AGENDA

ASPEN PLANNING & ZONING COMMISSION

October 15, 2024

4:30 PM, Pearl Pass Meeting Room
3rd Floor, 427 Rio Grande Pl,
Aspen

I. SITE VISIT

II. ROLL CALL

III. COMMENTS

IV. MINUTES

V. DECLARATION OF CONFLICT OF INTEREST

VI. PUBLIC HEARINGS

VII. OTHER BUSINESS

VII.AResolution #XX, Series of 2024 - Response to Colorado HB23-1255
P&Z Memo_Resolution #XX, Series of 2024_Response to HB1255.pdf
Resolution No.XX, Series of 2024 - Response to Colorado HB23-1255.pdf
Exhibit A - Section 26.470 Redlines.pdf
Exhibit B - Section 26.202.010.f Redlines.pdf
Exhibit C - Text, House Bill 23 1255.pdf

VIII. BOARD REPORTS

IX. 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 9, 2021

CITY OF ASPEN

MEMORANDUM

TO:	City of Aspen Planning & Zoning Commission
FROM:	Haley Hart, Long-Range Planner
THROUGH:	Ben Anderson, Deputy Community Development Director
MEMO DATE:	October 8, 2024
MEETING DATE:	October 15, 2024
RE:	Resolution #XX, Series of 2024 - Response to House Bill 23-1255 Recommendation from P&Z

REQUEST OF THE COMMISION:
As part of the Land Use Code (LUC) Amendment process, and prior to the consideration by City Council of an amendment to the Land Use Code updating Chapter 26.470 - *Growth Management Quota System*, and Section 26.212.010 – *Powers and duties*, which in their current text, are not in compliance with HB-1255, P&Z is asked to review the draft code and provide recommendation pursuant to 26.310.020.B – *Amendments to the Land Use Code procedure for amendment*.

SUMMARY AND BACKGROUND:
History of GMQS
Affordable housing and the concept of development allotments in Aspen dates to the 1977 adoption of the Growth Management Quota System (GMQS). Since then, inclusionary zoning, affordable housing mitigation requirements, and the assessment of impact fees on development for the provisions of affordable housing have become keystones of Aspen's approach to maintaining community character, social equity, and a functional in-town economy – and regulating "growth". This is basis for this concept of affordable housing mitigation, which is captured within Chapter 26.470 - *Growth Management Quota System,* and has historically been tied to the concept of a 'growth rate' as illustrated through an allotment system.

The initial response to growth in the Aspen area was based on a description of things that residents were seeing and feeling in the late 60s and early 70s. Traffic was increasing, new homes were being built, new businesses were coming to town, skier visits were increasing, population was growing. Conversations about infrastructure's capacity to serve these developments were being held as were calculations made about how to pay for necessary expansions of infrastructure to meet increasing demands. Following innovative approaches from communities like Petaluma, CA and Ramapo, NY, Aspen and Pitkin County established a series of policies to define and limit growth. Many types of policies emerged from this effort, but most central to our current discussion, the 1977 Plan

recommended annual quotas (or “allotments”) for the City of Aspen based on the phasing of development types:

- Free Market Residential 39 units
- Lodging Pillows 18 units
- Commercial building potential 24,385 square feet

These numbers were arrived at by examining building potential based on zoning at the time and allocating 80% of this potential over a period of 15 years. These numbers have changed overtime as a response to development pressures and availability for development. Tn their current, these allotments, which live within the GMQS chapter are:

- Free Market Residential 13 units
- Lodging Pillows 112 units
- Commercial building potential 33,300 square feet

Requests and applications for allotments are now reviewed annually by the planning staff, yet as Table 1 illustrates, only 5% of the residential allotments have been utilized over the last 7 years. The historic nexus between the granting of an allotment and the mitigation that development must pay has been critical in the City’s affordable housing program. Yet, that nexus has become less potent as there are limited opportunities within the City to develop a single-family residence on a property for the first time. Recently, the allotment system for free market residential growth has not been highly used as the City’s majority of mitigation is captured through re-development rather than first-time development opportunities.

Utilized Free Market Residential GMQS Allotments	
Year:	**Allotment # Allocated:**
2017	0
2018	1
2019	1
2020	2
2021	0
2022	1
2023	0

Table 1, Utilized Free Market Residential GMQS Allotments

The context for this history of GMQS interrelated to a Colorado House Bill which invalidates these annual free market residential GMQS allotment.

House Bill 23-1255

A Colorado land use bill, House Bill 23-1255, titled *Regulating Local Housing Growth Restrictions*, passed on June 7, 2023, in the 2023 legislative session. HB23-1255 preempts existing home rule regulations that limit the number of residential land use

applications or building permits using growth caps. The intent of the law is to increase housing supply across communities in Colorado. This bill overrides all existing laws that limit the number of residential permits or construction projects that a city approves per year.

The City of Aspen's Land Use Code (LUC) is intended to incorporate and implement home rule authority vested in the City under Article XX of the Colorado Constitution and the Home Rule Charter of the City. Within the City's LUC are regulations that are impacted by HB23-1255, specifically the City's GMQS under Title 26. This system oversees the City's development allotment process, subdivision procedures, employee generation rates, and affordable housing mitigation and fees, among other aspects of the code. GMQS-related provisions have long served as a foundation of Aspen's LUC and are referenced in various ways throughout. It is important to note that HB23-1255 only relates to residential development.

The most significant consequence of HB23-1255 is the intersection between the GMQS and how the City captures housing mitigation fees tied to new residential development allotments, and redevelopment scenarios. During the legislative process, an amendment was specifically included and adopted that recognized Aspen's system of connecting growth limits with affordable housing mitigation.

Aspen area residents have long determined that growth and development must be managed to ensure the long-term negative consequences associated with development, redevelopment, and that its impacts are minimized and mitigated. Aspen's GMQS has been at the center of these efforts. It is staff's intent in this process to ensure that the City continues to fulfill these community expectations, while bringing the LUC into conformance with the state legislation.

STAFF DISCUSSION:
On June 20, 2023, City Council passed Ordinance #11, Series of 2023 which implemented a non-renewable, temporary anti-growth law, preserving the current LUC and specifically, Chapter 26.470 - *Growth Management Quota System* (GMQS) for a 24-month period while staff conducted research to restructure Title 26 to bring it into compliance with HB23-1255.

Staff has now completed a thorough review and redline of Title 26 to ensure that the City's residential development allotment process is no longer referenced nor in conflict with HB23-1255. This process included all the Community Development's Planning Staff to engage with a subsection-by-subsection review and discussion to determine what components would be in direct conflict, and what those results would mean for Chapter 26.470. The result is that staff has made minimal edits by removing in its entirety the *Residential Development Within the City* annual allotments table and all interrelated mentions within Title 26. By doing so, the LUC no longer 'restricts' the amount of allowable residential allotments, which was set as a 0.5% growth increase per year. S Staff does not find that the removal of this table nor removal of interrelated mentions of residential

allotments changes the outcomes of capturing affordable housing mitigation. Since affordable housing mitigation is captured through redevelopment applications and not necessarily through the 'giving of an allotment,' staff finds that these redlines do not change policy outcomes within GMQS.

The only other mention of residential allotments in Title 26 is in *Section 26.212.010 – Powers and duties* (of the Planning and Zoning Commission). The single change is in removing the word 'residential' as it pertains to the graining of an allotment. The sole effect of the redlines in Chapter 26.470 – *Growth Management Quota System*, and Section 26.212.010 – *Powers and duties*, is to bring the code into full compliance with HB23-1255.

RECOMMENDATIONS:
Any proposed changes to the LUC in response to HB-1255 must follow the common process for amending the LUC, per 26.310.020 the process includes the following:

1. Passing of a Policy Resolution to open the code for edits. This was completed via Resolution #080, Series of 2024, on July 23, 2024
2. Formal recommendation from HPC – occurred on October 9, 2024
3. Formal recommendation from the P&Z – this meeting
4. First Reading of the ordinance in front of City Council – meeting set for November 12, 2024
5. And Second Reading of the ordinance in front of City Council – meeting set for December 17, 2024

Pursuance to 26.310.020, "the Director shall solicit input from the Planning and Zoning Commission, the Historic Preservation Commission, or other Boards of the City, as applicable." Staff requests that P&Z evaluate and provide a formal recommendation.

Staff recommends P&Z approve Resolution #XX, Series of 2024, bringing Chapter 26.470 and Section 26.202.010.f into compliance with Colorado House Bill 23-1255.

RECOMMENDED MOTION:
If the Commission concurs with the draft code, as is: "I move to approve Resolution # XX, Series of 2024."

If the Commission would like to add additional recommendations or make formal comment to Council on the draft code: "I move to approve Resolution No. XX with the following additions or changes…"

EXHIBITS:
Resolution #XX, Series of 2024 - Response to Colorado HB23-1255
A – Draft Code Amendment – Section 26.470 - Growth Management Quota System
B – Draft Code Amendment – Section 26.212.010 – Powers and duties
C – Text, House Bill 23-1255

RESOLUTION #XX
SERIES OF 2024

A RESOLUTION OF THE ASPEN PLANNING AND ZONING COMMISSION RECOMMENDING APPROVAL BY CITY COUNCIL FOR THE AMENDMENT OF CITY OF ASPEN LAND USE CODE SECTION 26.470 - GROWTH MANAGEMENT QUOTA SYSTEM, AND SECTION 26.212.010.F – POWERS AND DUTIES FOR THE PURPOSE OF CONFORMING WITH THE PROVISIONS OF COLORADO HOUSE BILL 23-1255

WHEREAS, the City of Aspen has for more than 40 years, regulated growth and mitigated the impacts of development utilizing the Growth Management Quota System (GMQS); and,

WHEREAS, the Land Use Code, and particularly, aspects of the GMQS have been regularly amended in response to community interests as expressed in the Aspen Area Community Plan; and,

WHEREAS, across this history of Land Use Code amendments, elements of and references to the GMQS have been included within various chapters of the Land Use Code; and,

WHEREAS, on June 7, 2023, the Colorado State Governor adopted HB23-1255, titled Regulating Local Housing Growth Restrictions; and,

WHEREAS, on June 20, 2023, City Council passed Ordinance #11, Series of 2023 adopting a temporary, nonrenewable anti-growth law for the purpose of amending or developing land use plans covering residential development for a two-year period; and,

WHEREAS, on August 7, 2023, HB23-1255 became effective; and

WHEREAS, this state law preempts local jurisdictions from implementing or enforcing "anti-growth" land use or building permit limitations for residential development with the intention of encouraging affordable housing in communities across Colorado; and,

WHEREAS, the passage of the state law invalidates components of Aspen's Land Use Code, in particular, the annual allotment system for residential development within GMQS; and,

WHEREAS, Community Development staff has thoroughly evaluated the intersection of HB23-1255 with Aspen's Land Use Code and the specific provisions of the GMQS and recommends a response that brings the Land Use Code and provisions of GMQS into compliance; and,

WHEREAS, Community Development staff proposed edits to GMQS, removing all mentions and interrelated subsections which reference the annual allotment system for residential development; and

WHEREAS, this Ordinance does not alter policy outcomes within the Aspen's Land Use Code outside of the deletion of said residential allotments. The sole effect of this Ordinance is to bring the code into full conformance with Colorado HB 23-1255; and

WHEREAS, Community Development has presented and discussed this issue with the Planning & Zoning Commission; and,

WHEREAS, at a regular meeting on October 15, 2024, the Planning & Zoning Commission considered the amended code, and reviewed staff's memo, and by a X - X (X-X) vote approves Resolution #XX, Series of 2024, recommending Council consideration and approval of amending Section 26.470 – Growth Management Quota System and 26.212.010.f – Powers and duties.

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

Section 1:
The Planning & Zoning Commission recommends the Land Use Code *Section 26.470 – Growth Management Quota System,* be rescinded and readopted as follows in Exhibit A.

Section 2:
S*ection 26.212.010.f – Powers and duties*, shall be rescinded and readopted as follows:

(f) To review and grant allotments for office, commercial and lodge pursuant to growth management quota system (GMQS), pursuant to Chapter 26.470.

Redlines are in Exhibit B.

Section 3:
Any scrivener's errors contained in the code amendments herein, including but not limited to mislabeled subsections or titles, may be corrected administratively following adoption of the Ordinance.

Section 4:
This ordinance 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 resolutions or ordinances repealed or amended as herein provided, and the same shall be conducted and concluded under such prior resolutions or ordinances.

Section 5:
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 15th day of October 2024.

Approved as to form:

_____
James R. True, City Attorney

Approved as to content:

_____
Teraissa McGovern, Chair

Attest:

_____
Tracy Terry, Municipal Court Clerk

Chapter 26.470. - GROWTH MANAGEMENT QUOTA SYSTEM (GMQS)

Sec. 26.470.010. - Purpose.

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 growth and development occurs in an orderly and efficient manner in the City; (c) ensure sufficient public facilities are present to accommodate growth and development; (d) ensure that 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 and development 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.

(Ord. No. 13-2022, § 7, 6-28-2022)

Sec. 26.470.020. - Terminology.

(a) *Growth management year.* A year period, lasting from January 1 through December 31, which constitutes the time period that each year's development allotments are available.
(b) *Development categories.* All development falls into one (1) of four (4) land use categories, which are outlined in Table 1. Table 1 establishes the development categories and units of allocation for each category for purposes of administering this Chapter.

Category	Description	Allocation Units
1. Residential Uses		
A. Residential - Free-Market	Dwelling units intended exclusively for residential purposes, not subject to any residency requirements and not including hotels, or lodging. Units may be in the form of single-family, duplex, multi-family or part of a mixed-use structure. (See definitions of Residential use and Dwelling, Sections 26.104.100 and 26.104.110.)	Dwelling units
i. Single-family and Duplex Demolition	Dwelling units that are demolished and redeveloped pursuant to Chapter 26.580 and subject to Section 26.470.090. These allotments are a subset of the total Residential, Free-Market allotment total. (See definition of Demolition, Section 26.104.100)	Dwelling units

Category	Description	Allocation Units
B. Residential - Affordable Housing	Dwelling units intended to house only local working residents that are deed restricted according to the Aspen/Pitkin County Housing Authority Guidelines. Units may be in the form of single-family, duplex, multi-family, dormitory or part of a mixed-use structure. (See definition of Affordable housing, Sections 26.104.100 and 26.104.110.)	Dwelling units
2. Commercial	Buildings, or portions thereof, supporting office, retail, warehousing, manufacturing, commercial recreation, restaurant/bar or service oriented businesses, including retail and office uses but not including hotel or lodging uses. (See definition of Commercial use, Sections 26.104.100 and 26.104.110.)	Net leasable squar
3. Lodging	Buildings, or portions thereof, used to house a transient tourist population on a short-term basis, including lodges, hotels, motels, bed and breakfasts, and timeshare development. (See definition of Hotel, Sections 26.104.100 and 26.104.110.)	Lodging pillows. (bedroom shall be c two (2) pillows.)
4. Essential Public Facilities	Facilities serving essential public purposes used by or for the benefit of the general public and serving the needs of the community. (See definition of Essential public facility, Sections 26.104.100 and 26.104.110.)	Square feet

(c)

Table 1, Development Categories.

TABLE 1, Development Categories.

(d) *Annual development allotment.* Each growth management year's potential growth within the City, applied to each type of land use. This is a unit of measurement applied to each type of applicable land use that, if granted, allows the specific development proposal to move forward in the review process. The number of development allotments for each land use is established in Table 2 below. See also Section 26.470.040, Allotment Procedure.

(e) *Carry-forward allotment.* The number of unused and unclaimed growth management allotments for each type of development that the City Council determines should be brought forward, or rolled-over, into the next growth management year. Procedures for carry-forward are established in Section 26.470.120, Yearly Growth Management Accounting Procedures.

(f) *Full time equivalent (FTE).* A unit of measurement standardizing the workloads of employees. In this Chapter, FTEs refer to the number of employees generated or housed by development.

(Ord. No. 13-2022, § 7, 6-28-2022)

Sec. 26.470.030. - Applicability and prohibitions.

This Chapter shall apply to all development in the City unless exempted in Section 26.470.070, Exempt Development.

(a) *Number of development applications.* No more than one (1) application for growth management allotments on any one (1) parcel shall be considered concurrently. To submit a new application, any active growth management application for the same property must be vacated.

(b) *Number of growth management allocations.* No more than one (1) project shall be entitled to growth management allotments on any one (1) parcel concurrently. In order to entitle a different project on the same parcel, existing growth allotments must be vacated. (Also see Section 26.470.150, Amendment of a Growth Management Development Order.)

(c) *No automatic "resubmission" of growth management applications.* Applications shall only be eligible for growth allotments within the growth management session in which they are submitted and shall not automatically become eligible for allotments in future sessions or future years. Applications must be resubmitted in order to be eligible for allotments in the next session or next year, as applicable. Resubmission shall effect a new submission date.

(d) *Subdivision and other required land use reviews.* Projects requiring additional land use reviews, including Conceptual Commercial Design Review, pursuant to Chapter 26.412, Commercial Design Standards, Conceptual Review by the Historic Preservation Commission, pursuant to Chapter 26.415, Historic Preservation, Project Review or Detailed Review, pursuant to Chapter 26.445, Planned Development, and Subdivision, pursuant to Chapter 26.480, Subdivision, may be reviewed concurrently with review for growth management, pursuant to Section 26.304.060(b)(1).

(e) *No partial approvals.* In order for a project to gain approval, sufficient allotments for every element of the project must be obtained. No partial approvals shall be granted. In circumstances where a proposal requires allotments be granted for various types of uses within the project, the reviewing body shall not grant approval unless allotments for every type of use are available. For example: If a proposal requires that allotments be granted for ~~free-market residential units,~~ lodging, affordable housing units and commercial space, and there are no remaining allotments for lodging ~~free-market residential~~ for the year, the project shall be tabled until such time as allotments are available. In the above example, the project shall be tabled in total and not granted allotments for the affordable housing units or the commercial space. Similarly, a project requiring ten thousand (10,000) square feet of commercial allotments when only five thousand (5,000) square feet of commercial allotments remain shall be tabled until such time as allotments are available. Also see multi-year allotments below.

(f) *Multi-year growth allotments.* Projects requiring development allotments in excess of the annual allotment may be granted a multi-year allotment, pursuant to Section

26.470.110(a), or may gain allotments over a multi-year period, provided that the allotment gained in any one (1) year shall not exceed the annual allotment.

(g) For example, a project requesting fifty thousand (50,000) square feet of commercial space may request either a one-time, multi-year allotment of fifty thousand (50,000) square feet or may request approval in the first year for twenty-five thousand (25,000) square feet and request approval for the remaining twenty-five thousand (25,000) square feet in a subsequent year through a multi-year allotment.

Gaining allotments in any year shall not guarantee that allotments will be granted in later years for the same project. Projects requiring a multi-year allotment shall not be granted a development order until all elements of the project have been granted allotments. If the design of a project changes prior to receiving the full allotment needed for a development order, the reviewing body shall determine if the changes are acceptable or if the change invalidates the previously granted allotment and requires a resubmission for allotments. Applications for each year's allotment need to be submitted, and there shall be no preferential status given to a project granted partial allotment.

Projects that do not require allotments in excess of the annual allotment shall not be eligible to gain partial allotments. See No partial approvals above.

(h) *Non-assignability of growth allotments.* Development allotments obtained pursuant to this Chapter shall not be assignable or transferable independent of the conveyance of the real property on which the development allotment has been approved.

(i) *No reduction in mitigation requirements.* Notwithstanding Section 26.470.110(d), Essential Public Facilities, an applicant may not request a reduction in the mitigation requirements of this Chapter. Properties requesting historic designation pursuant to Chapter 26.415, Historic Preservation, may be exempt from this provision, provided, however, that any reduction is reviewed and approved by City Council.

(j) *No combination of multiple affordable housing requirements allowed.* Whenever multiple affordable housing mitigation requirements are required each housing requirement shall be met. For example: A mixed-use project may require two (2) affordable housing units to mitigate an increase in commercial employee generation and two (2) affordable housing units to mitigate commercial ~~free-market residential~~ development. In this case, four (4) affordable housing units are required.

(Ord. No. 13-2022, § 7, 6-28-2022)

Sec. 26.470.040. - Allotment procedures.

(a) *General.* Aspen area residents have determined that growth and development must be managed to ensure long-term negative consequences associated with development redevelopment and its impacts are minimized. One (1) of the broad themes of the 2012 Aspen Area Community Plan (AACP) is to "manage future development so that it contributes to the long-term viability of a sustainable, demographically diverse visitor-

based economy and a vital year-round community." To implement these goals, the community has established a two (2) percent growth rate that can be accommodated without compromising community character. The AACP supports a "critical mass of year-round residents" to be housed while maintaining our community character and way of life. Therefore, the Growth Management Quota System does not limit the annual growth rate of affordable housing, while all ~~other types of~~ commercial and lodging development shall be limited to not exceed a two (2) percent annual growth rate. In order to address continued community growth concerns, a growth limit of one-half (0.5) percent has been implemented for ~~new free-market residential development and~~ the demolition and replacement of existing free-market residential single-family and duplex dwellings.

(b) *Existing development.* The following tables describe the existing (as of March 2007) amount of development in each sector used as a "baseline" in establishing annual allotments and development ceilings. [1]

EXPAND

Commercial Development Within the City (square feet)1	
Commercial use "class"	**Leasable square feet for class**
Merchandising	365,486
Lodging [2]	19,950
Offices	113,207
Recreation	179,824
Special purpose	144,777
Warehouse/storage	149,814
Multi-use	208,331
Commercial Condos	483,549
Total commercial:	1,664,938
2% Annual growth rate for commercial development	33,300

EXPAND

~~Residential Development Within the City (units)~~	
~~Property type~~	~~Residences in class~~
~~Single-family~~	~~1,268~~
~~Duplex or triplex~~ [3]	~~79~~
~~Multi-units 4 – 8~~ [4]	~~45~~
~~Multi-units 9+~~	~~142~~
~~Condominiums~~	~~2,978~~
~~Duplex condos~~	~~366~~
~~Manufactured~~	~~29~~
~~Partial exempt~~	~~1~~
~~Total residences:~~	~~4,909~~
~~Nonexempt affordable housing units~~ [5]	~~1,132~~
~~Total free-market residences~~	~~3,777~~
~~0.5% Annual growth rate for free-market residential development~~	~~18.9 units~~

EXPAND

Lodging Development Within the City (Pillows)	
Total lodging pillows:	7,500
1.5% Annual growth rate	112.5 pillows

[1] Source: Pitkin County Assessor, March 7, 2005

[2] Lodge unit square footage removed from total. Commercial space within lodge developments estimated through City records.

[3] ~~Single ownership duplex and triplex units. Two (2) units per property ownership estimated.~~

~~[4] Single-ownership apartment buildings. Residence count reflects actual number of units recorded with Assessor.~~

~~[5] A total of one thousand eight hundred fifteen (1,815) residences within the City are deed-restricted affordable housing. Of these units, several are considered tax-exempt and are not included in the Assessor's counts. These units are rental affordable housing owned by the City, APCHA or tax-exempt nonprofit organizations. Therefore, only the nonexempt units have been subtracted from the Assessor's total residences to determine the number of free-market residences.~~

Annual development allotments. The Growth Management Quota System establishes annual development allotments available for use by projects during each growth management year. The Community Development Director shall calculate the development allotments available for each type of land use as follows:

EXPAND

Available development allotments	=	annual allotment

The following annual allotments are hereby established:

Table 2, Development Allotments

EXPAND

Development Type
~~Residential — Total Free-Market~~
~~New Residential (Subdivision and multi-family units)~~
Single-Family and Duplex Demolition and Redevelopment
Residential — Affordable Housing
Commercial
Lodging

Development Type
Essential public facility
* Six (6) Demolition and Redevelopment Allotments represent City Council direction related to an annu 2013 and 2021.

Note, the annual allotment may be reduced if multi-year allotments are granted by the City Council. Upon a denial of the project and the completion of any appeals, where it is found the denial was appropriate, the project's allotments shall not be considered granted and shall be returned to the available allotment pool for the remainder of the year. Allotments shall be considered vacated by a property owner upon written notification from the property owner.

(c) *Allocation procedure.* Following approval or approval with conditions, pursuant to the above procedures for review, the Community Development Director shall issue a development order pursuant to Section 26.304.080, Development Orders. Those applicants having received allotments may proceed to apply for any further development approvals required by this Title or any other regulations of the City.

(d) *Expiration of growth management allotments.* Growth management allotments granted pursuant to this Chapter shall expire with the expiration of the development order, pursuant to the terms and limitations of Section 26.304.080, Development Orders. Expired allotments shall not be considered valid, and the applicant shall be required to re-apply for growth management approval. Expired allotments may be added to the next year's available allotments at the discretion of the City Council, pursuant to Section 26.470.120.

(Ord. No. 13-2022, § 7, 6-28-2022)

Sec. 26.470.050. - Calculations.

(a) *General.* Whenever employee housing or fee-in-lieu is required to mitigate for employees generated by a development, there shall be an employee generation analysis of the proposed development. Unless otherwise specified by this Chapter, the employee mitigation requirement shall be based upon the total employee generation of the proposed development. Except as specifically identified for Commercial Redevelopment, there are no credits granted during redevelopment. Additionally, credits are not given for changes between the land use categories outlined in Table 1. For instance, a change in use from commercial net leasable area to free-market residential units does not generate a credit.

(b) *Employee generation rates.*

(1) *Non-residential uses.* Table 3 establishes the employee generation rates that are the result of the Employee Generation Study, an analysis sponsored by the City during the fall and winter of 2012 considering the actual employment requirements of over one hundred (100) Aspen businesses. This study is available at the Community Development Department. Employee generation is quantified as full-time equivalents (FTEs) per one thousand (1,000) square feet of net leasable space or per lodge bedroom.

Table 3, Employee Generation Rates

Zone District	**Employees Generated per 1,000 Square Feet of Net Leasable Space**
Commercial Core (CC) Commercial (C-1) Neighborhood Commercial (NC) Commercial Lodge (CL) commercial space Lodge (L) commercial space Lodge Preservation (LP) commercial space Lodge Overlay (LO) commercial space Ski Base (SKI) commercial space	4.7
Mixed-Use (MU)	3.6
Service Commercial Industrial (S/C/I)	3.9
Public [1]	5.1
Lodge Preservation (LP) lodge units	0.3 per lodging bedroom

Zone District	Employees Generated per 1,000 Square Feet of Net Leasable Space
Lodge (L), Commercial Lodge (CL), Ski Base (SKI) and other zone district lodge units	0.6 per lodging bedroom

EXPAND

[1] For the Public Zone, the study evaluated only office-type public uses, and this number should not be considered typical for other non-office public facilities. Hence, each Essential Public Facility proposal shall be evaluated for actual employee generation.

Each use within a mixed-use building shall require a separate calculation to be added to the total for the project. For commercial net leasable space within basement or upper floors, the rates quoted above shall be reduced by twenty-five (25) percent for the purpose of calculating total employee generation. This reduction shall not apply to lodge units.

For lodging projects with flexible unit configurations, also known as "lock-off units," each separate "key" or rentable division shall constitute a unit for the purposes of this Section, such that employee generation is assessed on the configuration with the most number of rentable units. Timeshare units and exempt timeshare units are considered lodging projects for the purposes of determining employee generation. Free-market residential units included in a lodge development and which may be rented to the general public as a lodge unit, shall be counted as a lodge key in the calculation of employee generation.

(2) *Residential uses.* Employee Generation rates for Residential Uses (single-family, duplex and multifamily have been similarly established. Depending on the nature of development, (examples: new construction on an existing lot, creation of a new subdivision, expansion of Floor Area, or Demolition), different methodologies have been established and are identified and defined in Sections 26.470.090 and 26.470.100.

Table 4, Employee Generation Rates for Residential Uses

EXPAND

Residential Use	Employees Generated
All free-market residential use types	0.107 per 1,000 square feet

a. The residential employee 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 June 17, 2022.
The following methodology (as depicted in a comprehensive report conducted by RRC in Summer of 2022) was used to determine the above employee generation rate:

i. The calculation of construction labor required for building and remodeling residential units. Labor was calculated assuming employees have more than one (1) job (as outlined in the Regional Housing Study completed in 2019 by RRC), and divided over a forty-year career. One hundred (100) percent of the construction employment generation is included in the adopted rate.

ii. ii. The calculation of operational employment for residential units. The adopted rate included twenty-five (25) percent of the operational employment generation.

b. The calculation of Mitigation Floor Area for the purposes of determining employee generation and required mitigation shall be based on the definition of "Mitigation Floor Area" in Section 26.104.100, Definitions, and further discussed in Section 25.575.020(d).

c. For new construction on a vacant lot, all Mitigation Floor Area shall be included in the calculation of employee generation and required mitigation.

d. For redevelopment or renovation of an existing single-family, duplex, or multi-family unit that does not meet the requirements of Demolition (Chapter 26.580), only new, additional Mitigation Floor Area shall be calculated towards employee generation and required mitigation, pursuant to Sections 26.470.090(a) and (b).

e. The calculation of the Employment Generation shall be assessed per dwelling unit. Duplex, triplex, fourplex, or multi-family dwelling units do not combine their Mitigation Floor Area for one (1) calculation.

(c) *Employee generation review.* All essential public facilities shall be reviewed by the Planning and Zoning Commission to determine employee generation, pursuant to Section 26.470.110(d). In addition, any applicant who believes the employee

generation rate is different than that outlined herein may request an employee generation review with the Planning and Zoning Commission during a duly noticed public hearing, pursuant to Section 26.304.060(e). In establishing employee generation, the Planning and Zoning Commission shall consider the following:

(1) The expected employee generation of the use considering the employment generation pattern of the use or of a similar use within the City or a similar resort.

(2) Any unique employment characteristics of the operation.

(3) The extent to which employees of various uses within a mixed-use building or of a related off-site operation will overlap or serve multiple functions.

(4) A proposed restriction requiring full employee generation mitigation upon vacation of the type of business acceptable to the Planning and Zoning Commission.

(5) Any proposed follow-up analyses of the project (e.g., an audit) to confirm actual employee generation. The requirements of any proposed follow-up analysis shall be outlined in a Development Agreement, pursuant to Chapter 26.490.

(6) For single-family and duplex development and redevelopment, Employee Generation Review shall be only available for projects that can show evidence that mitigation was previously provided using physical units (on-site or off-site) which are currently deed-restricted and house APCHA qualified residents. The Planning and Zoning Commission will compare the mitigation provided at the time of the unit's deed restriction with the mitigation currently required for redevelopment using FTEs (Full-time Equivalents) as the basis for comparison. P&Z review shall ensure that any previously provided unit remains consistent with the intent of current APCHA regulations and standards and applicable provisions of the Land Use Code.

(d) *Employees housed.* Whenever a project provides residential units on or off site the schedule in Table 5 shall be used to determine the number of employees housed by such units:

Table 5, FTEs Housed

EXPAND

Unit Type	**Employees Housed**
Studio	1.25

Unit Type	Employees Housed
One-bedroom	1.75
Two-bedroom	2.25
Three-bedroom or larger	3.00, plus .5 per each additional bedroom
Dormitory	1.00 employee per 150 square feet of net liva

(e) *Employee housing fee-in-lieu payment.* Whenever a project provides employee housing via a fee-in-lieu payment, in part or in total, the amount of the payment shall be based upon the following (fee-in-lieu is only allowed for Categories 1—4, Category 5 is included for any necessary conversions between affordable housing unit types or for the purpose of conversions in the value of Certificates of Affordable Housing Credits):

EXPAND

Fee-in-Lieu (per FTE):
Category 1:
Category 2:
Category 3:
Category 4:
Category 5:

Payment shall be calculated on a full-time-equivalent employee (FTE) basis according to the Affordable Housing Category designation required by this Title. Unless otherwise stated in this Title or in a Development Order, Fee-in-Lieu payments shall be collected by the City of Aspen Building Department prior to and as a condition of Building Permit issuance.

The Fee-In-Lieu rates shall be updated every five (5) years and adopted by City Council ordinance. This five-year update shall evaluate and include cost analysis of new private and public sector affordable housing projects that have been completed or are otherwise appropriate since the previous update. During the intermediate years, Community Development staff shall propose to City Council an annual update (in January) to the

Fee-in-Lieu schedule via Ordinance, utilizing the most recent National Construction Cost Index provided by the Engineering News Record. If the annual increase is approved, updated Fee-in-Lieu figures shall be rounded to the nearest dollar. The annual update proposed in the intermediate years does not require a Policy Resolution prior to First and Second Reading.

The following methodology (as depicted in a comprehensive report conducted by TischlerBise, *Affordable Housing Fee-in-Lieu Study, Phase II* in Spring of 2021) was used to determine the above Fee-in-Lieu schedule:

> (1) Utilizing recent public sector, private sector, and public private partnership affordable housing projects, staff and the consultant team identified actual land and construction (hard and soft) costs for a number of recent projects and land purchases.
>
> (2) Costs for both land and construction were analyzed by project to the square foot of net livable development and averaged across the projects. Using the Code determined calculation of four hundred (400) square feet per full time equivalent (FTE) employee, a total cost of constructing affordable housing per FTE was identified.
>
> (3) Utilizing the Aspen Pitkin County Housing Authority (APCHA) Guidelines, established sales and rental rates by Category and bedroom count were used in a calculation to identify the revenue per FTE. Two (2) important assumptions were included for the rental revenue stream: a) revenue (rental income) was calculated over a fifteen-year period with a two (2) percent annual increase in the rental rate; and b) rental revenue was reduced by fifty (50) percent to acknowledge common maintenance and operations costs. Sales and Rental Revenue were then averaged per FTE.
>
> (4) The per FTE revenue amount for each Category (identified in #3 above) was subtracted from the total development cost per FTE (identified in #2 above). The remainder of each calculation subtracting the Category revenue from the total cost per FTE results in the Category Fee-in-Lieu schedule above.

(f) *Employee/square footage conversion.* Whenever an affordable housing mitigation requirement is required to be converted between a number-of-employees requirement and a square-footage requirement, regardless of direction, the following conversion factor shall be used: 1 employee = 400 square feet of net livable area.

(g) *Accessory dwelling units as mitigation units.* Accessory dwelling units, approved pursuant to Chapter 26.520 and which are deed-restricted as "for sale" category housing and transferred to a qualified purchaser according to the provisions of the Aspen/Pitkin County Housing Authority, shall be considered mitigation units and attributed to a project's affordable housing provision, or may be attributable to the creation of Affordable Housing Certificates, subject to the provisions of Chapters

26.520 and 26.540. ADUs which are not deed-restricted as category units and are not transferred to qualified purchasers shall not be considered mitigation units and shall not be attributed to a project's affordable housing provision.

(Ord. No. 5-2018, § 1, 2-26-2018; Ord. No. 10-2021, § 1, 5-11-2021; Ord. No. 13-2021, § 1, 5-11-2021; Ord. No. 13-2022, § 7, 6-28-2022; Ord. No. 14-2022, § 1, 6-30-2022)

Sec. 26.470.060. - Procedures for review.

A development application for growth management shall be reviewed pursuant to the following procedures and standards and the Common Development Review Procedures set forth at Chapter 26.304. According to the type of development or redevelopment requested, the following steps are necessary. ~~According to the type of allotments requested, the following steps are necessary~~. A development proposal may fall into multiple categories and therefore have multiple processes and standards to adhere to and meet. An application for growth management may be submitted to the Community Development Director on any date of the year.

(a) *Administrative applications.* The Community Development Director shall approve, approve with conditions or deny the application, based on the applicable standards of review in Section 26.470.090, Administrative Applications.

(b) *Planning and zoning commission applications.* The Planning and Zoning Commission, during a duly noticed public hearing, shall review a recommendation from the Community Development Director and shall approve, approve with conditions, or deny the application, based on the standards of review in Section 26.470.100, Planning and Zoning Commission Applications, and Section 26.470.080, General Review Standards. This requires a one-step process as follows:

Step One - Public Hearing before the Planning and Zoning Commission or Historic Preservation Commission.

(1) *Purpose:* To determine if the application meets the standards for approval.

(2) *Process:* The Planning and Zoning Commission or Historic Preservation Commission shall approve, approve with conditions, or deny an application after considering the recommendation of the Community Development Director and comments and testimony from the public at a duly noticed public hearing. The Historic Preservation Commission shall be the recommending body for historic landmarks, properties requesting landmark designation, and all properties located within a Historic District.

(3) *Standards of review:* The proposed development shall comply with the applicable review standards of Section 26.470.100, Planning and Zoning Commission applications and Section 26.470.080, General Review Standards.

(4) *Form of decision:* The Commission's decision shall be by resolution.

(5) *Notice requirements:* Posting, Mailing and Publication pursuant to Section 26.304.060(e)(3) and the provisions of Section 26.304.035, Neighborhood Outreach, as applicable.

(c) *City council applications.* City Council, during a duly noticed public hearing, shall review a recommendation from the Community Development Director, a recommendation from the Planning and Zoning Commission or Historic Preservation Commission, as applicable, and shall approve, approve with conditions, or deny the application, based on the standards of review in Section 26.470.110, City Council Applications, and Section 26.470.080, General Review Standards. This requires a two-step process as follows:

Step One - Public Hearing before the Planning and Zoning Commission or Historic Preservation Commission.

(1) *Purpose:* To determine if the application meets the standards for approval.

(2) *Process:* The Planning and Zoning Commission or Historic Preservation Commission shall forward a recommendation of approval, approval with conditions, or denial to City Council after considering the recommendation of the Community Development Director and comments and testimony from the public at a duly noticed public hearing. The Historic Preservation Commission shall be the recommending body for historic landmarks, properties requesting landmark designation, and all properties located within a Historic District.

(3) *Standards of review:* The proposed development shall comply with the applicable review standards of Section 26.470.110, City Council Applications, and Section 26.470.080, General Review Standards.

(4) *Form of decision:* The Commission's recommendation shall be by resolution.

(5) *Notice requirements:* Posting, Mailing and Publication pursuant to Section 26.304.060(e)(3) and the provisions of Section 26.304.035, Neighborhood Outreach, as applicable.

Step Two - Public Hearing before City Council.

(1) *Purpose:* To determine if the application meets the standards for approval.

(2) *Process:* The Community Development Director shall provide City Council with a recommendation to approve, approve with conditions, or deny the application, based on the standards of review. City Council shall approve, approve with conditions, or deny the application after considering the recommendation of the Community Development Director, the recommendation from the Planning and Zoning Commission or Historic Preservation

Commission, and comments and testimony from the public at a duly noticed public hearing.

(3) *Standards of review:* The proposed development shall comply with the applicable review standards of Section 26.470.110, City Council Applications, and Section 26.470.080, General Review Standards.

(4) *Form of decision:* City Council decision shall be by ordinance.

(5) *Notice requirements:* Posting, Mailing and Publication pursuant to Section 26.304.060(e)(3), the requirements of Section 26.304.035, Neighborhood Outreach, as applicable, and the requisite notice requirements for adoption of an ordinance by City Council.

(d) *Combined reviews.* An application for growth management review may be combined with development applications for other associated land use reviews, pursuant to Section 26.304.060(b)(1), Combined Reviews.

(Ord. No. 13-2022, § 7, 6-28-2022)

Sec. 26.470.070. - Exempt development.

The following types of development shall be exempt from the provisions of this Chapter. Development exempt from growth management shall not be considered exempt from other chapters of the Land Use Code. Where applicable, exemptions are cumulative.

(a) *Remodeling or renovation of existing single-family and duplex residential development.* The remodeling or renovation of existing single-family and duplex residential properties, that does not trigger Demolition pursuant to Chapter 26.580, shall be exempt from growth management provided that no additional Mitigation Floor Area is added to the property. When an expansion of Mitigation Floor Area occurs, see Section 26.470.0.090(a).

(b) *Conversion of an existing single-family residence to a duplex residence or two (2) detached residences or vise-versa, when Demolition is not triggered*. The conversion of an existing single-family residence to a duplex residence or two (2) detached single-family residences, or vise-versa, shall be exempt from growth management provided that no additional Mitigation Floor Area is added to the property. When an expansion of Mitigation Floor Area occurs, see Section 26.470.090(a).

(c) *Remodeling or expansion of existing multi-family residential development.* The remodeling of existing multi-family residential dwellings shall be exempt from growth management provided that no additional Mitigation Floor Area is added to the property and provided demolition of a unit or structure does not occur. When an expansion of Mitigation Floor Area occurs, see Section 26.470.090(b). When demolition occurs, see Section 26.470.100(d), Demolition or redevelopment of multi-family housing.

(Also see definition of Demolition, Section 26.104.100, and Chapter 26.580, Demolition.)

(d) *Remodeling or relocation of historic structures.* The remodeling or permanent or temporary relocation of a structure listed on the *Aspen Inventory of Historic Landmark Sites and Structures,* shall be exempt from growth management, provided that all necessary approvals are obtained, pursuant to Chapter 26.415, no Mitigation Floor Area expansion occurs, and Demolition is not triggered. Expansions shall be mitigated pursuant to this Chapter.

(e) *Remodeling of existing commercial development.* Remodeling of existing commercial buildings and portions thereof shall be exempt from the provisions of growth management, provided that demolition is not triggered, no additional net leasable square footage is created, and there is no change in use. If redevelopment involves an expansion of net leasable square footage, the replacement of existing net leasable square footage shall not require growth management allotments and shall be exempt from providing affordable housing mitigation only if that space previously mitigated. Existing, prior to demolition, net leasable square footage and lodge units shall be documented by the City Zoning Officer prior to demolition. Also see definitions of demolition and net leasable commercial space, Section 26.104.100.

If Demolition is triggered not due to remodel activity but is determined by the Community Development Director to be required for Normal Maintenance as defined in Title 26 (see definition in Section 26.104.100) or to rectify life safety issues, such as replacing a failing roof or mold removal, the square footage impacted by the work shall be exempt from this Section. This provision shall not be allowed to increase the height, floor area, net livable area or net leasable area of a building beyond what is the minimum necessary required to comply with the Building Code.

(f) *Special events.* Special events permitted by the City shall be exempt from this Chapter.

(g) *Accessory dwelling units and carriage houses.* The development of accessory dwelling units(ADUs) and carriage houses shall be exempt from the provisions of this Chapter but subject to the provisions of Chapter 26.520, Accessory Dwelling Units and Carriage Houses.

(h) *Retractable canopies and trellis structures.* Trellis structures and retractable canopies appended to a commercial or lodging structure shall be exempt from growth management provided that: a) there is no expansion of floor area; and b) the canopy or trellis structure is not enclosed by walls, screens, windows or other enclosures. Awnings shall be exempt from this Chapter.

(i) *Public infrastructure.* The development of public infrastructure such as roads, bridges, waterways, utilities and associated poles, wires, conduits, drains, hydrants and similar items considered essential services shall be exempt from growth management.

Essential public facilities shall not be exempt and shall be reviewed pursuant to Section 26.470.110(d), Essential Public Facilities. (Also see definition of essential services, Section 26.104.100.)

(Ord. No. 23-2017; Ord. No. 6-2019; Ord. No. 13-2021, § 2, 5-11-2021; Ord. No. 13-2022, § 7, 6-28-2022)

Sec. 26.470.080. - General review standards.

All Planning and Zoning Commission and City Council applications for growth management review shall comply with the following standards.

(a) *Sufficient allotments.* Sufficient growth management allotments are available to accommodate the proposed development, pursuant to Section 26.470.040(b). Applications for multi-year development allotment, pursuant to Section 26.470.110(a) shall be required to meet this standard for the growth management years from which the allotments are requested.

(b) *Development conformance.* The proposed development conforms to the requirements and limitations of this Title, of the zone district or a site-specific development plan, any adopted regulatory master plan, as well as any previous approvals, including the Conceptual Historic Preservation Commission approval, the Conceptual Commercial Design Review approval and the Planned Development - Project Review approval, as applicable.

(c) *Public infrastructure and facilities.* The proposed development shall upgrade public infrastructure and facilities necessary to serve the project. Improvements shall be at the sole costs of the developer. Public infrastructure includes, but is not limited to, water supply, sewage treatment, energy and communication utilities, drainage control, fire and police protection, solid waste disposal, parking and road and transit services.

(d) *Affordable housing mitigation.*

(1) For commercial development, sixty-five (65) percent of the employees generated by the additional commercial net leasable space, according to Section 26.470.050(b), Employee Generation Rates, shall be mitigated through the provision of affordable housing.

(2) For lodge development, sixty-five (65) percent of the employees generated by the additional lodge pillows, according to Section 26.470.050(b), Employee Generation Rates, shall be mitigated through the provision of affordable housing. For the redevelopment or expansion of existing lodge uses, see Section 26.470.100(g).

(3) For the redevelopment of existing commercial net leasable space that did not previously mitigate (see Section 26.470.100(e)), the mitigation requirements for affordable housing shall be phased at fifteen (15) percent beginning in 2017, and by three (3) percent each year thereafter until sixty-five (65) percent is reached, as follows:

EXPAND

Development order applied for during calendar year	Mitigation required (percent of employe
2017	15%
2018	18%
2019	21%
2020	24%
2021	27%
2022	30%
2023	33%
2024	36%
2025	39%
2026	42%
2027	45%
2028	48%
2029	51%
2030	54%
2031	57%
2032	60%
2033	63%
2034	65%

(4) Unless otherwise exempted in this Chapter, when a change in use between development categories is proposed, the employee mitigation shall be based on the use the development is converting to. For instance, if a commercial space is being converted to lodge units, the mitigation shall be based on the requirements for lodge

space, outlined in subsection (2), above. Conversely, if lodge units are being converted to commercial space, the mitigation shall be based on the requirements for commercial space, outlined in subsections (1) and (3), above.

(5) For new residential subdivisions, see Section 26.470.100(h) and (i).

(6) For new, redeveloped, or renovated single-family and duplex residential development, ~~or~~ the affordable housing mitigation requirements are established by Section 26.470.090(a) and (c).

(7) For the expansion of existing free-market multi-family units, affordable housing mitigation requirements are established by Section 26.470.090(b).

(8) For new free-market multi-family units, affordable housing mitigation requirements are established by Section 26.470.090(f).

(9) For the demolition or redevelopment of existing multi-family residential development, affordable housing mitigation requirements are established by Section 26.470.100(d).

(10) For essential public facility development, mitigation shall be determined based on Section 26.470.110(d).

(11) For all affordable housing units that are being provided as mitigation pursuant to this Chapter or for the creation of a Certificate of Affordable Housing Credit pursuant to Chapter 26.540, or for any other reason:

i. The proposed units comply with the Aspen/Pitkin County Housing Authority Employee Housing Regulations and Affordable Housing Development Policy, as amended.

ii. Required affordable housing may be provided through a mix of methods outlined in this Chapter, including newly built units, buy down units, certificates of affordable housing credit, or cash-in-lieu.

iii. Affordable housing that is in the form of newly built units or buy-down units shall be located on the same parcel as the proposed development or located off-site within the City limits. Units outside the City limits may be accepted as mitigation by the City Council, pursuant to Section 26.470.110(b). When off-site units within City limits are proposed, all requisite approvals shall be obtained prior to approval of the growth management application.

iv. Affordable housing mitigation in the form of a Certificate of Affordable Housing Credit, pursuant to Chapter 26.540, shall be extinguished pursuant to Section 26.540.120, Extinguishment and Re-Issuance of a Certificate,

utilizing the calculations in Section 26.470.050(f), Employee/Square Footage Conversion.

v. If the total mitigation requirement for a project is less than 0.1 FTEs, a cash-in-lieu payment may be made by right. If the total mitigation requirement for a project is 0.1 or more FTEs, a cash-in-lieu payment shall require City Council approval, pursuant to Section 26.470.110(c).

vi. Affordable housing units shall be approved pursuant to Section 26.470.100(d), Affordable Housing, and be restricted to a Category 4 rate as defined in the Aspen/Pitkin County Housing Authority Guidelines, as amended. An applicant may choose to provide mitigation units at a lower category designation.~~.~~

vii. Each unit provided shall be designed such that the finished floor level of fifty (50) percent or more of the unit's net livable area is at or above natural or finished grade, whichever is higher. This dimensional requirement may be varied through Special Review, Pursuant to Chapter 26.430.

(12) Affordable housing units that are being provided absent a requirement ("voluntary units") may be deed-restricted at any level of affordability, including residential occupied (RO).

(13) Residential mitigation deferral agreement.

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 Employee Housing Regulations. This allows deferral of the mitigation requirement for residential development 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. The City Attorney and Community Development Director shall prescribe the form to be used for a Deferral Agreement. A copy of the Deferral Agreement form is on file with the City of Aspen Community Development Department.

The required mitigation shall be calculated to the FTE and then multiplied by the codified Fee-in-Lieu at the time of building permit submission. This amount will be identified in the Deferral Agreement. Following the establishment of the initial mitigation requirement in the Deferral Agreement, the amount of mitigation initially identified shall increase annually by the CPI for each year that the Deferral Agreement is in effect until such time that the Deferral Agreement is terminated following sale to a non-resident. The term "CPI" shall mean the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, not seasonally adjusted, 1984=100 reference base; published by the United States Department of Labor, Bureau of Labor Statistics. The calculation of the value of the mitigation required at the time of

the termination of the Deferral Agreement may be completed using a commonly available calculator that aggregates the CPI over time. The term of the calculation shall be the month of the initial execution of the Deferral Agreement and the most recent index month available at the time of release of the Deferral Agreement. The provision describing this regular annual increase shall be described in the Deferral Agreement. The Deferral Agreement shall be recorded prior to the issuance of a Certificate of Occupancy or Letter of Completion.

Should a property with a Deferral Agreement in place be sold to a qualified resident, a new Deferral Agreement shall be established, identifying the initial mitigation requirement, and an inclusion of the continued annual increases that will continue to accrue from the date of initiation of the original deferral agreement. The initiation date of the original deferral agreement shall be identified in the new deferral agreement.

Deferral Agreements initiated prior to July 28, 2022, shall remain in effect and are not subject to the stipulations described in the paragraphs above. If desired, the parties to a previously established deferral agreement may, at their discretion, enter into a new deferral agreement that that updates the terms to be consistent with the provisions identified above.

(Ord. No. 23-2017; Ord. No. 12-2019; Ord. No. 12-2021, § 2, 5-11-2021; Ord. No. 13-2021, § 3, 5-11-2021; Ord. No. 13-2022, § 7, 6-28-2022)

Sec. 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 that does not trigger demolition, pursuant to Chapter 26.580.* The following types of free-market residential development ~~do not require a development allotment and~~ may proceed to building permit absent the need of any other land use reviews. These types of development shall require the provision of affordable housing mitigation in one (1) of the methods described in subsection (3) below.

(1) This Section applies to the new development of a single-family, two (2) detached residential units, or a duplex dwelling on a lot in one (1) of the following conditions:

a. A lot created by a lot split, pursuant to Section 26.480.060(a).

b. A lot created by a historic lot split, pursuant to Section 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 Section 26.480.020, Subdivision: applicability, prohibitions, and lot merger.

(2) Mitigation shall be based off the net increase of Mitigation Floor Area of an existing single-family, two (2) detached residential units on a single lot, or a duplex dwelling, during remodeling and renovation scenarios when the definition of Demolition is not met.

(3) The applicant shall have four (4) options for providing the required affordable housing mitigation:

a. Recording a resident-occupancy (RO), or lower, deed restriction on the single-family dwelling unit or one (1) of the residences if a duplex or two (2) 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 thirty (30) percent of the Allowable 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:

i. 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).

d. An affordable housing mitigation Deferral Agreement may be accepted by the City of Aspen pursuant to Section 26.470.080(d)(12).

Example 1: A new home of 3,400 square feet of Mitigation Floor Area on a vacant lot created by a historic lot split. The applicant must provide affordable housing mitigation for .364 FTEs.

3,400 / 1,000 × 0.107 = .36

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 four thousand five hundred (4,500) square feet of Mitigation Floor Area is expanded by two hundred fifty (250) square feet of Mitigation Floor Area. The renovation does not meet the definition of Demolition. The applicant must provide affordable housing mitigation for .03 FTEs.

250 / 1,000 × 0.107 = .03

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

(b) *Multi-family residential expansion.* The net increase of Mitigation Floor area of an existing free-market multi-family unit or structure, regardless of when the lot was subdivided or legally described shall require the provision of affordable housing mitigation in one (1) of the methods described below. This type of free-market residential development ~~does not require a development allotment and~~ may proceed directly to building permit. (When demolition occurs, see Section 26.470.100(e), Demolition or redevelopment of multi-family housing.)

(1) Mitigation shall be based off the net increase of Mitigation Floor Area of an existing free-market multi-family unit or structure, and provided Demolition does not occur.

(2) Affordable housing mitigation requirements for the type of free-market residential development described above shall be as follows. The applicant shall have four (4) 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 thirty (30) percent of the Allowable 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:

i. When a unit adds Floor Area, the difference between the generation rates of the existing Mitigation Floor Area and the proposed Mitigation Floor Area shall be the basis for determining the number of employees generated. No refunds shall be provided if Floor Area is reduced.

ii. 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 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).

d. An affordable housing mitigation Deferral Agreement may be accepted by the City of Aspen pursuant to Section 26.470.080(d)(12).

Example 1: A multi-family unit of 1,400 square feet of Floor Area is expanded by 400 square feet of Mitigation Floor Area. The applicant must provide affordable housing mitigation for 0.04 FTEs.

$$400 / 1{,}000 \times 0.107 = 0.04$$

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 one thousand four hundred (1,400) square feet of Floor Area is expanded by one thousand (1,000) square feet of Mitigation Floor Area. The applicant must provide affordable housing mitigation for 0.11 FTEs, the difference in employee generation of the two (2) unit sizes.

$$1000 / 1{,}000 \times 0.107 = 0.11$$

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

(c) *Single-family and duplex redevelopment or expansion that does trigger demolition as defined by Chapter 26.580.* Demolition and Redevelopment of Single-Family and Duplex properties shall require a land use application pursuant to Chapter 26.304, the allocation of a Growth Management allotment, and shall provide affordable housing mitigation in one (1) of the methods described below.

(1) *Applicability.* This review shall apply to all applications for development and redevelopment of single-family and duplex project that triggers Demolition as outlined Chapter 26.580, unless otherwise exempted in Section 26.580.050.

(2) *Procedures for review.*

a. *General.* An application for a GMQS review of the Demolition and Redevelopment of a single-family or duplex project shall be submitted (subject to the requirements of Chapter 26.304, Chapter 26.580 and Section 26.470.090(c)) and will considered in an Administrative Review by the Community Development Director. Following review, an approval would be granted by a recorded Notice of Approval and the issuance of a Development Order. On a single parcel, the Demolition of a Single Family, two (2) detached dwellings, or Duplex residential structure shall require one (1) allotment.

b. *Determination of applicability.* The applicant may request a preliminary Demolition pre-application conference with Community Development staff to determine the applicability of the Chapter and the application submission requirements. If a project is likely to trigger Demolition, a meeting should be set up with a Zoning Officer to confirm if the project is subject to Chapter 26.580, Demolition. An applicant must request a Pre-application conference summary outlining application requirements when a project triggers Demolition pursuant to Chapter 26.580, Demolition.

c. *Timing.* In preparation for submission of an application for a Demolition Allotment, Applicants shall request a Pre-Application Summary from Community Development staff.

Applications for a given year's available Demolition Allotments will be accepted starting on the first business day of January and extending for a 30-day period. (the "Initial Application Period"). An application shall not be considered until determined "Complete" per Chapter 26.304. All applications submitted during the Initial Application Period and deemed Complete and Compliant with the requirements of 26.470 will be entered into a lottery with all other Complete and Compliant applications, if the number of applications exceeds the number of available permits.

Lottery process. Each qualifying application submitted during the Initial Application Period will be assigned a number. Administered by the Community Development Department and witnessed by the City Clerk and the City Attorney, assigned numbers from the Complete and Compliant applications will be placed into a receptacle and drawn by hand. All applications participating in the lottery will be drawn in order and a list will be created identifying the drawn order for all applications.

Available allotments will be granted to the projects drawn by this process based on the drawn order. Applicants and their representatives will be notified by email of the time and place of the lottery and are welcome to be present during the lottery selection.

Notices of Approval and Development Orders associated with the applications selected by the lottery will be issued by the last business day in February.

Excess allotments. Should a lottery process not be required or should annual Demolition Allotments remain available following the lottery process, applications may be submitted throughout the year, and following completeness and compliance review, will be approved in the order received, subject to the availability of an allotment.

d. *Residential demolition and redevelopment standards.* This document sets the standards under which a redevelopment project will be reviewed and will serve as the basis under which a project will be approved for the issuance of a development allotment. This document, as amended from time to time, is available on Community Development's web page or may be requested from a staff planner.

e. *Combined reviews.* An application for growth management review may be ~~a~~ combined with development applications for other associated land use reviews, pursuant to Section 26.304.060(b)(1), Combined Reviews.

f. *Variations.* An application requesting a Variation of the Residential Demolition and Redevelopment Standards, or the review standards identified below, shall be processed as a Special Review in accordance with the common development review procedures set forth in Chapter 26.304. The Special Review (Section 26.430.040(k)) shall be considered a public hearing for which notice has been provided pursuant to Section 26.304.060(e)(3). Review is by the Planning and Zoning Commission. In this case, the granting of the development allotment would not be granted until Planning and Zoning Commission approves the special review.

g. *Insufficient demolition allotments.* Any property owner within the City who is prevented from redeveloping a property because that year's Demolition allotments have been entirely allocated may apply for City Council Review for a Multi-Year Development Allotment subject to Section 26.470.110(a).

(3) *Review standards for projects requesting a demolition allotment.*

a. Adequate growth management allotments are available for the project and the project meets any applicable review criteria in Chapter 26.470, Growth Management Quota System.

b. The project shall meet the requirements of the Residential Demolition and Redevelopment Standards prior to building permit issuance. The project shall be subject to the Residential Demolition and Redevelopment Standards in effect at the time of building permit submission is deemed complete.

(4) *Application contents.* Applications for a Demolition allotment shall include all application requirements outlined in Section 26.470.130 and Chapter 26.304, in addition to the following:

a. Demolition diagrams depicting total area to be demolished consistent with the methodology outlined in Section 26.580.040.

b. A written response to all applicable review criteria, including responses to the Residential Demolition and Redevelopment Standards, as amended from time to time pursuant to Chapter 26.580.

(5) *Affordable housing mitigation requirements.*

a. Affordable housing mitigation requirements for free-market residential development that triggers Demolition pursuant to Chapter 26.580 shall be as follows. The applicant shall have four (4) options:

i. Recording a Resident-Occupancy (RO), or lower, deed restriction on the single-family dwelling unit or one (1) of the residences if a duplex or two (2) detached residences are developed on the property. An existing deed restricted unit does not need to re-record a deed restriction.

ii. 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 thirty (30) percent of the Allowable 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.

iii. 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:

a. Employment Generation Rate: 0.107 per 1000 square feet of Mitigation Floor Area.

b. For redevelopment or renovation of an existing single-family or duplex that meets the definition of Demolition (Section 26.104.100), all Mitigation Floor Area (existing and new) shall be calculated toward employee generation and required mitigation.

c. 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).

iv. An affordable housing mitigation Deferral Agreement may be accepted by the City of Aspen pursuant to Section 26.470.080(d)(12).

Example: An existing home is redeveloped in a fashion that meets the definition of Demolition. The redeveloped home has a Mitigation Floor Area of five thousand seven hundred (5,700) square feet.

$$5{,}700 / 1{,}000 \times 0.107 = 0.61 \text{ FTE}$$

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

(d) *One hundred (100) percent affordable housing development.* All applications for the development of projects that are comprised of one hundred (100) percent affordable housing units, deed-restricted in accordance with the Aspen Pitkin County Housing Authority Regulations, shall be first reviewed administratively for compliance with this Chapter and relevant criteria as described below. Projects found by the Community Development Director to be in full conformance, shall be approved or approved with conditions by recordation of a Notice of Approval and the issuance of a development order. Applications that are not found to be in conformance with this Section, shall be subject to GMQS Review with the Planning and Zoning Commission per Section 26.470.100(c), or the application may be amended to bring the project into conformance for administrative approval.

(1) To be approved administratively, a project must meet the following criteria:

a. "For sale" or rental units.

i. The proposed units shall be deed-restricted as "for sale" units and transferred to qualified purchasers according to the Aspen Pitkin County Housing Authority Regulations. The developer of the project may be entitled to select the first purchasers, subject to the aforementioned qualifications, pursuant to the Aspen Pitkin County Housing Authority Regulations. The deed restriction may authorize the Aspen Pitkin County Housing Authority or the City to own the unit and rent it to qualified renters as defined in the Aspen Pitkin County Housing Authority Regulations, as amended; or

ii. The proposed units may be rental units, including but not limited to rental units owned by an employer, government or quasi-government institution, or non-profit organization if a legal instrument in a form acceptable to the City Attorney ensures permanent affordability of the units. The City encourages affordable housing associated for lodge development to be rental units associated with the lodge operation and contributing to the long-term viability of the lodge; or

iii. The proposed units may be a combination of "for sale" and rental units.

b. The units in the project comply with the Aspen Pitkin County Housing Authority's Regulations and Affordable Housing Development Policy, as amended.

c. The project meets all dimensional requirements of the underlying Zone District as described in Chapter 26.710 and does not require the approval of a variance of any kind from the provisions of Section 26.575.020. Calculations and Measurements.

d. The project meets all provisions of Chapter 26.410. Residential Design Standards and is compliant with Commercial Lodging and Historic District Design Standards and Guidelines, as may be applicable.

e. The project is in conformance with the requirements of Chapter 26.515, Transportation and Parking Management.

f. If a project is pursuing Certificates of Affordable Housing Credit, the requirements of Chapter 26.540 shall be met.

g. A project approved under this administrative process may be comprised of Category and/or Resident-Occupied (RO) units.

h. Each unit provided shall be designed such that the finished floor level of fifty (50) percent or more of each unit's net livable area is at or above natural or finished grade, whichever is higher.

(2) *Review of one hundred (100) percent affordable housing development on designated sites in a historic district but not containing a historic resource; and on designated sites outside of districts and not containing a resource.* Development of these properties, when the use is one hundred (100) percent affordable housing, shall be approved or approved with conditions by Administrative Review if compliant with Chapter 26.410, Residential Design Standards; Chapter 26.470, Growth Management; Chapter 26.515, Transportation and Parking Management; Chapter 26.540, Certificates of Affordable Housing Credit, and Chapter 26.710 for the applicable Zone District. In addition, the Historic Preservation Officer and the Chair of the Historic Preservation Commission, or their assign, must jointly determine compliance with the following non-flexible design standards.

a. *Create porosity on the site.* To meet this standard, achieve at least one (1) of the following:

i. Provide a front setback one and one-half (1.5) times the minimum requirement of the zone district; or

ii. Provide at least two (2) usable private outdoor spaces, such as porches or upper floor decks, which are at least six (6) feet deep and fifty (50) square feet in area on the street-facing façade(s); or

iii. Provide a shared outdoor gathering area of at least one hundred (100) square feet in area, so that at least fifty (50) square feet in area can be directly viewed from the street.

b. *Ensure proportions of historic resources are incorporated in a new structure.* All street-facing façade(s) of the development shall be demonstrated through a diagram to include at least one (1) instance of a width by height modulation that directly reflects a width by height modulation of the nearest historic primary structure on the block face(s).

c. *Design the development to be recognized as a product of its time.* Consider these three (3) aspects of the architecture: roof form, materials, and fenestration. The development must relate strongly to at least one (1) specific designated historic resource on the block face and in the same zone district in at least two (2) of these categories. Departing

from that historic resource in one (1) of these categories allows for creativity and a contemporary design response.

i. When choosing to relate to roof form, match a primary roof pitch of the development to at least one (1) primary roof pitch found on the historic resource.

ii. When choosing to relate to materials, match at least one (1) primary material of the development to that on the historic resource. A change in the finish, dimension or orientation is allowed.

iii. When choosing to relate to fenestration, match at least one (1) street-facing window on the development to the dimensions of at least one (1) street-facing window on the historic resource. A change in window finish or orientation is allowed.

(3) *Review of one hundred (100) percent affordable housing development on designated sites containing a historic resource where the historic resource is fully detached from all new construction, and all non-historic additions are to be removed, and no new addition will be made to the historic resource, and all new construction taller than one (1) story is distanced at least ten (10) feet from the historic resource on all sides.* Development of these properties, when the use is one hundred (100) percent affordable housing, shall be subject to a one-step review by the Historic Preservation Commission, for compliance with Section 26.415.070(c), Certificate of Appropriateness for a Minor Development (demolition of non-historic additions and all work directly affecting the historic resource); and Section 26.415.090, Relocation of Designated Historic Properties. All City of Aspen Historic Preservation Design Guidelines applicable to work affecting the historic resource shall apply in addition to the following criteria:

a. HPC may not deny Relocation, but shall determine a siting for the historic structure that best meets the City of Aspen Historic Preservation Design Guidelines while accommodating the allowed development rights for the property. A Conceptual site plan representing the full project must be provided to assist in this review.

b. HPC may grant approval for the historic resource only to be located in the side, rear and front setbacks per Section 26.415.110(c)(1)a., Variations. New construction is not permitted to be located in a setback. HPC may allow the new structure to provide no less than six (6) feet as the minimum distance requirement between buildings per Section 26.415.110(c)(1)b. Where the historic resource is one (1) story in height, this reduction is only permissible if the new construction permitted to be

within six (6) feet of the resource is one (1) story in height for at least ten (10) feet in depth.

c. The application must include a detailed summary, in consultation with the Historic Preservation Officer, of all necessary repairs to historic fabric that will be completed during construction including exterior materials, doors and windows. The summary must also identify all opportunities to restore an element of the historic resource to an earlier condition that can be documented through photographs or physical inspection. HPC will prioritize and require up to three (3) of these to be completed during construction. Examples include: re-opening of an enclosed porch, restoration of the original design of a street facing window, and restoration of missing details such as decorative porch trim.

d. As applicable, site development shall be designed so that:

i. A front walkway to the historic resource shall be no wider than the minimum requirement for accessibility, shall run directly from the street to the door unless necessary to avoid a preserved tree, and shall be gray concrete, brick, rectilinear stone or flagstone, to be determined by HPC.

ii. Stormwater facilities and conveyances shall be demonstrated to fully integrated with the surrounding landscape palette when viewed from the public right-of-way.

iii. The perimeter of the historic resource shall be entirely bordered by a gravel or small diameter rock planting strip one (1) foot in width to protect from the impacts of landscape planting and watering. No plant material around the historic resource shall have an identified mature height taller than forty-two (42) inches, other than one (1) shrub or tree, placed with the mature size of the species in mind. No hardscape, other than a front walkway, shall be permitted in street-facing yards around the historic resource.

iv. Perimeter fences which are considered part of the historic significance of a site shall be retained and repaired and cannot be moved, removed, or inappropriately altered.

v. Any new fence between the historic resource and the street shall be no more than forty-two (42) inches in height and shall have no less than a solid to void ratio of fifty (50) percent.

e. Following HPC review, Administrative Review will be conducted for determination that the new construction on the site is in compliance

with Chapter 26.410, Residential Design Standards; Chapter 26.470, Growth Management; Chapter 26.515, Transportation and Parking Management; Chapter 26.540, Certificates of Affordable Housing Credit, and Chapter 26.710 for the applicable Zone District. In addition, the Historic Preservation Officer and the Chair of the Historic Preservation Commission, or their assign, must jointly determine compliance with the following non-flexible design standards.

i. Ensure proportions of historic resources are incorporated in a new structure. All street-facing façade(s) of the development shall be demonstrated through a diagram to include at least one (1) instance of a width by height modulation that directly reflects a width by height modulation of the historic resource.

ii. Design the development to be recognized as a product of its time. Consider these three (3) aspects of the architecture: roof form, materials, and fenestration. The development must relate strongly to the historic resource in at least two (2) of these categories. Departing from the historic resource in one (1) of these categories allows for creativity and a contemporary design response.

1. When choosing to relate to roof form, match a primary roof pitch of the development to at least one (1) primary roof pitch found on the historic resource.

2. When choosing to relate to materials, match at least one (1) primary material of the development to that on the historic resource. A change in the finish, dimension or orientation is allowed.

3. When choosing to relate to fenestration, match at least one (1) street-facing window on the development to the dimensions of at least one street-facing window on the historic resource. A change in window finish or orientation is allowed.

iii. Allow the resource to be read as the unique architectural highlight of the property. Demonstrate that the historic resource will be distinguished from the new development through its height, ornateness, or primary material.

(4) *Application materials.* In addition to the application materials required by Section 26.470.130 and Chapter 26.304, the following shall be included in an application for administrative review of a one hundred (100) percent affordable housing project:

a. Floor Plans that include detailed drawings of individual units including floor area and net livable area for the entire site and unit by unit breakdown.

b. Elevations that provide detail on height and fenestration.

c. Parking Plan that includes detail on access and relationship to the right-of-way.

d. Residential Design Standards Application.

e. Narrative that describes the unit types and sizes, proposed categories of units, unit and project amenities and otherwise describes compliance with Section 26.470.090(c)(1)a.—i.

Any necessary submittal items necessary to provide sufficient detail in meeting the review standards identified in Section 26.470.090(d)(1)i. or 26.470.090(d)(2) above. This may include site plans, relocation plans, demolition plans, landscaping plans etc. for projects subject to the identified elements of the Historic Preservation Design Guidelines.

(5) *Review process.*

a. Application is submitted and accepted for review consistent with Chapter 26.304, Common Development Procedures.

b. APCHA, Engineering, Environmental Health and Parks shall be formal referral agencies on the application to identify any necessary conditions of approval.

c. While not required, it is highly encouraged that a meeting with the Development Review Committee is scheduled prior to approval to resolve any potential issues at this early stage of the design process to facilitate a more efficient building permit review.

d. If applicable, an HPC approval, pursuant to Section 26.470.090(d)(2) shall be completed before the completion of the administrative review process.

e. Approval shall be granted by the Community Development Director in the form of a recorded Notice of Approval. A Development Order shall be subsequently issued.

f. Public Notice of the Development Order shall be made consistent with the requirements of Chapter 26.304, Common Development Review Procedures.

(e) *Minor expansion of a commercial, lodge or mixed-use development.* The minor enlargement of a property, structure or portion of a structure for commercial, lodge or mixed-use development when demolition is not triggered shall be approved, approved with conditions or denied by the Community Development Director based on the following criteria. The additional development of uses identified in Section 26.470.020 shall not be deducted from the respective annual development allotments.

(1) The expansion involves no more than five hundred (500) square feet of net leasable space, no more than two hundred fifty (250) square feet of Floor Area, and no more than three (3) additional hotel/lodge units. No employee mitigation shall be required.

(2) The expansion involves no residential units.

(3)This shall be cumulative and shall include administrative GMQS approvals granted prior to the adoption of Ordinance No. 22, Series of 2013.

(4) When demolition is triggered, the application shall be reviewed pursuant to Section 25.470.100(f), Expansion or new commercial development.

(f) *Sale of locally-made products in common areas of commercial buildings.* Commercial use of common areas within commercial and mixed-use buildings which contain commercial use (a.k.a. "non-unit spaces," "arcades," "hallways," "lobbies," or "malls") shall be approved, approved with conditions or denied by the Community Development Director based on the following criteria.

(1) Products shall be limited to arts, crafts, or produce designed, manufactured, created, grown, or assembled in the Roaring Fork Valley, defined as the watershed of the Roaring Fork River plus the municipal limits of the City of Glenwood Springs. Exempt from these product and geographic limitations are items sold by a hardware store adjacent to the common area and items incidental to arts, crafts, and produce such as frames and pedestals.

(2) The area can be used by an existing business within the building or by "stand-alone" businesses. Multiple spaces may be created.

(3) These areas shall not be considered net leasable space for the purposes of calculating impact fees or redevelopment credits. No employee mitigation shall be required. Compliance with all zoning, building, and fire codes is mandatory.

(g) *Outdoor food/beverage vending license.* Outdoor food/beverage vending shall be approved, approved with conditions or denied by the Community Development Director based on the following criteria:

(1) *Location.* All outdoor food/beverage vending must be on private property and may be located in the Commercial Core (CC), Commercial (C1),

Neighborhood Commercial (NC), or Commercial Lodge (CL) zone districts. Outdoor Food Vending may occur on public property that is subject to an approved mall lease. Additional location criteria:

a. The operation shall be in a consistent location as is practically reasonable and not intended to move on a daily basis throughout the duration of the permit.

b. Normal operation, including line queues, shall not inhibit the movement of pedestrian or vehicular traffic along the public right-of-way.

c. The operation shall not interfere with required emergency egress or pose a threat to public health, safety and welfare. A minimum of six (6) feet ingress/egress shall be maintained for building entrances and exits.

(2) *Size.* The area of outdoor food/beverage vending activities shall not exceed fifty (50) square feet per operation. The area of activity shall be defined as a counter area, equipment needed for the food vending activities (e.g. cooler with drinks, snow cone machine, popcorn machine, etc.), and the space needed by employees to work the food vending activity.

(3) *Signage.* Signage for outdoor food/beverage vending carts shall be exempt from those requirements found within Land Use Code Chapter 26.510, Signs, but not excluding Prohibited Signs. The total amount of signage shall be the lesser of fifty (50) percent of the surface area of the front of the cart, or six (6) square feet. Sign(s) shall be painted on or affixed to the cart. Any logos, lettering, or signage on umbrellas or canopies counts towards this calculation. Food carts may have a sandwich board sign in accordance with the regulations found within Chapter 26.510.

(4) *Environmental Health Approval.* Approval of a food service plan from the Environmental Health Department is required. The area of outdoor food vending activities shall include recycling bins and a waste disposal container that shall be emptied daily and stored inside at night and when the outdoor food vending activities are not in operation. Additionally, no outdoor, open-flame char-broiling shall be permitted pursuant to Municipal Code Section 13.08.100, Restaurant Grills.

(5) *Building and Fire Code Compliance.* All outdoor food/beverage vending operations must comply with adopted building and fire codes. Applicants are encouraged to meet with the City's Building Department to discuss the vending cart/stand.

(6) *Application Contents.* An application for a food/beverage vending license shall include the standard information required in Section 26.304.030(b), plus the following:

a. Copy of a lease or approval letter from the property owner.

b. A description of the operation including days/hours of operation, types of food and beverage to be offered, a picture or drawing of the vending cart/stand, and proposed signage.

c. The property survey requirement shall be waived if the applicant can demonstrate how the operation will be contained on private property.

(7) *License Duration.* Outdoor food/beverage vending licenses shall be valid for a one-year period beginning on the same the date that the Notice of Approval is signed by the Community Development Director. This one-year period may not be separated into non-consecutive periods.

(8) *License Renewal.* Outdoor food/beverage vending licenses may be renewed. Upon renewal the Community Development Director shall consider the returning vendor's past performance. This shall include, but shall not be limited to, input from the Environmental Health Department, Chief of Police, special event staff, and feedback from adjacent businesses. Unresolved complaints may result in denial of a renewal request.

(9) *Business License.* The vending operator must obtain a business license.

(10) *Affordable Housing and Impact Fees Waived.* The Community Development Director shall waive affordable housing mitigation fees and impact fees associated with outdoor food/beverage vending activities.

(11) *Maintenance and public safety.* Outdoor food/beverage vending activities shall not diminish the general public health, safety or welfare and shall abide by applicable City regulations, including but not limited to building codes, health safety codes, fire codes, liquor laws, sign and lighting codes, and sales tax license regulations.

(12) *Abandonment.* The City of Aspen may remove an abandoned food/beverage vending operation, or components thereof, in order protect public health, safety, and welfare. Costs of such remediation shall be the sole burden of the property owner.

(13) *Temporary Cessation.* The Community Development Director may require a temporary cancelation of operations to accommodate special events, holidays, or similar large public gatherings. Such action will be taken if it is determined

that the food/beverage cart will create a public safety issue or create an excessive burden on the event activities.

(14) *License Revocation.* The Community Development Director may deny renewal or revoke the license and cause removal of the food/beverage vending operation if the vendor fails to operate consistent with these criteria. An outdoor food/beverage vending license shall not constitute nor be interpreted by any property owner, developer, vendor, or court as a site-specific development plan entitled to vesting under Article 68 of Title 24 of the Colorado Revised Statutes or Chapter 26.308 of this Title. Licenses granted in this subsection are subject to revocation by the City Manager or Community Development Director without requiring prior notice.

(h) *Temporary uses and structures.* The development of a temporary use or structure shall be exempt from growth management, subject to the provisions of Chapter 26.450, Temporary and Seasonal Uses. Temporary external airlocks shall only be exempt from the provisions of this Chapter if compliant with applicable sections of Commercial Design Review - Chapter 26.412, and approved pursuant to Chapter 26.450, Temporary and Seasonal Uses. Tents, external airlocks, and similar temporary or seasonal enclosures located on commercial properties and supporting commercial use shall only be exempt from the provisions of this Chapter, including affordable housing mitigation requirements, if compliant with applicable sections of Commercial Design Review - Chapter 26.412, if erected for 14 days or less in a twelve-month period, and approved pursuant to Chapter 26.450 - Temporary and Seasonal Uses. Erection of these enclosures for longer than 14 days in a twelve-month period shall require compliance with Commercial Design Review - Chapter 26.412, and compliance with the provisions of this Chapter including affordable housing mitigation. Affordable housing mitigation shall be required only for the days in excess of 14 in a twelve-month period. Cash-in-lieu may be paid by-right. The mitigation calculation shall include the expected lifespan of a building, which is currently thirty (30) years. For instance, a 500 square foot tent proposed to be up for twenty-one (21) days shall only require mitigation for seven (7) days. The calculation would be as follows:

Methodology:

- 500 sq. ft. / 1,000 sq. ft. = .5 sq. ft.
- 0.5 sq. ft. × 4.7 FTEs = 2.35 FTEs generated
- 2.35 FTEs × 65% mitigation rate = 1.5275 FTEs to be mitigated if structures are in use 100% of year
- 1.5275 FTEs / 365 days per year = .004184931 daily rate
- 0.004184931 × 7 days = .029294517 FTEs
- 0.029294517 × $223,072 cash-in-lieu rate = $6,534.78
- $6,534.78/ 30 years = $217.82 due for mitigation of the structure for a period of 7 days

(Ord. No. 6-2019; Ord. No. 12-2019; Ord. No. 13-2022, § 7, 6-28-2022; Ord. No. 23-2023, § 1, 12-12-2023)

Sec. 26.470.100. - Planning and zoning commission applications.

The following types of development shall be approved, approved with conditions or denied by the Planning and Zoning Commission, pursuant to Section 26.470.060, Procedures for review, and the criteria for each type of development described below. Except as noted, all growth management applications shall comply with the general requirements of Section 26.470.080. Except as noted, the following types of growth management approvals shall be deducted from the annual development allotments, when applicable. Approvals apply cumulatively.

(a) *Change in use.* A change in use of an existing property, structure or portions of an existing structure between the development categories identified in Section 26.470.020 (irrespective of direction), for which a certificate of occupancy has been issued and which is intended to be reused, shall be approved, approved with conditions or denied by the Planning and Zoning Commission based on the general requirements outlined in Section 26.470.080. No more than one (1) free-market residential unit may be created through the change-in-use.

(b) *Expansion of free-market residential units within a multi-family or mixed-use project.* The net livable area expansion of existing free-market residential units within a mixed-use project shall be approved, approved with conditions or denied by the Planning and Zoning Commission based on the general requirements outlined in Section 26.470.080. The remodeling or expansion of existing multi-family residential dwellings shall be exempt from growth management as long as no demolition occurs, pursuant to Section 26.470.070(c). ~~Expansion of existing free-market residential units shall not require a development allotment~~.

(c) *Affordable Housing.* The development of affordable housing that does not qualify for administrative review and approval under the criteria established in Section 26.470.090(c), shall be approved, approved with conditions, or denied by the Planning and Zoning Commission based on the general requirements outlined in Section 26.470.080, and all other applicable review criteria of this Title. If the affordable housing project is located in a historic district or on a historically designated property, the Historic Preservation Commission is the review body for this review. Additionally, the following shall apply to all affordable housing development:

(1) The proposed units shall be deed-restricted as "for sale" units and transferred to qualified purchasers according to the Aspen Pitkin County Housing Authority Regulations. The developer of the project may be entitled to select the first purchasers, subject to the aforementioned qualifications, pursuant to the Aspen Pitkin County Housing Authority Regulations. The deed restriction shall authorize the Aspen Pitkin County Housing Authority or the City to own the unit and rent it to qualified renters as defined in the Aspen Pitkin County Housing Authority Regulations, as amended.

(2) The proposed units may be rental units, including but not limited to rental units owned by an employer, government or quasi-government institution, or non-profit organization if a legal instrument in a form acceptable to the City Attorney ensures permanent affordability of the units. The City encourages affordable housing associated for lodge development to be rental units associated with the lodge operation and contributing to the long-term viability of the lodge.

(3) A combination of "for sale" and rental units is permitted.

(d) *Demolition or redevelopment of multi-family housing.* The City's neighborhoods have traditionally been comprised of a mix of housing types, including those affordable by its working residents. However, because of Aspen's attractiveness as a resort environment and because of the physical constraints of the upper Roaring Fork Valley, there is constant pressure for the redevelopment of dwellings currently providing resident housing for tourist and second-home use. Such redevelopment results in the displacement of individuals and families who are an integral part of the Aspen work force. Given the extremely high cost of and demand for market-rate housing, resident housing opportunities for displaced working residents, which are now minimal, will continue to decrease.

Preservation of the housing inventory and provision of dispersed housing opportunities in Aspen have been long-standing planning goals of the community. Achievement of these goals will serve to promote a socially and economically balanced community, limit the number of individuals who face a long and sometimes dangerous commute on State Highway 82, reduce the air pollution effects of commuting and prevent exclusion of working residents from the City's neighborhoods.

The Aspen Area Community Plan established a goal that affordable housing for working residents be provided by both the public and private sectors. The City and the Aspen/Pitkin County Housing Authority have provided affordable housing both within and adjacent to the City limits. The private sector has also provided affordable housing. Nevertheless, as a result of the replacement of resident housing with second homes and tourist accommodations and the steady increase in the size of the workforce required to assure the continued viability of Aspen area businesses and the City's tourist-based economy, the City has found it necessary, in concert with other regulations, to adopt limitations on the combining, demolition or conversion of existing multi-family housing in order to minimize the displacement of working residents, to ensure that the private sector maintains its role in the provision of resident housing and to prevent a housing shortfall from occurring.

The combining, demolition (see definition of demolition), conversion, or redevelopment of multi-family housing shall be approved, approved with conditions or denied by the Planning and Zoning Commission based on compliance with the following requirements:

(1) *Requirements for combining, demolishing, converting or redeveloping free-market multi-family housing units.* Only one (1) of the following three (3) options is required to be met when combining, demolishing, converting or redeveloping a free-market multi-family residential property. To ensure the continued vitality of the community and a critical mass of local working residents, no net loss of density (total number of units) between the existing development and proposed development shall be allowed.

a. *One hundred (100) percent replacement.* In the event of the demolition of free-market multi-family housing, the applicant shall have the option to construct replacement housing consisting of no less than one hundred (100) percent of the number of units, bedrooms and net livable area demolished. The replacement units shall be deed-restricted as resident occupied (RO) affordable housing, pursuant to the Guidelines of the Aspen/Pitkin County Housing Authority. In summary, this option replaces the demolished free-market units with an equal number of units, bedrooms and net livable area of deed-restricted, Resident Occupied (RO) development. An applicant may choose to provide the mitigation units at a lower category designation. Each replacement unit shall be approved pursuant to subsection (c), Affordable Housing, of this Section.

When this one hundred (100) percent standard is accomplished, the remaining development on the site may be free-market residential development with no additional affordable housing mitigation required as long as there is no increase in the number of free-market residential units on the parcel. Free-market units in excess of the total number originally on the parcel shall be reviewed pursuant to Section 26.470.100, subsection (h) or (i), Residential Development - sixty (60) or seventy (70) percent affordable as required.

b. *Fifty (50) percent replacement.* In the event of the demolition of free-market multi-family housing and replacement of less than one hundred (100) percent of the number of previous units, bedrooms or net livable area as described above, the applicant shall be required to construct affordable housing consisting of no less than fifty (50) percent of the number of units, bedrooms and the net livable area demolished. The replacement units shall be deed-restricted as Category 4 housing, pursuant to the guidelines of the Aspen/Pitkin County Housing Authority. In summary, this option replaces the free-market units - with fifty (50) percent of the new units, bedrooms and net livable area allowed as free market units and fifty (50) percent of the new units, bedrooms and net livable area required as deed-restricted, Category 4, affordable housing units. An applicant may choose to provide mitigation units at a lower category designation. Each replacement unit shall be approved pursuant to Section 26.470.100(c), Affordable housing.

When this fifty (50) percent standard is accomplished, the remaining development on the site may be free-market residential development as long as additional affordable housing mitigation is provided pursuant to Section 26.470.080, General Requirements, and there is no increase in the number of free-market residential units on the parcel. Free-market units in excess of the total number originally on the parcel shall be reviewed pursuant to Section 26.470.100, subsection (h) or (i), Residential Development - sixty (60) or seventy (70) percent affordable as required.

c. *One hundred (100) percent affordable housing replacement.* When one hundred (100) percent of the free-market multi-family housing units are demolished and are solely replaced with deed-restricted affordable housing units on a site that are not required for mitigation purposes, including any net additional dwelling units, pursuant to Section 26.470.190(c) or Section 26.470.100(c), Affordable Housing; all of the units in the redevelopment are eligible for a Certificate of Affordable Housing Credit, pursuant to Chapter 26.540, Certificates of Affordable Housing Credit. Any remaining unused free market residential development rights shall be vacated.

(2) *Requirements for demolishing deed-restricted, affordable multi-family housing units.* In the event a project proposes to demolish or replace existing deed-restricted affordable housing units, the redevelopment may increase or decrease the number of units, bedrooms or net livable area such that there is no decrease in the total number of employees housed by the existing units. The overall number of replacement units, unit sizes, bedrooms and category of the units shall comply with the Aspen/Pitkin County Housing Authority Guidelines.

(3) *Location requirement.* Multi-family replacement units, both free-market and affordable, shall be developed on the same site on which demolition has occurred, unless the owner shall demonstrate and the Planning and Zoning Commission determines that replacement of the units on site would be in conflict with the parcel's zoning or would be an inappropriate solution due to the site's physical constraints.

When either of the above circumstances result, the owner shall replace the maximum number of units on site which the Planning and Zoning Commission determines that the site can accommodate and may replace the remaining units off site, at a location determined acceptable to the Planning and Zoning Commission, or may replace the units by extinguishing the requisite number of affordable housing credits, pursuant to Chapter 26.540, Certificates of Affordable Housing Credit.

When calculating the number of credits that must be extinguished, the most restrictive replacement measure shall apply. For example, for an applicant

proposing to replace one (1) one-thousand-square-foot three-bedroom unit at the fifty (50) percent rate using credits, the following calculations shall be used:

• Fifty (50) percent of one thousand (1,000) square feet = five hundred (500) square feet to be replaced. At the Code mandated rate of one (1) FTE per four hundred (400) square feet of net livable area, this requires the extinguishments of 1.25 credits; or

• A three-bedroom unit = three (3.0) FTEs. Fifty (50) percent of three (3.0) FTEs = 1.50 credits to be extinguished.

Therefore, in the most restrictive application, the applicant must extinguish 1.50 credits to replace a three-bedroom unit at the fifty (5) percent rate. The credits to be extinguished would be Category 4 credits.

(4) *Fractional unit requirement.* When the affordable housing replacement requirement of this Section involves a fraction of a unit, fee-in-lieu may be provided only upon the review and approval of the City Council, to meet the fractional requirement only, pursuant to Section 26.470.110(c), Provision of required affordable housing via a fee-in-lieu payment.

(5) *Timing requirement.* Any replacement units required to be deed-restricted as affordable housing shall be issued a certificate of occupancy, according to the Building Department, and be available for occupancy at the same time as, or prior to, any redeveloped free-market units, regardless of whether the replacement units are built on site or off site.

(6) *Redevelopment agreement.* The applicant and the City shall enter into a redevelopment agreement that specifies the manner in which the applicant shall adhere to the approvals granted pursuant to this Section and penalties for noncompliance. The agreement shall be recorded before an application for a demolition permit may be accepted by the City.

(7) *Growth management allotments.* The existing number of free-market residential units, prior to demolition, may be replaced exempt from growth management, provided that the units conform to the provisions of this Section. The redevelopment credits shall not be transferable separate from the property unless permitted as described above in subsection (3), Location requirement.

(8) *Exemptions.* The Community Development Director shall exempt from the procedures and requirements of this Section the following types of development involving Multi-Family Housing Units. An exemption from these replacement requirements shall not exempt a development from compliance with any other provisions of this Title:

a. The replacement of Multi-Family Housing Units after non-willful demolition such as a flood, fire, or other natural catastrophe, civil commotion, or similar event not purposefully caused by the landowner. The Community Development Director may require documentation be provided by the landowner to confirm the damage to the building was in-fact non-willful.

To be exempted, the replacement development shall be an exact replacement of the previous number of units, bedrooms, and square footage and in the same configuration. The Community Development Director may approve exceptions to this exact replacement requirement to accommodate changes necessary to meet current building codes; improve accessibility; to conform to zoning, design standards, or other regulatory requirements of the City; or, to provide other architectural or site planning improvements that have no substantial effect on the use or program of the development. (Also see Chapter 26.312, Nonconformities.) Substantive changes to the development shall not be exempted from this Section and shall be reviewed as a willful change pursuant to the procedures and requirements of this Section.

b. The demolition of Multi-Family Housing Units by order of a public agency including, but not limited to, the City of Aspen for reasons of preserving the life, health, safety, or general welfare of the public.

c. The demolition, combining, conversion, replacement, or redevelopment of Multi-Family Housing Units which have been used exclusively as tourist accommodations or by non-working residents. The Community Development Director may require occupancy records, leases, affidavits, or other documentation to the satisfaction of the Director to demonstrate that the unit(s) has never housed a working resident. All other requirements of this Title shall still apply including zoning, growth management, and building codes.

d. The demolition, combining, conversion, replacement, or redevelopment of Multi-Family Housing Units which were illegally created (also known as "Bandit Units"). Any improvements associated with Bandit Units shall be required to conform to current requirements of this Title including zoning, growth management, and building codes. Replaced or redeveloped Bandit Units shall be deed restricted as Resident Occupied affordable housing, pursuant to the Guidelines of the Aspen/Pitkin County Housing Authority.

e. Any development action involving demising walls or floors/ceilings necessary for the normal upkeep, maintenance, or remodeling of adjacent Multi-Family Housing Units.

f. A change order to an issued and active building permit that proposes to exceed the limitations of remodeling/demolition to rebuild portions of a structure which, in the opinion of the Community Development Director, should be rebuilt for structural, safety, accessibility, or significant energy efficiency reasons first realized during construction, which were not known and could not have been reasonably predicted prior to construction, and which cause no or minimal changes to the exterior dimensions and character of the building.

(e) *Expansion or new commercial development.* The expansion of an existing commercial building or commercial portion of a mixed-use building or the development of a new commercial building or commercial portion of a mixed-use building shall be approved, approved with conditions or denied by the Planning and Zoning Commission based on general requirements outlined in Section 26.470.080.

(f) *New free-market residential units within a multi-family or mixed-use project.* The development of new free-market residential units within a multi-family or mixed-use project shall be approved, approved with conditions or denied by the Planning and Zoning Commission based on the general requirements outlined in Section 26.470.080 and the following criteria:

(1) Affordable housing net livable area shall be provided in an amount equal to at least thirty (30)percent of the new free-market residential net livable area. (Note that for new free-market units that are included as part of a project subject to section 26.470.100(d), Demolition or redevelopment of multi-family housing, the requirements in said section shall prevail.)

(2) Affordable housing units provided shall be approved pursuant to Section 26.470.100(c), Affordable Housing.

(3) 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.

(g) *Expansion or new lodge development.* The expansion of an existing lodge, the redevelopment of existing lodge which meets the definition of demolition, or the development of a new lodge shall be approved, approved with conditions or denied by the Planning and Zoning Commission based on the following criteria:

(1) Sixty-five (65) percent of the employees generated by the lodge, timeshare lodge, exempt timeshare units, and associated commercial development, according to Section 26.470.050(b), Employee Generation, shall be mitigated through the provision of affordable housing.

(2) Free-market residential units included in a lodge development and which may be rented to the general public as a lodge unit shall be considered lodge units and mitigated through the provision of affordable housing in accordance with this Section.

(3) Affordable housing units provided shall be approved pursuant to Section 26.470.100(c), Affordable Housing.

(4) New or redeveloped Boutique Lodges, or the conversion of lodge, residential or commercial uses to boutique lodge is subject to the mitigation standards for commercial uses as provided for in Section 26.470.080(d)(1) and (3).

Note: A residential project that creates new lots via Subdivision, pursuant to Chapter 26.480, Subdivision, (excepting lot splits) or the replacement of existing multi-family units following Demolition, pursuant to Section 26.470.100(d), shall have the choice of using either Section 26.470.100(h) or 26.470.100(i), as specified below. ~~These development types require the granting of development allotments~~.

(h) *Residential development—Sixty (60) percent affordable.* The development of a residential project or an addition of units to an existing residential project, in which a minimum of sixty (60) percent of the additional units and thirty (30) percent of the additional Allowable Floor Area is affordable housing deed-restricted in accordance with the Aspen/Pitkin County Housing Authority Guidelines, shall be approved, approved with conditions or denied by the Planning and Zoning Commission based on the following criteria:

(1) A minimum of sixty (60) percent of the total additional units and thirty (30) percent of the project's additional Allowable Floor Area shall be affordable housing. Multi-site projects are permitted. Affordable housing units provided shall be approved pursuant to Section 26.470.100(d), Affordable Housing, and shall average Category 4 rates as defined in the Aspen/Pitkin County Housing Authority Guidelines, as amended. An applicant may choose to provide mitigation units at a lower category designation.

(2) If the project consists of only one (1) free-market residence, then a minimum of one (1) affordable residence representing a minimum of thirty (30) percent of the project's total Allowable Floor Area and deed-restricted as a Category 4 "for sale" unit, according to the provisions of the Aspen/Pitkin County Affordable Housing Guidelines, shall qualify.

(i) *Residential development—Seventy (70) percent affordable.* The development of a residential project or an addition to an existing residential project, in which seventy (70) percent of the project's additional units and seventy (70) percent of

the project's additional bedrooms are affordable housing deed-restricted in accordance with the Aspen/Pitkin County Housing Authority Guidelines, shall be approved, approved with conditions or denied by the Planning and Zoning Commission based on the following criteria:

(1) Seventy (70) percent of the total additional units and total additional bedrooms shall be affordable housing. At least forty (40) percent of the units shall average Category 4 rates as defined in the Aspen/Pitkin County Housing Authority Guidelines. The remaining thirty (30) percent affordable housing unit requirement may be provided as Resident Occupied (RO) units as defined in the Aspen/Pitkin County Housing Authority Guidelines. Multi-site projects are permitted. Affordable housing units provided shall be approved pursuant to Section 26.470.070(4), Affordable Housing. An applicant may choose to provide mitigation units at a lower category designation.

(2) If the project consists of one (1) free-market residence, then the provision of one (1) RO residence and one (1) category residence shall be considered meeting the seventy-percent unit standard. If the project consists of two (2) free-market residences, then the provision of two (2) RO residences and two (2) category residences shall qualify.

(Ord. No. 23-2017; Ord. No. 6-2019; Ord. No. 12-2019; Ord. No. 12-2021, § 1, 5-11-2021; Ord. No. 13-2021, § 4, 5-11-2021; Ord. No. 13-2022, § 7, 6-28-2022)

Sec. 26.470.110. - City council applications.

The following types of development shall be approved, approved with conditions or denied by the City Council, pursuant to Section 26.470.060, Procedures for Review, and the criteria for each type of development described below. Except as noted, all growth management applications shall comply with the general requirements of Section 26.470.080. Except as noted, all City Council growth management approvals shall be deducted from the respective annual development allotments, when applicable.

(a) *Multi-year development allotment.* The City Council, upon a recommendation from the Planning and Zoning Commission, shall approve, approve with conditions or deny a multi-year development allotment request based on the following criteria:

(1) A project is required to meet at least five (5) of the following criteria.

a. The proposal exceeds the minimum affordable housing required for a standard project.

b. The proposed project represents an excellent historic preservation accomplishment. A recommendation from the Historic Preservation Commission shall be considered for this standard.

c. The proposal furthers affordable housing goals by providing units established as priority through the current Aspen/Pitkin County Housing Authority Employee Housing Regulations and Housing Development Policy and provides a desirable mix of affordable unit types, economic levels and lifestyles (e.g., singles, seniors, families, etc.).

d. The proposal minimizes impacts on public infrastructure by incorporating innovative, energy-saving techniques. Recommendations from relevant departments shall be considered for this standard. For example, if an applicant proposed an innovative design related to the storm sewer system, a recommendation from the Engineering Department shall be considered.

e. The proposal minimizes construction impacts beyond minimum requirements both during and after construction. A recommendation from the Engineering and Building Departments shall be considered for this standard.

f. The proposal maximizes potential public transit usage and minimizes reliance on the automobile by exceeding the requirements in Chapter 26.515, Off-Street Parking and Mobility. A recommendation from the Transportation and Engineering Departments shall be considered for this standard.

g. The proposal exceeds minimum requirements of the Residential Demolition and Redevelopment Standards or for LEED certification, as applicable. A recommendation from the Building Department and/or Engineering Department shall be considered for this standard.

h. The proposal represents a desirable site plan and an architectural design solution.

i. The proposal promotes opportunities for local businesses through the provision of Alley stores or second-tier commercial space.

(2) The project complies with all other provisions of the Land Use Code and has obtained all necessary approvals from the Historic Preservation Commission, the Planning and Zoning Commission and the City Council, as applicable.

(3) The Community Development Director shall be directed to reduce the applicable annual development allotments, as provided in Section 26.470.120, in subsequent years as determined appropriate by the City Council.

(b) *Provision of required affordable housing units outside City limits.* The provision of affordable housing, as required by this Chapter, with units to be located outside the City boundary, upon a recommendation from the Planning and Zoning Commission, shall be approved, approved with conditions or denied by the City Council based on the following criteria:

(1) The off-site housing is within the Aspen Urban Growth Boundary.

(2) The proposal furthers affordable housing goals by providing units established as priority through the current Aspen/Pitkin County Housing Authority Guidelines and provides a desirable mix of affordable unit types, economic levels and lifestyles (e.g., singles, seniors and families).

(3) The applicant has received all necessary approvals from the governing body with jurisdiction of the off-site parcel.

City Council may accept any percentage of a project's total affordable housing mitigation to be provided through units outside the City's jurisdictional limits, including all or none.

(c) *Provision of required affordable housing via a fee-in-lieu payment.* The provision of affordable housing in excess of 0.10 Full-Time Equivalents (FTEs) via a fee-in-lieu payment, upon a recommendation from the Planning and Zoning Commission shall be approved, approved with conditions or denied by the City Council based on the following criteria:

(1) The provision of affordable housing on site (on the same site as the project requiring such affordable housing) is impractical given the physical or legal parameters of the development or site or would be inconsistent with the character of the neighborhood in which the project is being developed.

(2) The applicant has made a reasonably good-faith effort in pursuit of providing the required affordable housing off site through construction of new dwelling units, the deed restriction of existing dwelling units to affordable housing status, or through the purchase of affordable housing certificates.

(3) The applicant has made a reasonably good-faith effort in pursuit of providing the required affordable housing through the purchase and extinguishment of Certificates of Affordable Housing Credit.

(4) The proposal furthers affordable housing goals, and the fee-in-lieu payment will result in the near-term production of affordable housing units.

The City Council may accept any percentage of a project's total affordable housing mitigation to be provided through a fee-in-lieu payment, including all or none.

(d) *Essential public facilities.* The development of an essential public facility, upon a recommendation from the Planning and Zoning Commission, shall be approved, approved with conditions or denied by the City Council based on the following criteria:

(1) The Community Development Director has determined the primary use and/or structure to be an essential public facility (see definition). Accessory uses may also be part of an essential public facility project.

(2) The Planning and Zoning Commission shall determine the number of employees generated by the essential public facility pursuant to Section 26.470.050(c), Employee Generation Review.

(3) Upon a recommendation from the Community Development Director and the Planning and Zoning Commission, the City Council may assess, waive or partially waive affordable housing mitigation requirements as is deemed appropriate and warranted for the purpose of promoting civic uses and in consideration of broader community goals.

(e) *Preservation of significant open space parcels.* On a project-specific basis and upon a recommendation from the Planning and Zoning Commission, the City Council shall approve, approve with conditions or deny development of one (1) or more residences in exchange for the permanent preservation of one (1) or more parcels considered significant for the preservation of open space. The preservation parcel may lie outside the City jurisdiction. ~~The exempted residential units shall be deducted from the respective annual development allotment established pursuant to Section 26.470.040(b).~~ The exempted residential units shall provide affordable housing mitigation, pursuant to the applicable requirements of Chapter 26.470. This exemption shall only apply to the specific residences approved through this provision. Other residences within a project not specifically exempted through this provision shall require growth management approvals pursuant to this Chapter. The criteria for determining the significance of a preservation parcel and the associated development rights to be granted may include:

(1) The strategic nature of the preservation parcel to facilitate park, trails or open space objectives of the City. This shall include a recommendation from the City of Aspen Open Space Acquisition Board.

(2) Identification of the preservation parcel as desirable for preservation in any adopted master plans of the City or following a recommendation from the Parks and Open Space Department.

(3) Proximity and/or visibility of the preservation parcel to the City.

(4) The development rights of the preservation parcel, including the allowed uses and intensities and impacts associated with those uses if developed to the maximum.

(5) The proposed location of the parcel being granted growth management approvals and the compatibility of the resulting uses and intensities of development with the surrounding neighborhood, including the impacts from the specified method of providing affordable housing mitigation. The new

residences shall be restricted to the underlying zoning restrictions of the property on which they lie unless additional restrictions are necessary in order to meet this criterion.

(6) The preservation parcel shall be encumbered with a legal instrument, acceptable to the City Attorney, which sterilizes the parcel from further development in perpetuity.

(f) *Reduction in lodge units.* The reduction of units in an existing or approved Lodge or Boutique Lodge shall be reviewed pursuant to the standards listed below. Review shall be by City Council pursuant to Section 26.470.060(c), Step Two. Properties ceasing all lodging operations shall not be subject to this review. Physical changes to the property may be required for compliance with zoning limitations.

(1) The project shall comply with the review standards outlined in Section 26.425.035, Conditional Use - Standards for Boutique Lodge Uses, but shall not be subject to a Conditional Use review unless required by the underlying zone district or overlay zone district.

(2) The proposed use meets the definition of Boutique Lodge or Lodge in Section 26.104.110, as applicable.

(3) The proposed reduction will likely result in a product that meets customer demand. The lodge may provide documentation to indicate their targeted consumer's lodging expectations.

(4) The proposed reduction will not likely result in the property being used as a private residence. The city may request assurances that the lodge is not being converted to a private residence through a development agreement, or the like.

(g) *Additional allotments for local property owners of Single-Family and Duplex Redevelopment or Expansion that does trigger Demolition as defined by Chapter 26.580 and Section 26.470.090(c).* Any property owner within the City who applied for an allotment through Section 26.470.090 and was not granted an allotment due to a lack of allotments available for the calendar year can request an allotment from future years. Up to two (2) allotments may be granted through this process and shall not be deducted from a future year's available allotments. This review procedure is available only to property owners who can establish, through such procedures and documentation set forth below, that the property proposed for redevelopment or expansion has been owned and occupied by the applicant or applicant's immediate family members for at least 35 years. All other property owners may request an allotment through the Multi-year development allotment procedures outlined in Section 26.470.110(a). The following review criteria shall apply to the consideration of the award of additional allotments pursuant to this subsection (g):

(1) The property owner or immediate family members have owned and occupied the property for at least thirty-five (35) years. Documentation evidencing ownership and residency shall be provided, which may include but is not limited to property transactions records, property tax remittance, voter registration records, and the like. Additionally, signed affidavit(s) attesting to ownership and occupancy for all thirty-five (35) years must be submitted.

(2) The granting of the allotment furthers the goals, objectives and policies of the Aspen Area Community Plan.

(3) The project meets all review criteria in Section 26.470.090(c)(3), or a variation is approved by the Planning and Zoning Commission.

(Ord. No. 13-2022, § 7, 6-28-2022)

Sec. 26.470.120. - Yearly growth management accounting procedures.

(a) *General.* The Community Development Director shall maintain an ongoing account of available, requested and approved growth management allocations for all land uses identified in Table 1 of Section 26.470.020. Allotments shall be considered allocated upon issuance of a development order for the project. Unless specifically not deducted from the annual development allotment, all units of growth shall be included in the accounting. Approved affordable housing units shall be counted regardless of the unit being provided as mitigation or otherwise.

(b) *Yearly Allotment Carry-Forward Procedures.* At the conclusion of each growth management year, the Community Development Director shall prepare a summary of growth allocations. The City Council, at its first regular meeting of the growth management year, shall review the prior year's growth summary, consider a recommendation from the Community Development Director, and shall, via adoption of a resolution, establish the number of unused and unclaimed allotments to be carried forward and added to the annual allotment. A public hearing is not required and this action may be completed as part of City Council's consent calendar.

The City Council may carry forward any portion of the previous year's unused allotment, including all or none. The City Council shall consider the following criteria in determining the allotments to be carried forward:

(1) The community's growth rate over the preceding five-year period.

(2) The ability of the community to absorb the growth that could result from a proposed development utilizing accumulated allotments, including issues of scale, infrastructure capacity, construction impacts and community character.

(3) The expected impact from approved developments that have obtained allotments, but that have not yet been built.

There is no limit, other than that implemented by the City Council, on the amount of potential growth that may be carried forward to the next year.

Any allotments awarded to a project which does not proceed and which are considered void shall constitute unused allotments and may be considered for allotment roll-over by the City Council for the year from which they were assigned. If a project decides not to proceed with the development after Council's decision on roll-over allotments for that year, then those allotments shall be considered expired and no longer available. Allotments shall be considered vacated by a property owner upon written notification from the property owner or upon expiration of the development right pursuant to Section 26.470.040(d), Expiration of Growth Management Allotments.

(Ord. No. 13-2022, § 7, 6-28-2022)

Sec. 26.470.130. - Application contents.

Applications for growth management shall include the following:

(1) The general application information required in Common development review procedures, Chapter 26.304.

(2) A site-improvement survey meeting the requirements of Title 29, Engineering Design Standards.

(3) A description of the project and the number and type of the requested growth management allotments.

(4) A detailed description and site plan of the proposed development, including proposed land uses, densities, natural features, traffic and pedestrian circulation, off-street parking, open space areas, infrastructure improvements, site drainage and any associated off-site improvements.

(5) A description of the proposed affordable housing and how it provides adequate mitigation for the project and conforms to the Aspen/Pitkin County Housing Authority Guidelines.

(6) A statement specifying the public facilities that will be needed to accommodate the proposed development, proposed infrastructure improvements and the specific assurances that will be made to ensure that the public facilities will be available to accommodate the proposed development.

(7) A written response to each of the review criteria for the particular review requested.

(8) Copies of required approvals from the Planning and Zoning Commission, Historic Preservation Commission and the City Council, as necessary.

(Ord. No. 23-2017; Ord. No. 12-2019; Ord. No. 13-2022, § 7, 6-28-2022)

Sec. 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 Mitigation Floor Area for the purposes of determining affordable housing mitigation in redevelopment scenarios that meet the definition of Demolition, per Chapter 26.580. 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. An applicant's failure to accurately document existing conditions prior to demolition and verify reconstruction rights with the City Zoning.

(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) Any 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.~~

(Ord. No. 13-2022, § 7, 6-28-2022)

Sec. 26.470.150. - Amendment of a growth management development order.

(a) *Insubstantial amendment.* An insubstantial amendment to an approved growth management development order may be authorized by the Community Development Director if:

(1) The change conforms to all other provisions of the Land Use Code and does not exceed approved variations to the residential design standards, require an amendment to the commercial design review approval or such variations or amendments have been approved.

(2) The change does not alter the number, size, type or deed restriction of the proposed affordable housing units, subject to compliance with the Aspen/Pitkin County Housing Authority Guidelines.

(3) The change is limited to technical or engineering considerations discovered prior to or during actual development that could not reasonably be anticipated during the review process or any other minor change that the Community Development Director finds has no substantial effect on the conditions and representations made during the original project review.

(b) *Substantial amendment.* All other amendments to an approved growth management development order shall be reviewed pursuant to the terms and procedures of this Chapter. Allotments granted shall remain valid and applied to the amended application, provided that the amendment application is submitted prior to the expiration of vested rights. Amendment applications requiring additional allotments or allotments for different uses shall obtain those allotments pursuant to the procedures of this Chapter. Any new allotments shall be deducted from the growth management year in which the amendment is submitted.

(Ord. No. 13-2022, § 7, 6-28-2022)

Sec. 26.470.160. - Appeals.

(a) *Appeal of adverse determination by Community Development Director.* An appeal made by an applicant aggrieved by a determination made by the Community Development Director on an application for administrative review shall be to the Planning and Zoning Commission. The appeal procedures set forth at Chapter 26.316 shall apply. The Planning and Zoning Commission may reverse, affirm or modify the decision or determination of the Community Development Director based upon the application submitted to the Community Development Director and the record established by the Director's review. The decision of the Planning and Zoning Commission shall constitute the final administrative action on the matter.

(b) *Appeal of adverse determination by Planning and Zoning Commission.* An appeal made by an applicant aggrieved by a determination made by the Planning and Zoning Commission on an application for Planning and Zoning Commission review shall be to the City Council. The appeal procedures set forth at Chapter 26.316 shall apply. The City Council may reverse, affirm or modify the decision or determination of the Planning and Zoning Commission based upon the application submitted to the Planning and Zoning Commission and the record established by the Commission's review. The

decision of the City Council shall constitute the final administrative action on the matter.

(c) *Insufficient development allotments.* Any property owner within the City who is prevented from developing a property because that year's development allotments have been entirely allocated may appeal to the City Council for development approval. An application requesting allotments must first be denied due to lack of necessary allotments. The appeal procedures set forth at Chapter 26.316 shall apply. The City Council may take any such action determined necessary, including but not limited to making a one-time increase of the annual development allotment sufficient to accommodate the application.

(Ord. No. 14, 2007, §§ 1, 10; Ord. No. 31, 2016, § 1; Ord. No. 12-2019; Ord. No. 13-2022, § 7, 6-28-2022)

Sec. 26.212.010. - Powers and duties.

In addition to any authority granted the Planning and Zoning Commission (hereinafter "Commission") by state law or the Municipal Code of the City of Aspen, Colorado, the Commission shall have the following powers and duties:

(a) To initiate amendments to the text of this Title, pursuant to Chapter 26.310;

(b) To review and make recommendations of approval or disapproval of amendments to the text of this Title, pursuant to Chapter 26.310;

(c) To initiate amendments to the Official Zone District Map, pursuant to Chapter 26.310;

(d) To review and make recommendations of approval, approval with conditions or disapproval to the City Council in regard to amendments of the Official Zone District Map, pursuant to Chapter 26.310;

(e) To review and make recommendations of approval, approval with conditions, or disapproval to the City Council on a Planned Development Project Review and to approve, approve with conditions, or deny Planned Development Detailed Review, pursuant to Chapter 26.445, Planned Development;

(f) To review and grant allotments for ~~residential~~, office, commercial and lodge pursuant to growth management quota system (GMQS), pursuant to Chapter 26.470;

(g) To hear, review and recommend approval, approval with conditions or disapproval of a plat for subdivision, pursuant to Chapter 26.480;

(h) To hear and approve, approve with conditions or disapprove conditional uses pursuant to Chapter 26.425;

(i) To hear and approve, approve with conditions or disapprove development subject to special review, pursuant to Chapter 26.430;

(j) To hear and approve, approve with conditions or disapprove development in environmentally sensitive areas (ESA), pursuant to Chapter 26.435;

(k) To make its special knowledge and expertise available upon reasonable written request and authorization of the City Council to any official, department, board, commission or agency of the City, County, State or the federal government;

(l) To adopt such rules of procedure necessary for the administration of its responsibilities not inconsistent with this Title;

(m) To grant variances, not including variances to allowable FAR or height, from the provisions of this Title when a consolidated application is presented to the Commission for review and approval pursuant to Chapter 26.314;

(n) To grant variances from the provisions of this Title when a consolidated application is presented to the Commission for review and approval pursuant to Chapter 26.314;

(o) To hear, review and approve variances to the residential design guidelines, pursuant to Chapter 26.410;

(p) To hear and decide appeals from and review any order, requirement, decision or determination made by any administrative official charged with the enforcement of Chapter 26.410, including appeals of interpretation of the text of the residential design standards. The Commission may only grant relief from the residential design standards. A variance from the residential design standards does not grant an approval to vary other standards of this Chapter that may be provided by another decision-making administrative body; and

(q) To hear, review and approve, approve with conditions or disapprove an application for Public Projects Review, pursuant to Chapter 26.500.

(r) To hear, review and approve, approve with conditions or disapprove an application appealing the Community Development Director's determination that Demolition has been triggered pursuant to Chapter 26.580.

(Ord. No. 41-2002, § 1; Ord. No. 50a-2005, § 3; Ord. No. 12-2007, § 6; Ord. No. 31-2012, § 4; Ord. No. 36-2013, § 8; Ord. No. 46-2015, § § 5&6; Ord. No. 13-2022, § 3, 6-28-2022)

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

HOUSE BILL 23-1255

BY REPRESENTATIVE(S) Lindstedt and Dickson, deGruy Kennedy, Epps, Froelich, Garcia, Jodeh, Lindsay, Mabrey, Michaelson Jenet, Sharbini, Sirota, Woodrow, Kipp, Story, Vigil, Weissman;
also SENATOR(S) Gonzales, Buckner, Cutter, Hinrichsen, Moreno, Priola, Winter F.

CONCERNING PREEMPTION OF LOCAL REGULATIONS LIMITING THE NUMBER OF BUILDING PERMITS ISSUED FOR DEVELOPMENT.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 29-20-104.2 as follows:

29-20-104.2. Anti-growth law - preemption - legislative declaration - definitions. (1) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

(a) A RELIABLE PUBLIC POLICY ENVIRONMENT THAT SUPPORTS AN ADEQUATE AND AFFORDABLE HOUSING SUPPLY IS A MATTER OF STATEWIDE CONCERN, AND A HEALTHY SUPPLY OF HOUSING UNITS TO MATCH BOTH CURRENT DEMAND AND FUTURE DEMAND DRIVEN BY POPULATION GROWTH

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

IS CRITICAL FOR JOB CREATION, HOUSING STABILITY, AFFORDABILITY, AND THE OVERALL ECONOMIC WELL-BEING OF ALL COLORADANS;

(b) THE LACK OF AFFORDABLE HOUSING IN COLORADO IS DIRECTLY ATTRIBUTABLE TO THE SCARCITY OF HOUSING UNITS;

(c) ACCORDING TO A STUDY OF HOUSING DEVELOPMENT IN COLORADO, THE STATE HAS OVER ONE HUNDRED SEVENTY-FIVE THOUSAND FEWER HOUSING UNITS THAN NEEDED TO RESTORE ITS HISTORICAL POPULATION-TO-HOUSING RATIO FROM 1986 THROUGH 2008;

(d) TO CLOSE THE DEFICIT AND ACCOUNT FOR PROJECTED POPULATION GROWTH, THE STATE WILL NEED TO ADD OVER ONE HUNDRED SIXTY-TWO THOUSAND HOUSING UNITS BY 2027;

(e) ANTI-GROWTH LAWS ENACTED BY LOCAL GOVERNMENTS SEVERELY UNDERMINE THE ABILITY TO CONSTRUCT THE ADDITIONAL HOUSING UNITS COLORADANS NEED;

(f) ANTI-GROWTH LAWS DO IRREPARABLE ECONOMIC HARM TO WORKING CLASS COLORADANS BY LIMITING THE HOUSING SUPPLY AND DRIVING UP HOUSING PRICES AND RENTS. FURTHERMORE, ANTI-GROWTH LAWS THREATEN THE LIVELIHOOD OF COLORADANS EMPLOYED IN CONSTRUCTION AND OTHER BUILDING TRADES AS WELL AS BUSINESSES ACROSS THE STATE THAT RELY ON THE COMMERCE ASSOCIATED WITH HOME BUILDING.

(g) UNIFORMITY IN LAND USE LAWS CONCERNING RESIDENTIAL GROWTH IS NECESSARY FOR EFFICIENT RESIDENTIAL DEVELOPMENT STATEWIDE AND FOR THE ENCOURAGEMENT OF CONSTRUCTION OF NEW HOUSING UNITS;

(h) THE ENACTMENT OR ENFORCEMENT OF ANTI-GROWTH LAWS BY SOME LOCAL GOVERNMENTS DECREASES HOUSING DEVELOPMENT IN THESE LOCATIONS AND PUTS PRESSURE ON OTHER LOCAL GOVERNMENTS' RESIDENTIAL HOUSING STOCK, ROADS, UTILITIES, AND OTHER SERVICES; AND

(i) IT IS THEREFORE NECESSARY FOR THE GENERAL ASSEMBLY TO PREEMPT AND PROHIBIT THE ENFORCEMENT OF EXISTING ANTI-GROWTH LAWS AND PROHIBIT THE ENACTMENT AND ENFORCEMENT OF NEW

ANTI-GROWTH LAWS.

(2) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "ANTI-GROWTH LAW" MEANS A LAND USE LAW THAT EXPLICITLY LIMITS EITHER THE GROWTH OF THE POPULATION IN THE GOVERNMENTAL ENTITY'S JURISDICTION OR THE NUMBER OF DEVELOPMENT PERMITS OR BUILDING PERMIT APPLICATIONS FOR RESIDENTIAL DEVELOPMENT OR THE RESIDENTIAL COMPONENT OF ANY MIXED USE DEVELOPMENT SUBMITTED TO, REVIEWED BY, APPROVED BY, OR ISSUED BY A GOVERNMENTAL ENTITY FOR ANY CALENDAR OR FISCAL YEAR. AS USED IN THIS SUBSECTION (2)(a), "LAND USE LAW" MEANS ANY STATUTE, RESOLUTION, ORDINANCE, CODE, RULE, REGULATION, PLAN, POLICY, PROCEDURE, STANDARD, INITIATIVE, GUIDELINE, REQUIREMENT, OR LAW THAT REGULATES THE USE OR DIVISION OF PROPERTY OR ANY INTEREST IN PROPERTY.

(b) "GOVERNMENTAL ENTITY" MEANS:

(I) A STATUTORY OR HOME RULE COUNTY, A CITY AND COUNTY, OR A MUNICIPALITY; AND

(II) ANY SPECIAL DISTRICT OR AGENCY, AUTHORITY, POLITICAL SUBDIVISION, OR INSTRUMENTALITY OF A COUNTY, OR OF A CITY AND COUNTY, OR OF A MUNICIPALITY.

(c) "PROPERTY" MEANS REAL PROPERTY LOCATED WITHIN THE STATE THAT IS NOT PUBLICLY OWNED.

(3) NOTWITHSTANDING ANY PROVISION OF SECTION 29-20-104 TO THE CONTRARY, A GOVERNMENTAL ENTITY SHALL NOT ENACT OR ENFORCE AN ANTI-GROWTH LAW AFFECTING PROPERTY.

(4) (a) NOTWITHSTANDING ANY PROVISION OF SECTION 29-20-104 OR SUBSECTION (3) OF THIS SECTION TO THE CONTRARY, A GOVERNMENTAL ENTITY MAY ENACT AND ENFORCE A TEMPORARY, NONRENEWABLE ANTI-GROWTH LAW:

(I) FOLLOWING A DISASTER EMERGENCY DECLARED BY THE GOVERNOR OR LOCAL GOVERNMENT THAT OCCURRED IN THE JURISDICTION

OF THE GOVERNMENTAL ENTITY;

(II) FOR THE PURPOSE OF DEVELOPING OR AMENDING LAND USE PLANS OR LAND USE LAWS COVERING RESIDENTIAL DEVELOPMENT OR THE RESIDENTIAL COMPONENT OF A MIXED-USE DEVELOPMENT; OR

(III) TO PROVIDE FOR THE EXTENSION OR ACQUISITION OF PUBLIC INFRASTRUCTURE, PUBLIC SERVICES, OR WATER RESOURCES.

(b) A TEMPORARY, NONRENEWABLE ANTI-GROWTH LAW AFFECTING PROPERTY ALLOWED BY SUBSECTION (4)(a) OF THIS SECTION MAY BE EFFECTIVE FOR NO MORE THAN TWENTY-FOUR MONTHS IN ANY FIVE-YEAR PERIOD.

(5) (a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (5)(b) OF THIS SECTION, NOTHING IN THIS SECTION REQUIRES A GOVERNMENTAL ENTITY TO APPROVE A PERMIT APPLICATION OR PRECLUDES A GOVERNMENTAL ENTITY FROM REGULATING THE USE OF LAND, DEVELOPING LAND USE PLANS, ENACTING AFFORDABILITY REQUIREMENTS THAT REGULATE OR RESTRICT MARKET RATE DEVELOPMENT OR REDEVELOPMENT IN ORDER TO ENFORCE AFFORDABILITY REQUIREMENTS, REGULATING THE RENTAL OF ANY PROPERTY OR PORTION OF A PROPERTY THAT IS AVAILABLE FOR LODGING FOR LESS THAN THIRTY DAYS, OR DENYING A PERMIT FOR ANY REASON, INCLUDING EXTENDING OR ACQUIRING INFRASTRUCTURE, WATER RESOURCES, OR SERVICES.

(b) SUBSECTION (5)(a) OF THIS SECTION DOES NOT APPLY TO A HOTEL UNIT PORTION OF A STRUCTURE THAT IS USED BY A BUSINESS ESTABLISHMENT TO PROVIDE COMMERCIAL LODGING TO THE GENERAL PUBLIC FOR PREDOMINANTLY OVERNIGHT OR WEEKLY STAYS, THAT IS CLASSIFIED AS A HOTEL OR MOTEL FOR PURPOSES OF PROPERTY TAXATION, THAT IS NOT A UNIT, AS DEFINED IN SECTION 38-33.3-103 (30), IN A CONDOMINIUM, AND THAT IS ZONED OR PERMITTED BY A GOVERNMENTAL ENTITY FOR USE AS A HOTEL.

SECTION 2. In Colorado Revised Statutes, 29-20-104, **amend** (1) introductory portion as follows:

29-20-104. Powers of local governments - definition. (1) Except as expressly provided in ~~section 29-20-104.5~~ SECTION 29-20-104.2 OR

29-20-104.5, the power and authority granted by this section does not limit any power or authority presently exercised or previously granted. EXCEPT AS PROVIDED IN SECTION 29-20-104.2, each local government within its respective jurisdiction has the authority to plan for and regulate the use of land by:

SECTION 3. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in

November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Julie McCluskie SPEAKER OF THE HOUSE OF REPRESENTATIVES	Steve Fenberg PRESIDENT OF THE SENATE
Robin Jones CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES	Cindi L. Markwell SECRETARY OF THE SENATE

APPROVED_____
(Date and Time)

_____
Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO