for .47 FTEs, the difference in employee generation of the two unit sizes.

$$2,600 / 1,000 \times .18 = .47$$

In this example the applicant may provide a Certificate of Affordable Housing Credit or request City Council accept a fee-in-lieu payment.

- d. For property owners qualified as a full-time local working resident, an affordable housing mitigation deferral agreement may be accepted by the City of Aspen subject to the Aspen/Pitkin County Housing Authority Guidelines. This allows deferral of the mitigation requirement until such time as the property is no longer owned by a full-time local working resident. Staff of the City of Aspen Community

Development Department and Staff of the Aspen/Pitkin County Housing Authority can assist with the procedures and limitations of this option.

26.470.140. Reconstruction limitations.

In reconstruction scenarios, growth management allotments and any other reconstruction rights that this Code establishes, may continue, subject to the following limitations.

A. An applicant may propose to demolish and then delay the reconstruction of existing development for a period not to exceed one (1) year. To comply with this limitation and maintain the reconstruction right, an applicant must submit a complete building permit application for reconstruction on or before the one-year anniversary of the issuance date of the demolition permit. The City Council may extend this deadline upon demonstration of good cause. The continuation of growth management allotments in a reconstruction scenario for single-family and duplex development are not subject to this time limitation.

B. Single-family and duplex development receive no credit for existing Floor Area for the purposes of determining affordable housing mitigation in redevelopment scenarios that meet the definition of Demolition – per 26.470.090.A.3. The exception to this is when a single-family or duplex is demolished by an act of nature or through any manner not purposefully accomplished by the owner.

C. Applicants shall verify existing conditions prior to demolition with the City Zoning Officer in order to document any reconstruction rights. An applicant's failure to accurately document existing conditions prior to demolition and verify reconstruction rights with the City Zoning Officer may result in a loss of some or all of the reconstruction rights.

D. Reconstructed buildings shall comply with applicable requirements of the Land Use Code, including but not limited to Chapter 26.312, Nonconformities, and Chapter 26.710, Zone Districts.

E. Reconstruction rights shall be limited to reconstruction on the same parcel or on an adjacent parcel under the same ownership.

F. Residential redevelopment credits may be converted to lodge redevelopment credits by right. The conversion rate shall be three (3) lodge units per each one (1) residential unit. This is a one-way conversion, and lodge credits may not be converted to residential credits.

26.575.020. Calculations and Measurements

D. Measuring Floor Area. *In measuring floor areas for floor area ratio and allowable floor area, the following applies:*

- 1. General. Floor area shall be attributed to the lot or parcel upon which it is developed. In measuring a building for the purposes of calculating floor area ratio and allowable floor area, there shall be included all areas within the surrounding exterior walls of the building. When measuring from the exterior walls, the measurement shall be taken from the exterior face of framing, exterior face of structural block, exterior face of straw bale, or similar*

exterior surface of the nominal structure excluding sheathing, vapor barrier, weatherproofing membrane, exterior-mounted insulation systems, and excluding all exterior veneer and surface treatments such as stone, stucco, bricks, shingles, clapboards or other similar exterior veneer treatments. (Also, see setbacks.)

Note: In measuring Floor Area for the purposes of calculating employee generation and affordable housing mitigation for single-family and duplex development, please refer to 26.470.090.