

AGENDA

ASPEN PLANNING & ZONING COMMISSION

June 7, 2022

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



I.VIRTUAL MEETING INSTRUCTIONS

TO JOIN ONLINE:

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

Enter Meeting Number: 2553 815 0353

Enter Password: 81611

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-- OR --

JOIN BY PHONE

Call: 1-650-479-3208

Enter Meeting Number: 2553 815 0353

Enter Password: 81611

II.ROLL CALL

III.COMMENTS

IV.MINUTES

None

V.DECLARATION OF CONFLICT OF INTEREST

VI.PUBLIC HEARINGS

None

VII.OTHER BUSINESS

- VII.A. Presentation, Discussion, Recommendation
Policy and Code Amendment Response to Residential Building Moratorium
[PZ Memo Draft.pdf](#)
[Ordinance No. 13_PandZ.docx](#)
[Ordinance No. 14_PandZ.docx](#)
[Exhibit A - Residential Demolition and Redevelopment Standards.20220602.pdf](#)
[Exhibit B - 26.470_GMQS_20220602.pdf](#)
[Exhibit C - 26.580_Demolition.20220602.pdf](#)

- Exhibit D - 26.710_Zone Districts.20220602.pdf
- Exhibit E - Supporting Code Sections.20220602.pdf
- Exhibit F - Case Study Memo_220328.pdf
- Exhibit G - Review of Residential Development Impacts_220519.pdf
- Exhibit H - Buy Down and FIL Analysis_220519.pdf
- Exhibit I - AH Zoning Feasibility Analysis_220519.pdf
- Exhibit J - Graphic_ Alignment with AACP.pdf

VIII.ADJOURN

IX.NEXT RESOLUTION NUMBER: #11, SERIES 2022

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



MEMORANDUM

TO: City of Aspen Planning and Zoning Commission

FROM: Ben Anderson, Principal Planner
Garrett Larimer, Senior Planner

THROUGH: Amy Simon, Planning Director

MEMO DATE: June 2, 2022

MEETING DATE: June 7, 2022

RE: **Presentation and Discussion of proposed amendments to the Land Use Code – Residential Building requirements**

REQUEST OF THE PLANNING AND ZONING COMMISSION:

Following numerous Work Session discussions with City Council, an extensive public engagement process, and significant effort from our consultant team, staff will be presenting a summary of proposed Land Use Code (LUC) responses and specific redline changes to the LUC for the Commission's consideration. These proposed changes are the foundation of two Ordinances that will be brought to City Council for final review at First and Second Reading of Ordinances on the 14th and 28th of June. These Ordinances would conclude the response to the declaration of the moratorium and if passed by City Council, will be in effect prior to the end of the moratorium on August 8, 2022.

P&Z's review of the Ordinances and participation in the discussion on June 7th will hopefully result in a consensus set of comments for staff and Council's consideration, and if the Commission desires, a formal recommendation on the Ordinances from P&Z that will be presented to Council.

Ordinance 13 – This Ordinance contains the majority of the proposed changes in response to the moratorium. The changes are numerous but are focused on: *Demolition*, GMQS (26.470) and a new section that spells out calculation methodology (26.580); *Affordable Housing mitigation* requirements for single-family and duplex development GMQS (26.470); *Affordable Housing review processes* in GMQS (26.470), and *opportunities* for development of affordable housing in the Zone Districts (26.710); and changes to *Calculations and Measurements* (26.575.020), *Definitions* (26.104) and other sections of the code in support of these more significant policy proposals. The draft ordinance included in P&Z's packet does not contain clean version of the proposed code amendments. The Commission should refer to the redline edits in the Exhibits to view proposed code changes.

Ordinance 14 – This Ordinance is much more limited in scope and applies only to a proposed increase to the Affordable Housing Fee-in-Lieu (FIL) that is directed by the LUC to occur on an annual basis. This increase, per code, is based on the national construction cost index published by the Engineering News Record.

BACKGROUND AND SUMMARY:

Where this Memo and Meeting fit into the larger process

The contents of this memo reflect staff’s proposed policy responses to previous Council direction across numerous Work Sessions, input and feedback from participants in the engagement process, and the research and analysis of our consultant experts. There are a few remaining aspects of this proposed set of responses that are yet to be finalized. The memo identifies these outstanding items and staff will discuss further during the meeting.

With direction from P&Z, and the inclusion of final analysis by our consultant team and City staff, code language that is currently in draft will be formalized. Prior to Second Reading of the Ordinance, this language will have been reviewed by multiple staff members across relevant departments including the City Attorney’s office, our consultant team that includes a third-party land use law review, and by members of the community that have participated in our engagement efforts – particularly those in the development and design community. In spite of the extension of the moratorium, timelines remain tight as we finalize this work. Staff remains committed to making sure that interested community members that have participated in this process have an opportunity to review the final code changes prior to Council making a final decision at Second Reading.

Exhibits

For the Commission’s Review, there are several documents attached as **Exhibits F-I** to the memo that have been developed by the staff of Design Workshop. They are included primarily for P&Z’s review but have all been instructive to staff as we have made decisions about what to include (and importantly, what not to include) in our proposed policy responses. Staff and the consultant team will be prepared to discuss any of the material presented in these exhibits should P&Z have questions or comments. It should be noted that the exhibits raise questions that Council or the Commission may desire staff to re-visit following the moratorium.

PRIMARY POLICY PROPOSALS:

26.470 – Growth Management Quota System

Demolition – Exhibit B (redline edits of 26.470)

Central to staff’s proposed response to concerns about the pace and scale of single-family and duplex development is the use of the long-standing GMS allotment system to regulate projects that engage in the demolition and redevelopment of a property. Currently there are 19 Residential Development Allotments. Under current code, these are only necessary for new subdivisions or new multifamily units. The proposal is to now include redevelopment scenarios within this system and assign a portion of this total number of residential allotments to projects that trigger Demolition.

In staff's view, residential projects that trigger Demolition are very impactful to neighbors, to Aspen's physical infrastructure and environment, and to the capacity at the Pitkin County Landfill. They generate a significant employee demand and often, these projects transform the scope and scale of the existing home into a new residence that is fundamentally different, both in form and function, from the previous structure. Additionally, in analysis of building permits over the last 9 years, there is a recent trend showing a significant increase in Demolition projects (15 in 2021; a rough average of 6.5 in the previous 8 years) and in the Demolition of increasingly more recent built homes (a building permit is currently in review for the demolition and redevelopment of a home built in 2006).

At a Work Session on May 23, staff asked for Council's direction on the number of Demolition allotments they desired to establish. Staff recommended a range of 5 – 8 allotments per year. **Council identified (6) as the number that they would like to begin with.** This may be a topic on which P&Z would like to make a recommendation to Council.

In addition to limiting the number of Demolition projects that could be approved annually, the proposed policy would also establish standards during demolition and for the new home resulting from a redevelopment in order for a project to be issued a Demolition allotment. In staff's view, implementing these standards would be a starting point that will be more fully built out, defined, and updated over time. To start, the ***Residential Demolition and Redevelopment Standards*** will include:

- Waste Diversion: Participation in the Green Halo construction and demolition tracking system (used already by the Pitkin County Landfill) and a minimum diversion threshold of demolition and construction waste.
- Embodied Carbon: A required reporting of the total embodied carbon of the building process and materials for a project using a choice of approved life-cycle assessment tools or material specific EPDs (Environmental Product Declarations). At this time, the report will provide useful data to ComDev and Climate Action staff, rather than showing compliance with a particular threshold.
- Energy Reporting: An approved Demolition allotment would require the future home to participate in Building IQ energy reporting and benchmarking for residential projects. This program will be developed by Climate Action and approved by Council at a later date and will support the community's broader Greenhouse Gas (GHG) reduction goals
- Building Energy Performance and Electrification:
 1. Projects will be subject to the high-performance updates coming to our Building and Energy Codes in Title 8 that will include making sure homes are designed and built to increased performance standards, for potential future conversion to 100% electric, and to more easily accommodate on-site photo-voltaic and battery storage systems in the future, if they're not included in the current development proposal.
- Stormwater: Projects will be subject to a higher expectation in contributing to local water quality through implementation of non-structural and sustainable Best Management Practices (BMPs).

Note: The details of the Residential Demolition and Redevelopment Standards are one of the topics that have not yet been finalized. Staff is working across City agencies to ensure that the initial version of the standards does not add unintentional complexity or conflict between Land

*Use and other requirements in the development process. This is a document that will be reviewed by interested members of the public, prior to final Council consideration. The current draft is included as **Exhibit A** for P&Z's review.*

For applications for projects that show or will be conditioned to show compliance with the standards described above, the proposed process for the allotment system would work like this:

- Up to the maximum number of annual allotments for Demolition, land use applications would be accepted on a first come, first serve basis and entered into the queue once determined “complete”.
- Due to the requirements for submission of the land use application, it is anticipated and encouraged that these requests would be submitted concurrently or at least proximately to the building permit. It is also anticipated that referral agencies would be given an opportunity early on in the review process to identify issues with the design and coordinate with the design team – hopefully reducing overall review times ahead of building permit issuance.
- Since the standards for approval of an allotment are objective and definitive, staff proposes that the applications for allotments be reviewed administratively – with approval granted through a Notice of Approval that would include any necessary conditions.
- The issuance of an allotment would have a three-year vesting period – consistent with the requirements of Colorado State law.
- If and when the annual allotments are fully utilized in a given year, there is a process for an application to request from Council the issuance of a multi-year allotment for an additional Demolition – that would reduce the number of allotments available in the following year.

In addition to these outcomes in GMQS, a Demolition and Redevelopment would translate into affordable housing mitigation requirements on the entirety of the new home. Together, this set of policies seeks to discourage Demolition, but if it does happen, the resulting redevelopment will be high performing and be better aligned with the AACP and Aspen's climate action goals and commitments. Additionally, policies (described later in the memo) are proposed to encourage energy performance upgrades and other flexibility to existing homes.

Affordable Housing Mitigation – Exhibit B (redline edits of 26.470)

In November of 2021, staff proposed Ordinance 24, which is currently tabled following Council discussion in December of 2021. The ordinance proposed to include the floor area of basements and garages and eliminate the credit for existing floor area (in redevelopment scenarios that trigger Demolition) in the calculation of affordable housing mitigation. Following public comment and Council discussion, Council tabled the ordinance and gave direction to staff to engage with consultants on an updated employee generation study – and to work on new standards for the mitigation deferral agreement for locals that pursue projects that require mitigation.

In the calculation of the mitigation requirements for a project, there are three primary variables:

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- 1) What counts? This is where staff is proposing the most significant change.
- 2) The Employee Generation Rate – this is based on employees generated (FTEs) per 1000 square feet of construction activity. This will likely have minimal change from the current code due to the update to the generation study. This number is estimated using national and local data to arrive at the number of employees generated during construction and in the long-term maintenance and operations of a building.
- 3) The Mitigation Rate – this has generally reflected the community’s expectation about what portion of the employee’s generated by a project should be mitigated for. Conceptually, this asks what portion of the project’s employees should be housed in Aspen. There have been many answers to this question over the years. Today, this type of residential development has mitigated at 100%. Commercial and Lodge development mitigates at 65%. On May 23rd, staff asked Council for their direction on the residential mitigation rate. Unanimously, they supported the continuation of the 100% mitigation rate for single-family and duplex residential development and redevelopment.

These may be topics on which P&Z would wish to make a recommendation.

Single-Family and Duplex Mitigation Requirements: Staff is continuing to work with our consultants to finalize and review for legal sufficiency the update to the 2015 Employee Generation Study. Based on preliminary findings, staff will continue to propose the inclusion of basements, garages and other currently exempted areas into the calculation of affordable housing mitigation requirements. Additionally, we are working on the necessary code adjustments to eliminate the credit for existing floor area in demolition and redevelopment scenarios. We will not have finalized numbers to report until First Reading, but as a preliminary estimate, Council could expect code changes to have the following effect:

Scenario: An existing home with 2,000 square feet of Floor Area (current floor area calculation) is Demolished. A new home is redeveloped with 3,240 square feet of Floor Area (current code with exempted basement and garage), but with a total square footage of 7,500 square feet that includes the basement and garage.

Current Code that *includes* credit for existing floor area and *exempts* basements and garages
= 0.20 FTE

Also, to provide additional context, it is important to consider the mitigation requirements that were present prior to the 2015 study. Prior to 2015, the calculation of a home’s size for mitigation purposes was consistent with how it is now – the use of a net floor area calculation that excluded basements, garages, stairs and provided credit for existing Floor Area. However, the mitigation structure was completely different. The idea was that for every 3,000 square feet of net floor area, a home would provide 1 FTE of a “moderate income employee” (an average of Cat 2/Cat 3). Please look to the table below for further illustration of these dynamics that compare two previous mitigation systems with the one now proposed by staff.

Scenario:

2,000 sf - existing home demolished, net Floor Area

3,240 sf – new home, net Floor Area

7,500 sf – new home, mitigation floor area – includes basement and garage

	2013 Methodology & 2013 FIL	2013 Methodology & current FIL	2015 Methodology & current FIL	Proposed Methodology & current FIL
Square Footage on which mitigation is based	1,240	1,240	1,240	7,500
Employee Generation per 1000 sf	0.33 FTE	0.33 FTE	.16 FTE	.184 FTE *
Total Mitigation Requirement (FTE)	0.41 FTE	0.41 FTE	0.20 FTE	1.38 FTE*
Total AH Mitigation (based on FIL)	\$96,235	\$154,345	\$75,295	\$519,535*
AH Mitigation per square foot	\$77.60	\$124.47	\$60.72	\$69.27*

* These numbers are based on total employee generation rate based on construction, and operation and maintenance. See below for further discussion.

The proposed change does not drastically change the employees that a square foot generates, instead, it would reflect a policy change about what square footage counts towards the calculation. In the Proposed Methodology, the primary difference is the inclusion of subgrade and garages in the calculation of mitigation and the elimination of the credit for existing floor area. In the proposal, using this scenario, a 7,500 square foot home would be calculated in total – rather than that same house be calculated at the 1,240 sf calculated using previous versions of mitigation requirements in the Code.

In a recently updated employee generation study, the calculations conducted by our consultant, RRC, show the FTEs generated by **Construction at 0.081 FTE / 1000 square feet**. For **Operations and Maintenance; 0.103 FTE / 1000 square feet**. In total, the **combined FTE generation is 0.184 FTE / 1000 square feet**. From this study, the eventual employee generation rate adopted in the code could be no greater than 0.184 FTE, but it could be less. Staff is fully confident in the work conducted by RRC, but there may be reasons to not use the maximum generation amounts:

- 1) The other levers of mitigation (What we count, mitigation rate at 100%, an updated FIL) are generally at the maximum of appropriateness.
- 2) The generation estimate is sound but is based on general, rather than property specific data – using only a portion of the O&M would account for the variability between properties in the services that they use.
- 3) As we are proposing to eliminate the credit for existing FA in redevelopment scenarios – using only a portion of O&M resolves some of the concerns about homes that have previously mitigated.
- 4) We are not proposing a phased approach to the implementation – upon the ending of the moratorium, all projects would be subject to these new requirements – and the size of the increase from current requirements starts to raise questions about reasonableness.

Using the same scenario describe above, here are some potential choices for setting the employee generation rate:

What to Include from Generation Calculation	Generation Rate	Mitigation in FTE	Mitigation in FIL	Increase from Current
100% Construction and 0% O&M	.081 FTE / 1000 sf	.60 FTE	\$228,709	3X
100% Construction and 25% O&M	.107 FTE / 1000 sf	.80 FTE	\$299,297	4X
100% Construction and 50% O&M	.133 FTE / 1000 sf	1.0 FTE	\$376,475	5X
100% Construction and 100% O&M	.184 FTE / 1000 sf	1.38 FTE	\$519,535	7X

Note: Current mitigation rate is .16 FTE / 1000 sf. The majority of the increase from current is related to the inclusion of basements and the elimination of the credit for existing floor area.

A recommendation that P&Z may want to make is regarding the employee generation rate. Do any of the potential generation rates (the difference being the % of O&M to include) seem appropriate to the Commission?

Staff will discuss this entire topic in more detail during the meeting – as there is clear recognition that this a complex set of issues.

Fee-in-Lieu

In addition to changing calculation methods for employee generation, staff is also proposing in a separate ordinance (Ordinance 14) to increase the Affordable Housing Mitigation Fee-in-Lieu. Per code, staff is directed to propose an annual increase in January of each year using the Engineering News Record National Construction Cost Index. Due to the moratorium, staff did not pursue this change in January, but believes it is appropriate to do this with the other proposed changes resulting from the moratorium so that the total impact can be understood. Based on the index from May of 2021 to May of 2022, it is anticipated that the proposed increase to the FIL will be 8.47%. Current Category 2 FIL (applicable to single-family and duplex) per FTE: \$376,475. With an 8.47% increase: \$408,362.

In the scenario above (7,500 square feet of new home), using the update to FIL:

Current Code and Current FIL = \$75,295 of approximate mitigation (\$10.03 / square foot).

Proposed Change and update to FIL = \$563,540 of approximate mitigation (\$75.13 / square foot).

As another way of thinking about this proposed change, using the total generation rate for Employee Generation, the following comparison shows the impact of the new calculation as a percentage of a typical real estate valuation in our current context:

At \$2,500 (rough estimate) of value per sq. ft. in the Aspen market of the same 7,500 sf home:

Current mitigation requirements: .004 (0.4%) of the per square foot value

Proposed mitigation requirements with update to FIL: .03 (3%) of the per square foot value

AH Mitigation Deferral Agreement for Locals

In response to several comments that staff received during consideration of Ordinance 24 and in our engagement efforts on the moratorium, staff is proposing improvements to the deferral

agreement that would bring certainty to the value of future mitigation requirements when a resident enters into an agreement. Now, an FTE calculation is included in the agreement, but the future value of the mitigation is unknown as it is tied to the value of the FIL at the time that the agreement is terminated. Rather than be subject to the uncertainty around future updates to the FIL or other changes to mitigation requirements, future valuation of the mitigation would be tied to annual increase in the Consumer Price Index (CPI). In staff's view, this would provide improved certainty for the resident, create simplicity for current and future staff, and improve the agreement in general terms. Toward this same end, staff also recommends that future mitigation requirements within the deferral agreement should be allowed to be met with fee-in-lieu, by right. In previous conversations with P&Z, this was a topic that had considerable interest from the Commission. This may be a topic on which P&Z would wish to make a recommendation.

100% Affordable Housing Review Process – Exhibit B (redlines of 26.470)

As has been previously discussed with Council, staff is proposing that 100% affordable housing projects (Category and RO) that are fully compliant with all other aspects of the Land Use Code, would be reviewed and approved administratively. Currently these projects would most commonly be reviewed by P&Z, but if on a designated property or in a historic district, HPC would review. The purpose of this change is to remove unnecessary and unpredictable review processes for projects that are otherwise compliant with the Land Use Code. The change would also create parity between AH and free-market residential development in the level of staff review and public scrutiny the development types receive. Under the proposal, to qualify for administrative review, these projects would be compliant with the use and dimensional limitations of the underlying zone district, APCHA regulations related to the size and qualities of the units, parking requirements, and residential design standards. This may be a topic on which P&Z would wish to make a recommendation.

Additionally, the process has been designed to bring clarity to the Land Use application process for 100% AH projects and builds in a development review committee (City staff comprised from development review departments) process to identify and troubleshoot potential issues in setting up the eventual building permit process for a more expedient review.

One topic that is not easily addressed in making these reviews administrative is the relationship to Aspen's *Historic Preservation Design Guidelines* and the Historic Preservation Commission review process. Any project on a designated property or in a historic district for affordable housing would be of a scope that would necessitate an HPC review. While staff desires to streamline and make more predictable the process in reviewing AH projects, historic preservation review has been essential in maintaining Aspen's historic, cultural, and architectural character in the face of immense pressure to do otherwise. Staff does not want to undermine this role, but at the same time wants to avoid the use of HPC review criteria by those desiring to create unintended obstacles to the development of affordable housing. Staff is working with HPC to identify aspects of a project that would still offer HPC a chance to weigh in (relocation, relationship of new construction to a historic resource, materials, etc.)

26.710 – Zone Districts – Exhibit D (redline edits of 26.710)

Additional Opportunity for Affordable Housing

In our conversations with Council and with the public during our engagement efforts, staff heard two comments loud and clear:

- 1) Affordable housing should be allowed and encouraged throughout Aspen.
- 2) Any affordable housing should be consistent with neighborhood scale and character.

With these two concepts in mind, staff is proposing targeted changes to Chapter 26.710 to eliminate unnecessary obstacles to 100% AH development and to provide some additional opportunity for AH that respects underlying zoning. It should be understood, however, that these changes will not in themselves result in new AH units. Rather, these changes should be viewed as an improved foundation, that when paired with other policies, incentives and subsidies, could result in additional interest in affordable housing from the private sector, and create more predictable and affordable paths for public sector AH development. It is important to note that the proposed changes only apply to projects that are comprised of 100% AH (Category and RO).

As the number of changes is extensive, the following provides a brief identification and description of the proposed changes:

1) In residential zone districts (R-6, R-15, R-15A), triplexes and fourplexes (3 and 4-unit multifamily) would be allowed by right if the project otherwise conformed to the underlying dimensional limitations. For example, in the R-6, the allowable floor area for a duplex on a 6,000 square foot lot, is 3,600 square feet. Under this change, four units could go in where there is currently a limit of two – fitting within the 3,600 square foot limit.

2) In the R-6 and R-15 there are some existing multi-family developments that are currently non-conforming. This means that they are stuck in their current conditions, and if demolished, would need to resort to allowed uses. The proposed change would convert 100% affordable properties, or properties proposed for 100% affordable projects into a conforming use. This would give flexibility for moderate expansion, redevelopment with upgraded or redesigned units, and remove current limitations on even minor upgrades. For these now conforming projects, they would be granted an FAR of .75:1 (which is consistent with the minimum in RMF).

3) Across the residential zones, including RMF, there has been an unintended intersection between the zone district standards and language in the Non-Conformities (26.312) chapter that identifies “non-conforming lots of record”. In staff’s view, the intent of the code as written is to grant a minimum development right (of a single-family home) on lots that do not meet lot size criteria. Instead, the code has been applied over time to restrict otherwise allowed uses based on lot size criteria. These changes would in several sections and zones provide clarity to this issue. The outcome would be that in the RMF (and other residential zones) that 100% affordable projects would be allowed regardless of the lot size. So, on a 3,000 or 4,500 square foot lot in the RMF (standard lot size is 6,000), 100% AH multifamily could be built, although scaled down accordingly based on the dimensions already identified in the zone district limitations.

4) Across Zone Districts, both residential and commercial (but excluding zones like Park and Open Space), identifying 100% affordable housing as an allowed use. As a result of past code changes this was either intentional or left ambiguous. For the most part, the dimensional and use limitations that are currently in effect are retained (example: AH as an allowed use in the CC – but with limitations. Only on upper floors, and only as part of a mixed-use project). In other circumstances, dimensional changes are proposed. In the Lodge Zone District, 100% AH as a single use is not currently allowed. The proposed change would create this as an allowed use and would establish an FAR of 1.5:1. In this zone, lodge or mixed-use projects are granted an FAR of 2:5 or 2.75:1 depending on lot size. Additionally, in the SCI Zone District, the FAR for affordable in a mixed-use scenario is proposed to increase from .75:1 to 1:1. In the SCI, this would not change the overall massing of a development but would increase the proportion of FAR that could be allocated to AH.

5) It is proposed that any limitations on where AH Credits can be pursued for the development of AH units are removed. This was previously included as a limitation in the CC, C-1, and NC zones. This change would allow projects across zone districts to pursue AH credits.

6) In the Mixed-Use Zone District, it is proposed that new, free-market residential units (single-family, duplex and multifamily) are prohibited and no longer an allowed use. The mechanism and language to implement this are identical to past actions toward this outcome in the CC, C-1, and NC zones. While no new units can be established, existing units remain as conforming uses. This change has two purposes: to preserve the current mix of residential and commercial uses in the zone district and to encourage development of affordable housing. In essence, this amendment would preclude future change of use to additional free-market housing.

**Code changes necessary in support of the primary policy proposals:
(Exhibit E – redline edits of several code sections)**

26.104.100 – Definitions

The Definitions section of Part 100 contains all of the specific terms utilized throughout the Land Use Code. Because of the complexity and nature of land use and the local conditions found in Aspen, these definitions serve as the basis to understand and implement the provisions of the LUC. Anytime an amendment is done to any section of the LUC, the definitions section often needs to be amended as well, to bring clarity or to make sure that definitions align with the altered policy or regulation.

To respond to proposed changes elsewhere in the LUC, staff is recommending changes to the Definitions section identifying new terms and revising definitions on three topics: floor area, demolition, and affordable housing. It is staff's intension that these changes will bring needed clarity to topics that are often confusing for customers and staff and will support important the other amendments.

Floor Area – Under current regulations and definitions, staff uses the same calculation for Floor Area to determine both compliance with dimensional limitations and to calculate affordable housing mitigation. With the policy proposal to include subgrade and other areas that are currently excluded from Floor Area calculations for affordable housing mitigation related to residential development, new or modified terms and definitions are needed.

Gross Floor Area
this is where architects start – includes all horizontal areas of a home

Allowable Floor Area
This excludes basements, portions of garages, vertical circulation, etc. for calculation of conformance with zone district dimensional limitations

Mitigation Floor Area
This includes basements, garages, vertical circulation for calculation of affordable housing mitigation

Demolition – In support of the use of the GMQS allotment system for projects that trigger Demolition, existing terms needed to be better defined and new terms were identified. These definitions are supported by a new section of Code, 26.580, that is further described below.

Affordable Housing – There are three new terms added related to AH development:

- 100% Affordable Housing – this is a term that is necessary to give definition to the types of projects that qualify for new zoning flexibility – and includes both Category and RO units.
- Triplex – a three-unit multifamily project that could be located in residential zones that are currently limited to single-family and duplex, if 100% affordable.
- Fourplex – a four-unit multifamily project that could be located in residential zones that are currently limited to single-family and duplex, if 100% affordable.

26.212 – Planning and Zoning Commission

Planning and Zoning Commission would be the review body to consider an appeal of the Community Development Director’s determination that a project has triggered Demolition.

26.312 – Non-Conformities

The proposed changes to the Non-Conformities chapter are relatively minimal, but impactful in bringing clarity to the differentiation of projects that trigger the 40% Demolition threshold versus projects that simply destroy a non-conforming portion of a building.

26.316 – Appeals

The proposed change aligns the Appeals chapter with the change to 26.212, Planning and Zoning Commission, described above.

26.430 – Special Review

If a project was pursuing a Demolition allotment and proposed a variation from any of the identified standards, an application could request a Special Review by the Planning and Zoning Commission.

26.540 – Certificates of Affordable Housing Credits

Under current code, the issuance of Certificates of Affordable Housing Credit requires review by P&Z or HPC in spite of the very formulaic nature of the review criteria. There is very little or no discretion. Staff proposes changing this to an administrative review – consistent and in conjunction with the GMQS administrative review for 100% affordable housing projects.

26.575.020 – Calculations and Measurements

There are three primary changes proposed to this section of the code that serves as the basis for how staff and the design community measure our built environment.

1) First, there is new text that supports the definitional changes to floor area that were described above in 26.104.100. Again, these definitional changes are necessary to distinguish the calculation of a home's area for the purpose of aligning with allowable floor area in the zone district standards (mass and scale) versus the calculation for the determination of AH mitigation.

2) The second changes are in support of the goal of encouraging remodels and upgrades to existing homes, rather than full demolition. Under current code, if a home or a portion of a home was built to the limits of their setbacks or their height, it would not be possible to upgrade the insulation or add exterior continuous insulation to the wall or roof assemblies for improved energy performance without requesting a Variance – and the criteria for getting a Variance are difficult to cross. The proposed code changes would allow existing homes to exceed their setbacks or height limitations by a maximum of 8 inches to accommodate insulation upgrades (increased R-value) and/or to add materials that make the home more resistant to wildfires. The 8 inches dimension was identified to provide the flexibility to allow an addition of up to 6 inches of additional insulation. This could help to increase the wall or ceiling assembly performance of an existing structure.

Similarly, staff proposes additional flexibility for upgrades to mechanical equipment and related screening for existing homes where the site conditions and current regulations preclude mechanical equipment that is getting increasingly larger and taller as it becomes more efficient.

3) Lastly, the current code allows for some flexibility for dimensional standards in order for a project to comply with building codes or in the pursuit of energy efficiency. The changes give additional flexibility and streamlines process when the Community Development Director applies discretion to situations that cannot meet dimensional limitations, but where building code compliance or improved energy efficiency is in the best interest of the community or the project.

26.580 – Demolition – Exhibit C – redline edits

This new section of the Land Use Code was pulled from the Calculation and Measurements section and expanded. The new section applies to demolition of all use types within the City. However, emphasis is given to Residential projects by outlining important requirements in the measure of demolition, the 40% Demolition threshold, review processes – including appeals, and importantly the adoption process for the *Residential Demolition and Redevelopment Standards* (RDRS) that are at the heart of the review for the allocation of a GMQS Demolition Allotment (described earlier in this memo). The RDRS will live outside of the Land Use Code much like our Historic Preservation Guidelines, Commercial Design Guidelines, and Aspen's Wireless Telecommunications Facilities Design Guidelines. This allows these documents to be more flexible over time as the process to amend them, while requiring Council approval, would not

require the process for a full amendment to the Land Use Code. The intention behind the increased flexibility is to allow for the document to be updated quickly and easily to reflect changes in industry best practices, to respond to amended regulations from other review agencies that are included in the standards, and to encourage the RDRS document to be iterative and remain on the progressive and leading edge of regulatory requirements.

CONCLUSION AND NEXT STEPS:

During the P&Z meeting on June 7th, staff intends to have a structured discussion on the proposed polic. The discussion will provide space for Commissioner questions, individual Commissioner comments, and an opportunity for staff to gauge P&Z consensus on difficult topics.

Following discussion and direction from P&Z, proposed Ordinances will be reviewed and considered by Council in the following meetings:

City Council, Regular Meeting – First Reading:	June 14 th
City Council, Regular Meeting – Second Reading	June 28 th

RECOMMENDATIONS:

Staff recommends a robust discussion that includes questions and comments from P&Z, the identification of specific comments that the Commission would like forwarded onto Council, and if desired, a recommendation related to support of Ordinances 13 and 14.

EXHIBITS:

- A – Residential Demolition and Redevelopment Standards**
- B – 26.470 – Growth Management Quota System – Redline edits**
- C – 26.580 – Demolition – Redline edits**
- D – 26.710 – Zone Districts – Redline edits**
- E – Multiple Code Sections, supporting amendments – Redline edits**
- F – Community Case Studies**
- G – Residential Development Impacts**
- H – Buy Down and Fee-in-Lieu Analysis**
- I – Affordable Housing Zoning Analysis**
- J – Graphic, Alignment with Aspen Area Community Plan (AACP)**

**ORDINANCE #13
SERIES OF 2022**

AN ORDINANCE OF THE ASPEN CITY COUNCIL AMENDING CITY OF ASPEN LAND USE CODE SECTIONS: 26.104.100, DEFINITIONS; 26.212, PLANNING AND ZONING COMMISSION; 26.312, NON-CONFORMITIES; 26.316, APPEALS; 26.430, SPECIAL REVIEW; 26.470, GROWTH MANAGEMENT QUOTA SYSTEM; 26.540, CERTIFICATES OF AFFORDABLE HOUSING CREDIT; 26.575.020, CALCULATIONS AND MEASUREMENTS; AND 26.710, ZONE DISTRICTS; AND THE CREATION OF A NEW SECTION, 26.580, DEMOLITION. ADDITIONALLY, THIS ORDINANCE ADOPTS THE *RESIDENTIAL DEMOLITION AND REDEVELOPMENT STANDARDS AS IDENTIFIED IN SECTION 26.580, DEMOLITION.*

WHEREAS, the City of Aspen (the "City") is a legally and regularly created, established, organized, and existing municipal corporation under the provisions of Article XX of the Constitution of the State of Colorado and the Home Rule Charter for the City (the "Charter"); and,

WHEREAS, the zoning and land use powers conferred upon the City by the State of Colorado as a Home Rule Municipality empower the City to manage land use to ensure the public health, safety, and welfare; and,

WHEREAS, the City of Aspen currently regulates land uses within the City limits in accordance with the Aspen Land Use Code (hereinafter "Land Use Code"), Title 26 of the Aspen Municipal Code, adopted pursuant to its Home Rule Constitutional authority and the Local Government Land Use Control Enabling Act of 1974, as amended, §§29-20-101, *et seq.* C.R.S; and,

WHEREAS, the character of certain development activities in the City of Aspen is having a negative impact upon the health, peace, safety, and general wellbeing of the residents and visitors of Aspen; and,

WHEREAS, recent land use applications seeking Development Orders in various City Zone Districts do not appear to be consistent with the goals and vision as expressed by the 2012 Aspen Area Community Plan, including:

- We must pursue more aggressive measures to ensure the needs of the community are met, and to preserve our unique community character. (pg 20); and
- 1.1. Achieve sustainable growth practices to ensure long-term vitality and stability of our community and diverse visitor-based economy. (pg 24); and
- V.1. Encourage a commercial mix that is balanced, diverse and vital and meets the needs of year-round residents and visitors. (pg 26); and
- V.2. Facilitate the sustainability of essential businesses that provide basic community needs. (pg 26); and
- V.3. Ensure that the City Land Use Code results in development that reflects our architectural heritage in terms of site coverage, mass, scale, density and a diversity of heights, in order to:
 - Create certainty in land development.
 - Prioritize maintaining our mountain views.
 - Protect our small-town community character and historical heritage.

- Limit consumption of energy and building materials.
- Limit the burden on public infrastructure and ongoing public operating costs.
- Reduce short- and long-term job generation impacts, such as traffic congestion and demand for affordable housing. (pg 26);

and,

WHEREAS, the City of Aspen depends on a lived-in community of year-round locals to support community culture, provide labor and capital to support the local economy, ensure public safety and peace through the presence of first responders, health care and essential service workers in the community, and ensure the long-term viability of the community and tourist economy; and,

WHEREAS, due to unprecedented increases in home prices and a lack of supply over time, the residential real estate market in Aspen no longer delivers meaningful housing for local residents, therefore, the affordable housing system is relied upon to provide the vast majority of housing for locals and workers; and,

WHEREAS, the availability of housing for local workers and residents including first responders, health care workers, and other essential service workers is diminishing, the system for delivering affordable housing is not keeping pace with need, and the housing market in the region and state of Colorado are in crisis; and,

WHEREAS, recent evolutions in the residential real estate market and economy, including new financial dynamics, the proliferation of short-term rentals, have rendered elements of the Land Use Code inadequate to respond to local affordable housing needs; and,

WHEREAS, the current regulatory structure to deliver affordable housing to the community is inadequate to meet the needs of current residents and provide affordable housing to meet the future needs, and to ensure the presences of first responders, health care and essential workers, and an adequate labor force to support the economy; and,

WHEREAS, the Aspen Area Community Plan includes policies directing the City of Aspen to address affordable housing in the community, including:

- VIII.1. Restore public confidence in the development process. (pg 27)
- VIII.2. Create certainty in zoning and the land use process. (pg 27)
- VIII.3. Ensure that the Planned Development process results in tangible, long-term community benefits and does not degrade the built or natural environment through mass and scale that exceeds the Land Use Code standards. (pg 27)
- II.1. The housing inventory should bolster our socioeconomic diversity. (pg 4I)
- II.2. Affordable housing should be prepared for the growing number of retiring Aspenites. (pg 4I)
- IV.2. All affordable housing must be located within the Urban Growth Boundary. (pg 42)
- IV.3. On-site housing mitigation is preferred. (pg 42)
- IV.5. The design of new affordable housing should optimize density while demonstrating compatibility with the massing, scale, and character of the neighborhood; (pg 42)

and,

WHEREAS, a functional residential housing sector is essential to sheltering Aspen's populations, supporting a stable economy, maintaining the health, peace and safety of the City of Aspen for its residents and visitors; and,

WHEREAS, the City of Aspen recognizes that anthropogenic climate change and the impacts to the ecological and economic health of the community constitutes an emergency and a threat to the health and safety of the residents of the City of Aspen and the global community; and,

WHEREAS, the City of Aspen is a signatory to the US Mayors' Climate Protection Agreement, the Chicago Climate Exchange, and the Global Covenant of Mayors for Climate and Energy, and

WHEREAS, the City committed to the Race to Zero campaign, requiring the City to publicly endorse the following principles:

- Recognize the global climate emergency.
- Commit to keeping global heating below the 1.5° Celsius goal of the Paris Agreement.
- Commit to putting inclusive climate action at the center of all urban decision-making, to create thriving and equitable communities for everyone.
- Invite our partners – political leaders, CEOs, trade unions, investors, and civil society – to join us in recognizing the global climate emergency and help us deliver on science-based action to overcome it; and,

WHEREAS, the City has adopted an Ecological Bill of Rights establishing ten inalienable ecological rights for all, including:

- The right to ensure the efficient use of energy and of natural resources,
- The right to expect from our governments active and consistent enforcement of land use and development regulations; and,

WHEREAS, the Aspen Area Community Plan includes policies directing the City of Aspen to address climate change and environmental stewardship, including:

- I.1. By 2020, reduce the carbon footprint of the Aspen Area from 2004 levels by 30% (to 588,612.5 tons CO₂-e). (pg 52)
- I.2. All existing development and uses should minimize their greenhouse gas emissions. (pg 52)
- I.3. Incentivize alternative forms of transportation to reduce reliance on fossil fuels. (pg 52)
- I.4. All new development and uses should minimize their greenhouse gas emissions. (pg 52)
- II.3. All existing development and uses should minimize their air pollution emissions. (pg 52)
- 11.4. All new development and uses should minimize their air pollution emissions. (pg 52)

IV.I. Maximize recycling, implement waste reduction and environmentally responsible purchasing programs, and encourage behavior that moves the Aspen Area toward being a zero-waste community and extends the life of the landfill. (pg 53)

IV.4. Increase the practice of deconstruction and increase the amount of materials that are diverted from the landfill, reused or recycled. (pg 53)

V.4. Require new development and redevelopment to minimize their energy usage and use on-site renewable energies as the site allows. (pg 53)

V.5. Existing development should minimize energy usage and use on-site renewable energies as the site allows; and, (pg 53)

and,

WHEREAS, residential development contributes to climate change through transportation required to construct and service residential properties, the energy and impacts inherent in creating and sourcing the materials necessary for residential development, the natural resource consumption required for the operation of residential structures, and the production of solid waste and associated disposal impacts from the construction and operation of residential structures; and,

WHEREAS, the City's current residential development regulations are not sufficiently aligned with its adopted climate and environmental protection policies and regulations, undermining the community's ability to effectively reduce greenhouse gas emissions and avoid the worst effects of climate change; and,

WHEREAS, a pause in certain types of residential development is necessary in order to ensure that residential development supports the City's adopted climate and environmental policies and does not unnecessarily contribute to further climate and environmental impacts; and,

WHEREAS, the processes and procedures described in the Land Use Code, including but not limited to Chapter 26.300 determine how development is reviewed and permitted in the City; and,

WHEREAS, those processes and procedures are designed to balance the right to the use of private real property in the City with community input and preservation of history and character to ensure the orderly use of land within the City limits; and,

WHEREAS, in certain circumstances, those processes and procedures are not delivering the development outcomes described in the AACP or Land Use Code, warranting a pause to certain residential development applications to align those processes and procedures with adopted community policies; and,

WHEREAS, the community has a Growth Management Quota System (GMQS) designed to manage the pace, type, location, and extent of development. That system was developed prior to recent evolutions in Aspen's development environment including the proliferation of private vacation rentals, current trends in development finance and ownership, and the further build-out of Aspen's zone districts. To provide for the ongoing viability of the GMQS system, it is necessary to assess the applicability and effectiveness of GMQS relative to adopted City policies in the context of the pause on residential development established by this ordinance; and,

WHEREAS, the City Council and the Community Development Department require a period of time in which to review all existing land use codes and regulations as they affect land use development in certain Zone Districts within the City of Aspen to ensure that all land use development proceeds in a manner that is consistent with the Aspen Area Community Plan; and

WHEREAS, the City Council desires that the staff of the Community Development Department conduct a thorough analysis and assessment of the Land Use Code and regulations affecting the development of land within certain Zone Districts of the City of Aspen, with particular attention to zoning, Growth Management Quota System, affordable housing, solid waste, environmental stewardship, climate action, development review procedures, calculations and measurements, and related regulations to ensure consistency with the Aspen Area Community Plan and Climate Action Plan; and

WHEREAS, a moratorium through an emergency ordinance on all development applications will enable a reasoned discussion and consideration of desired amendments to the Land Use Code without creating a rush of development applications and the related impacts upon the community; and

WHEREAS, in Ordinance #06, Series of 2022, The Aspen City Council by a vote of 5-0 approved a temporary moratorium through June 8, 2022, on the acceptance of any new land use application seeking a development order or notice of approval, and on the acceptance of certain building permit applications for all residential uses in all zone districts within the city; and declaring an emergency; and

WHEREAS, Policy Resolution #043, Series of 2022, approved by Council on March 22, 2022 during a properly noticed public hearing, provided direction to staff to pursue amendments of the Land Use Code to “support the development of more affordable housing in Aspen” and “Align land use review processes with community development needs, including affordable housing, and the mitigation of the community impacts from free-market development” among other objectives; and,

WHEREAS, in Ordinance #08, Series of 2022, The Aspen City Council, by a vote of 5-0 approved, an extension of the temporary moratorium through August 8, 2022; and

WHEREAS, in response to Council direction and approval, Community Development staff has engaged a Consultant support team that includes Design Workshop, City Explained, Inc., White and Smith Planning Group, RRC Associates, and Economic and Planning Systems (EPS); and

WHEREAS, throughout the duration of the moratorium, staff and the consultant team carried out an extensive public engagement effort to inform the public and receive input from stakeholders. A summary of these efforts was presented to Council at a Work Session on May 9, 2022; and

WHEREAS, in response to Council direction, recommendations from the consultant team, and input from the community, including technical stakeholders, staff has drafted proposed amendments throughout the Land Use Code in support of the Policy Resolution and Council’s desired outcomes of the temporary moratorium as identified in Ordinance #06, Series of 2022; and

WHEREAS, Community Development staff provided public engagement opportunities, and held discussion with the Planning and Zoning Commission on June 7, 2022 and received recommendations from the Planning and Zoning Commission; and

WHEREAS, at a regular meeting on June 14, 2022 City Council by an X – X (X-X) vote, approved Ordinance #13, Series of 2022 on First Reading; and,

WHEREAS, at a regular meeting on June 28th, during a properly noticed public hearing, City Council by a X -X (X-X), approved Ordinance #13, Series of 2022 on Second Reading; and,

WHEREAS, the Aspen City Council finds that this Ordinance furthers and is necessary for the promotion of public health, safety, and welfare; and,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO, THAT:

Note on the Draft Ordinance for P&Z:

The sections identified are all being amended, but staff has not included the clean language of the proposed amendments in the Ordinance Draft for P&Z consideration. Please refer to the redline edits for each section as presented in the Exhibits.

Section 1:

Land Use Code Section 26.104.100. *Definitions* shall be rescinded and readopted as follows:
(See Exhibit E)

Section 2:

Land Use Code Section 26.212. *Planning and Zoning Commission* shall be rescinded and readopted as follows: (See Exhibit E)

Section 3:

Land Use Code Section 26.312. *Non-Conformities* shall be rescinded and readopted as follows:
(See Exhibit E)

Section 4:

Land Use Code Section 26.316. *Appeals* shall be rescinded and readopted as follows:
(See Exhibit E)

Section 5:

Land Use Code Section 26.430. *Special Review* shall be rescinded and readopted as follows:
(See Exhibit E)

Section 6:

Land Use Code Section 26.470. *Growth Management Quota System* shall be rescinded and readopted as follows: (See Exhibit B)

Section 6:

Land Use Code Section 26.540. *Certificates of Affordable Housing Credits* shall be rescinded and readopted as follows: (See Exhibit E)

Section 7:

Land Use Code Section 26.575.020. *Calculations and Measurements* shall be rescinded and readopted as follows: (See Exhibit E)

Section 8:

Land Use Code Section 26.580. *Demolition* is a new section of the code and shall be adopted as follows:
(See Exhibit C)

Section 9:

Land Use Code Section 26.710. *Zone Districts* shall be rescinded and readopted as follows:
(See Exhibit D)

Section 10:

The Residential Demolition and Redevelopment Standards shall be adopted as follows:

See Exhibit A to the Ordinance

Section 11:

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 12:

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 13:

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.

Section 14:

A public hearing on this ordinance was held on the 28th day of June, 2022, at a meeting of the Aspen City Council commencing at 5:00 p.m. in the City Council Chambers, Aspen City Hall, Aspen, Colorado, a minimum of fifteen days prior to which hearing a public notice of the same shall be published in a newspaper of general circulation within the City of Aspen.

INTRODUCED AND READ, as provided by law,
by the City Council of the City of Aspen on the 14th day of June 2022.

ATTEST:

Nicole Henning, City Clerk

Torre, Mayor

FINALLY, adopted, passed and approved this 28th day of June 2022.

ATTEST:

Nicole Henning, City Clerk

Torre, Mayor

APPROVED AS TO FORM:

James R. True, City Attorney

FINALLY, adopted, passed and approved this ____ day of _____, 2022.

Torre, Mayor

ATTEST:

APPROVED AS TO FORM:

Nicole Henning, City Clerk

James R. True, City Attorney

DRAFT

**ORDINANCE #14
SERIES OF 2022**

**AN ORDINANCE OF THE ASPEN CITY COUNCIL AMENDING CITY OF ASPEN
LAND USE CODE SECTION 26.470.050 – CALCULATIONS TO ADOPT A REVISED
AFFORDABLE HOUSING MITIAGTION FEE-IN-LIEU RATE SCHEDULE.**

WHEREAS, pursuant to chapter 26.470, Growth Management Quota System, of the City of Aspen Municipal Code, applicants may, under conditions specified by the Chapter, pay fees to satisfy requirements to provide affordable or employee housing; and,

WHEREAS, pursuant to prior resolutions and ordinances of the City, the City Council has historically established these fees, referred to in Chapter 26.470 as an affordable housing impact fee, affordable housing mitigation fees, and cash-in-lieu payments; and,

WHEREAS, in 2019 and 2020 Community Development Staff worked with consultants White and Smith Planning Law Group and TischlerBise in the drafting of the *Affordable Housing Fee-in-Lieu Study, Phase I*, a study that provided recommendations for improving the methodology in calculating and updating the Affordable Housing Fee-in-Lieu; and,

WHEREAS, The City elected to enact a new fee-in-lieu schedule and methodology for update utilizing calculations and recommendation provided in the *Affordable Housing Fee-in-Lieu Study, Phase II*, completed in April of 2021 by White and Smith Planning and Law Group and TischlerBise; and,

WHEREAS, in Ordinance #010, Series of 2021, City Council adopted a new Fee-in-Lieu schedule reflective of the recommendation presented in the *Affordable Housing Fee-in-Lieu Study, Phase II*; and,

WHEREAS, Land Use Code Section 26.470.050(E), Calculations - Employee housing fee-in-lieu payment; prescribes that the Fee-In-Lieu rates shall be updated every five years and adopted by city council ordinance, and that during intermediate years, the City may choose to update the fee-in-lieu schedule, by ordinance, based on the change in the Engineering News Record National Construction Cost Index; and,

WHEREAS, due to the declaration of a moratorium on Residential Development, first through Ordinance # 27, Series of 2021, and confirmed by Ordinance # 06, Series of 2022, staff did not present a proposed Fee-in-Lieu update to City Council in January of 2022 as directed by 26.470.050.E; and,

WHEREAS, Policy Resolution #043, Series of 2022, approved by Council on March 22, 2022, provided direction to staff to pursue amendments of the Land Use Code to “support the development of more affordable housing in Aspen” and “Align land use review processes with

community development needs, including affordable housing, and the mitigation of the community impacts from free-market development” among other objectives; and,

WHEREAS, The City is electing to update the fee-in-lieu schedule based on the change in the Engineering News Record, National Construction Cost Index, which shows a 8.47% increase from the time of the fee-in-lieu adoption in May of 2021 through May of 2022; and

WHEREAS, the Aspen City Council finds that this Ordinance furthers and is necessary for the promotion of public health, safety, and welfare; and

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO THAT:

Section 1: Adoption of updated Fee-in-Lieu rates.

Section 26.470.050.E shall be rescinded and readopted as follows:

26.470.050. Calculations

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):

Fee-in-Lieu (per FTE):

Category 1:	\$442,616
Category 2:	\$408,362
Category 3:	\$374,971
Category 4:	\$328,533
Category 5:	\$271,582

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 years and adopted by City Council ordinance. This 5-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 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 important assumptions were included for the rental revenue stream: a) revenue (rental income) was calculated over a 15-year period with a 2% annual increase in the rental rate; and b) rental revenue was reduced by 50% 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.

Section 2:

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 3:

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 4:

If any section, subsection, sentence, clause, phrase, or portion of this ordinance 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.

Section 5:

A public hearing on this ordinance was held on the 28th day of June, 2022, at a meeting of the Aspen City Council commencing at 5:00 p.m. in the City Council Chambers, Aspen City Hall, Aspen, Colorado, a minimum of fifteen days prior to which hearing a public notice of the same shall be published in a newspaper of general circulation within the City of Aspen.

INTRODUCED AND READ, as provided by law, by the City Council of the City of Aspen on the 14th day of June 2022.

Attest:

Nicole Henning, City Clerk

Torre, Mayor

FINALLY, adopted, passed and approved this 28th day of June 2022.

Attest:

Nicole Henning, City Clerk

Torre, Mayor

Approved as to form:

James R. True, City Attorney

FINALLY, adopted, passed and approved this ____ day of _____, 2022.

Torre, Mayor

ATTEST:

APPROVED AS TO FORM:

Nicole Henning, City Clerk

James R True, City Attorney

Residential Demolition and Redevelopment Standards

Purpose: The City of Aspen has various sustainability, affordable housing, and construction policies and goals to address impacts of construction and development. The *Residential Demolition and Redevelopment Standards* seek to supplement existing policies in the Land Use Code, stated goals of the City of Aspen City Council, and community goals as stated in the Aspen Area Community Plan to ensure residential construction activity for single family and duplex residential development is meeting regulatory requirements, community expectations, and resulting in high quality design.

Intent: The intent of the *Residential Demolition and Redevelopment Standards* is to ensure complex projects with significant community, construction, and environmental impacts are designed in a manner that mitigates those impacts. To ensure that projects reduce environmental impacts, energy consumption, and carbon footprint. Single-family and duplex residential structures should be designed in a way that exceeds industry standards in building performance. The design and ongoing operations of these structures should reduce reliance on sources of energy that rely on fossil fuels, source sustainable materials, implement smart technology to reduce operational energy demands, support the implementation of fully electric heating and cooling systems, reduce the demands of luxury loads (including audio visual systems, lighting, security systems, snowmelt, etc.), offset carbon or energy demands through onsite energy production, reduce water consumption, and divert waste from the landfill by reusing and recycling materials.

Adoption of Residential Demolition and Redevelopment Standards: Pursuant to the powers and authority conferred by the Charter of the City, the City Council hereby adopts and incorporates by reference redevelopment standards, hereinafter referred to as the *Residential Demolition and Redevelopment Performance Standards*, which are incorporated by reference into the City of Aspen Land Use Code. The *Residential Demolition and Redevelopment Standards* set forth the design parameters to ensure residential redevelopment improves solid waste diversion, increases the energy efficiency of structures, and reduces negative impacts of construction. The *Residential Demolition and Redevelopment Standards* may be amended, updated, and expanded from time to time by City Council Resolution. The *Residential Demolition and Redevelopment Standards* shall be available for public inspection at the Community Development Departments web page. Projects that are pursuing a Demolition Allotment as described in Section 26.470.090.C will be reviewed these standards.
(Ord. 13, Series of 2022).

Applicability: These *Residential Demolition and Redevelopment Standards* shall be used to evaluate projects that trigger Demolition as defined by Section 26.104.100 and Section 26.580 of the Land Use Code. These *Residential Demolition and Redevelopment Standards* shall be the basis for determining a projects compliance with the review criteria for projects requesting a Demolition allotment pursuant to Land Use Code Section 26.470.090.C. A project must meet the *Residential Demolition and Redevelopment Standards* in effect at the time of building permit submission is deemed complete.

Review Authority: The Community Development and Engineering Departments, or designee, is authorized to enforce the rules and regulations contained in the *Residential Demolition and Redevelopment Standards* in order to carry out the intent of the standards and requirements of Municipal Code. Where no specific or applicable rules, regulations or standards appear to be set forth in the *Residential Demolition and Redevelopment Standards*, or other rules, regulations, standards, guidelines, and recommended practices, as published by professional associates, technical organizations, model code groups, and similar entities, may be used by the City for guidance.

Exemptions: The Community Development Director may exempt the following development activities from a portion or all of the requirements below:

1. The property is a Historically Designated landmark and compliance with some, or all, or the requirement of these standard is not practical. If this is the case, at the discretion of the Community Development Director, with a recommendation from the Historic Preservation Officer, some or all requirements may be exempted from a project. The applicant must provide a report and summary of what requirements can not be met, identify the specific constraint, and alternative design elements that are proposed to offset the lack of compliance. Alternatives could include improved thermal envelopes, energy efficient equipment, additional renewable energy offsets, etc.
2. Projects where 100% of the units are currently, or proposed to be, deed restricted with the Aspen Pitkin County Housing Authority.
3. When a project proposes to demolish and revegetate a site, with no new development proposed, the demolition of the structure is subject to waste diversion requirements, but any requirements applicable to the new structure may be waived. An approved demolition and revegetation permit is required. Upon redevelopment of the site with a new structure, the new structure will be subject to the requirements of Section 26.580 and Section 26.470.090.C, as amended and subject to vesting requirements of the code. All timing and code requirements will be memorialized as a condition of approval.

Requirements: Projects that trigger Demolition and are seeking a Demolition Allotment pursuant to Section 26.470.090.C must satisfy the following required Performance Elements prior to building permit issuance and will be included as a condition of approval:

1. **Waste Diversion:** All projects are required to source separate non-hazardous waste materials and divert a minimum of 35%, by weight, from the landfill. Materials may be salvaged or recycled to meet the waste diversion requirements. This will be included as a condition of approval to be met prior to building permit issuance and prior to final inspection, and shall be documented in the Construction Management Plan.
 - A. Recyclable/diverted materials may include:
 - i. Asphalt,
 - ii. Clean concrete,
 - iii. Metals,
 - iv. Wood,

- v. Single stream recyclables,
- vi. Gypsum board,
- vii. Carpet.

*A final determination of actual recyclable materials will be based on the local recycling facility capability.

- B. A construction waste management plan may include salvage for resale, salvage and reuse (on or off site), recycling, and disposal.
 - C. The project must track all waste materials by type through the WasteTracking (formerly Green Halo) System. All waste must be quantified by weight or volume, but the same units of measure must be used through the project.
 - D. All waste generated by the project that is to be included as diverted waste to meet the minimum diversion requirements shall be recycled at the Pitkin County Landfill, or another approved recycling facility as approved by the Construction Mitigation Officer.
 - E. A Waste Management Plan shall be included as part of the Construction Management Plan to be approved prior to building permit issuance.
 - i. Waste reduction calculations, including anticipated rates for salvage, recycling, and disposal as a percentage of total waste generated by the work, using the WasteTracking system. The waste management plan must indicate anticipated types and quantities of demolition and construction waste generated by the work, including estimated quantities and assumptions.
 - ii. Plan implementation: The project must maintain logs of each load including:
 - 1. Type of Load
 - 2. Load weight
 - 3. Name of hauling service
 - 4. Landfill or recycling center
 - 5. Date accepted by the recycling center or landfill
 - iii. A final waste diversion report shall be submitted as part of the Final Inspections for the project prior to issuance of a Certificate of Occupancy.
 - 1. The final waste diversion report shall include recycling and processing facility records that indicate acceptance of recyclable waste by recycling and processing facilities, and other records including sales and donations as applicable and required to substantiate conformance with waste diversion requirements.
2. **Embodied Carbon:** All projects must provide an Embodied Carbon Report to the building department prior to building permit issuance for all concrete, cement, and metal used for the project. This will be included as a condition of approval. Any of the following approved life-cycle assessment (LCA) tools may be used:

- [EC3](#)

- [One Click LCA](#)

3. **Energy Reporting:** All projects that trigger Demolition are subject to Section 8.60 – Building IQ of the Aspen Municipal Code and shall follow the requirements for a “Non-City Covered Property.” The Single-Family and Duplex structures subject to these Redevelopment Requirements shall comply with the requirements of the Multi-Family Residential structures over 15,000 square feet. This will be included as a condition of approval. This requirement shall supersede the applicability statements in Section 8.60.030 and the exceptions listed in Section 8.60.020.M.
4. **Building Energy Performance:** Projects are subject to the requirements of the Supplemental Building Code requirements attached as Appendix A to the *Residential Demolition and Redevelopment Standards*.
5. **Engineering:** In addition to compliance with all applicable requirements of the URMP, CMP, and the Engineering Design Standards, the project shall meet the following requirement:
 - A. Runoff from 50% of the site impervious area shall be treated in above grade sustainable BMPs such as bioretention areas, pervious pavers, tree canopy, grass buffer or other approved above grade BMPs as outlined in the URMP. 50% of the site’s impervious area is permitted to be treated in subsurface BMPs.

Alternative Compliance: A project may request variations from these standards if the Planning and Zoning Commission makes a determination the project meets the review criteria for Special Review (Section 26.430.040.J).

Amendments: Any future amendments to the *Residential Demolition and Redevelopment Standards* shall be made by City Council via Resolution.

Violations and Penalties: Any person violating any provision of these standards may be punished by a fine, imprisonment or both a fine and imprisonment, as set forth in Section 1.04.080 of the City of Aspen Municipal Code. Each day any violation of this Chapter shall continue shall constitute a separate offense.

RESIDENTIAL DEMOLITION ALLOTMENT MIXED FUEL LOW CARBON APPENDIX

Residential demolition allotment new one- and two-family dwellings shall comply with the 2015 Building Codes as adopted by the City of Aspen with the following amendments. These amendments shall not apply to additions or renovations. This document will be replaced by the 2021 Building Codes when and as adopted by the City of Aspen.

INTERNATIONAL ENERGY CONSERVATION CODE

SECTION C408 SYSTEM COMMISSIONING

C408.1 General. This section covers the commissioning of the building mechanical systems such as heating, cooling, ventilation, and snowmelt ~~in Section C403 and electrical power and lighting systems in Section C405.~~

C408.2 Mechanical systems and service water-heating systems commissioning and completion requirements.

Prior to the final mechanical and plumbing inspections, the *registered design professional* or *approved agency* shall provide evidence of mechanical systems *commissioning* and completion in accordance with the provisions of this section.

Construction document notes shall clearly indicate provisions for *commissioning* and completion requirements in accordance with this section and are permitted to refer to specifications for further requirements. Copies of all documentation shall be given to the owner or owner's authorized agent and made available to the *code official* upon request in accordance with Sections C408.2.4 and C408.2.5.

Exceptions: The following systems are exempt:

1. Mechanical systems and service water heater systems in buildings where the total mechanical equipment capacity is less than 480,000 Btu/h (140.7 kW) cooling capacity and 600,000 Btu/h (175.8 kW) combined service water heating and space heating capacity.
2. Systems included in Section C403.3 that serve individual *dwelling units* and *sleeping units*.

R202 Definitions

APPLIANCE. A device or apparatus that is manufactured and designed to utilize energy and for which this code provides specific requirements.

COMBUSTION EQUIPMENT. Any *equipment* or *appliance* used for space heating, service water heating, cooking, clothes drying, or lighting that uses fuel gas or fuel oil.

ELECTRIC VEHICLE (EV). An automotive-type vehicle for on-road use, such as passenger automobiles, buses, trucks, vans, neighborhood electric vehicles, electric motorcycles, and the like, primarily powered by an electric motor that draws current from a rechargeable storage battery, a fuel cell, a photovoltaic array, or another source of electric current. Plug-in hybrid electric vehicles are electric vehicles having a second source of motive power. Off-road, self propelled electric mobile equipment, such as industrial trucks, hoists, lifts, transports, golf carts, airline ground support equipment, tractors, boats and the like, are not considered electric vehicles.

ELECTRIC VEHICLE SUPPLY EQUIPMENT (EVSE). The conductors, including the ungrounded, grounded, and equipment grounding conductors and the electric vehicle connectors, attachment plugs, and all other fittings, devices, power outlets, or apparatus installed specifically for the purpose of transferring energy between the premises wiring and the electric vehicle.

EQUIPMENT. Piping, ducts, vents, control devices and other components of systems other than appliances that are permanently installed and integrated to provide control of environmental conditions for buildings. This definition shall also include other systems specifically regulated in this code.

EV-READY SPACE. A parking space that is provided with an electrical circuit capable of supporting an installed EVSE.

SOLAR-READY ZONE. A section or sections of the roof or building overhang designated and reserved for the future installation of a solar photovoltaic or solar thermal system.

R401.2 Compliance. New projects shall comply with R401 through R404.

**TABLE R402.1.2
INSULATION AND FENESTRATION REQUIREMENTS BY COMPONENT**

CLIMATE ZONE	FENESTRATION U-FACTOR ^{b,1}	SKYLIGHT ^b U-FACTOR	GLAZED FENESTRATION SHGC ^{b,6}	CEILING R-VALUE	WOOD FRAME WALL R-VALUE ⁹	MASS WALL R-VALUE ^b	FLOOR R-VALUE	BASEMENT WALL R-VALUE ^{c,9}	SLAB ^d R-VALUE & DEPTH	CRAWL SPACE ^{c,9} WALL R-VALUE
7	<u>0.28</u> 0.22	0.55 0.44	NR	49 <u>60</u>	<u>20 + 5ei</u> or <u>13 + 10ei</u> <u>34 + 12ci</u> or <u>20 + 20ci</u> or <u>13 + 25ci</u> or <u>0 + 35ci</u>	<u>19/21</u> <u>25ci</u>	38	<u>15ei</u> or <u>19</u> or <u>13 + 5ei</u> <u>20ci</u> or <u>5 +</u> <u>15ci</u> or <u>13</u> <u>+ 10ci</u>	10ci, 4 ft	<u>15ei</u> or <u>19</u> or <u>13 +</u> <u>5ei</u> <u>20ci</u> or <u>5</u> <u>+ 15ci</u> or <u>13 + 10ci</u>

- d. R-5 shall be added to the required slab edge R-values for heated slabs. Insulation depth shall be the depth of the footing or 2 feet, whichever is less in Climate Zones 1 through 3 for heated slabs. R-10 insulation shall be provided under the full slab area of a heated slab in addition to the required slab edge insulation R-value for slabs, as indicated in the table. Slab edge insulation shall be installed to separate conditioned from unconditioned spaces including adjacent garages, entries, and porches. The slab-edge insulation for heated slabs shall not be required to extend below the slab.

**TABLE R402.1.4
EQUIVALENT U-FACTORS^a**

CLIMATE ZONE	FENESTRATION U-FACTOR ^f	SKYLIGHT U-FACTOR	CEILING U-FACTOR	WOOD FRAME WALL U-FACTOR	MASS WALL U-FACTOR ^b	FLOOR U-FACTOR	BASEMENT WALL U-FACTOR	CRAWL SPACE WALL U-FACTOR
7	<u>0.28</u> 0.22	0.55 0.44	0.026 0.018 ^d	0.045 0.026	0.057 0.036	0.028	0.050 0.044	0.055 0.044

- d. Ceilings with attics may use an equivalent U-factor of 0.024.

R402.1.5 “Total UA Alternative”

- a. If the total building thermal envelope UA (sum of U-factor times assembly area) is less than or equal to the total UA resulting from using the U-factors in Table R402.1.4, as amended, (multiplied by the same assembly area as in the proposed building), the building shall be considered in compliance with amended Table R402.1.2. The UA calculation shall be done using a method consistent with the ASHRAE Handbook of Fundamentals and shall include the thermal bridging effects of framing materials. The SHGC requirements shall be met in addition to UA compliance.
- b. If using REScheck software to show compliance with this alternative path for the 2015 edition of the code, the proposed design must be a minimum of ~~2%~~ 30% more efficient than the standard reference design in order to accommodate the amended prescriptive Fenestration U-factor.

R402.3.6 Maximum area. The vertical fenestration area, not including opaque doors and opaque spandrel panels, shall be not greater than 20 percent of the gross above grade wall area. The skylight area shall be not greater than 3 percent of the gross roof area.

R402.4.1.2 Testing. The building or dwelling unit shall be tested for air leakage. The maximum air leakage rate for any building or dwelling unit shall not exceed 1.5 air changes per hour. Testing shall be conducted in accordance with ANSI/RESNET/ICC 380, ASTM E779 or ASTM E1827 and reported at a pressure of 0.2 inch w.g. (50 Pascals). Where required by the code official, testing shall be conducted by an approved third party. A written report of the results of the test shall be signed by the party conducting the test and provided to the code official. Testing shall be performed at any time after creation of all penetrations of the building thermal envelope have been sealed.

R403.5 Service hot water systems. Energy conservation measures for service hot water systems shall be in accordance with Sections R403.5.1 and R403.5.4 through R403.5.5.

R403.5.5 Combustion service hot water heating. Combustion equipment may not be used for service hot water heating unless the following conditions are met.

1. The service hot water system shall comply with the provisions of C408, and

2. Each piece of equipment shall be provided with the following:
 - a. A condensate drain that is no more than 2 inches higher than the base of the installed water heater and allows natural draining without pump assistance shall be installed within 3 feet of the water heater.
 - b. A dedicated, appropriately phased branch circuit(s) that shall have a minimum amperage requirement for comparable heat pump(s) and, if specified in the design, supplemental electric resistance heat service water heating capacity and recovery, terminating within 3 feet of the water heater with no obstructions. Both ends of the branch circuit(s) shall be labeled with the words "For Future Electric Service Water Heating" and be electrically isolated.
 - c. The equipment shall be installed in a space sized to fit future equivalent electric heat pump(s) and, if specified in the design, supplemental electric resistance heat water heating equipment or a minimum 3 feet by 3 feet by 7 feet high (per heat pump), whichever is larger.
 - d. Water heaters shall be installed in a space with a minimum volume of 700 cubic feet or with the equivalent of one 16-inch by 24-inch grill to a heated space and one 8-inch duct of no more than 10 feet in length for cool exhaust air.

R403.6.2 Heat or energy recovery ventilation. *Dwelling units* shall be provided with a heat recovery (HRV) or energy recovery (ERV) ventilation system. The system shall be balanced to within 10% of the average supply and exhaust rates. Minimum HRV and ERV requirements, measured at the lowest tested net supply airflow, shall be greater than or equal to 65 percent Sensible Recovery Efficiency (SRE), a minimum 1.2 cubic feet per minute per watt determined at a static pressure of not less than 0.2 inch w.c. (49.85 Pa), and shall not use recirculation as a defrost strategy.

R403.9 Snow and ice melt systems Snow- and ice- melting systems shall comply with R403.9.1 through R403.9.3.

R403.9.1 Efficiency. Combustion equipment may not be used for snow and ice melt systems unless the following conditions are met.

1. The snowmelt system shall comply with the provisions of C408, and
2. Each piece of equipment shall be provided with the following:
 - a. A condensate drain located within 3 feet, and
 - b. A dedicated, appropriately phased branch circuit(s) that shall have a minimum amperage requirement for a comparable electric hydronic snowmelt system sized in accordance with NEC 440.4(B) and 440.35, and terminating within 3 feet of the heating equipment with no obstructions. Both ends of the branch circuit shall be labeled "For Future Electric Snowmelting" and be electrically isolated.

R403.9.2 Controls. Systems shall include automatic controls capable of shutting configured to shut off the system when the pavement temperature of the snowmelted surface is greater than 50/40°F (10°C) and precipitation is not falling, and an automatic or manual control that will allow shutoff when the outdoor temperature is greater than 40°F (4.8°C).

R403.9.3 Snow Melt Slab Insulation. R-10 insulation shall be installed under the snow melted surface.

R403.10 Pools and permanent spa energy consumption (Mandatory). The energy consumption of pools and permanent spas shall be in accordance with Sections R403.10.1 through R403.10.3.

R403.10.1 Heaters. The electric power to heaters shall be controlled by an on-off switch that is an integral part of the heater mounted on the exterior of the heater in a location with *ready access*, or external to and within 3 feet (914 mm) of the heater. Operation of such switch shall not change the setting of the heater thermostat. Such switches shall be in addition to a circuit breaker for the power to the heater. ~~Gas fired heaters shall not be equipped with continuously burning ignition pilots.~~ Combustion equipment may not be used for pool or spa heating unless the following conditions are met:

1. Heaters shall not be equipped with continuously burning ignition pilots,
2. Each piece of combustion equipment shall be provided with the following:
 - a. A condensate drain located within 3 feet, and
 - b. A dedicated, appropriately phased branch circuit that shall have a minimum amperage requirement for a comparable electric heater, sized in accordance with NEC 440.4(B) and

440.35, terminating within 3 feet of the heating equipment with no obstructions. Both ends of the branch circuit shall be labeled “For Future Electric Pool Heating” and be electrically isolated.

R403.13 Heating outside a building. Systems installed to provide heat outside a building shall be electric radiant systems. Such heating systems shall be controlled by an occupancy sensing device or a timer switch, so that the system is automatically de-energized when occupants are not present.

R403.14 Combustion space heating. Combustion equipment may not be used for primary space heating unless the following conditions are met:

1. The space heating system(s) shall comply with the provisions of C408, and
2. Each piece of equipment shall be provided with the following:
 - a. A condensate drain located within 3 feet, and
 - b. A dedicated, appropriately phased branch circuit(s) that shall have a minimum amperage requirement for a comparable electric heat pump and, if specified in the design, electric resistance supplemental heat sized in accordance with NEC 440.4(B) and 440.35, and terminating within 3 feet of the heating equipment with no obstructions. Both ends of the branch circuit(s) shall be labeled “For Future Electric Space Heating” and be electrically isolated.

Exception:

1. Where an electrical circuit in compliance with NEC 440.4(B) and 440.35 exists for space cooling equipment.

R404.1 Lighting equipment. Not less than 75 percent of the lamps in permanently installed lighting fixtures shall be high-efficacy lamps or not less than 75 percent of the permanently installed lighting fixtures shall contain only high-efficacy lamps. All permanently installed lighting fixtures, excluding kitchen appliance lighting fixtures, shall contain only high-efficacy lighting sources.

R404.1.1 Lighting equipment (Mandatory). Fuel gas lighting systems shall not have continuously burning pilot lights be permitted.

R404.2 Renewable energy infrastructure. Buildings shall comply with Sections R404.4.1 through R404.4.7.

Exceptions:

1. A building with a permanently installed on-site renewable energy system.
2. A building with less than 600 square feet (55 m²) of roof area oriented between 110 degrees and 270 degrees of true north.
3. A building where all areas of the roof that would otherwise meet the requirements for a solar-ready zone are in full or partial shade for more than 70 percent of daylight hours annually.

R404.2.1 Solar-ready zone area. The total area of the solar-ready zone shall not be less than 300 square feet and shall be composed of areas not less than 5.5 feet in width and not less than 80 square feet exclusive of access or set back areas as required by the International Fire Code.

R404.2.2 Obstructions. Solar-ready zones shall be free from obstructions, including but not limited to vents, chimneys, and roof-mounted equipment.

R404.2.3 Shading. The solar-ready zone shall be set back from any existing or new permanently affixed object on the building or site that is located south, east or west of the solar zone a distance not less than two times the object’s height above the nearest point on the roof surface. Such objects include, but are not limited to, taller portions of the building itself, parapets, chimneys, antennas, signage, rooftop equipment, trees and roof plantings.

R404.2.4 Roof load documentation. The structural design loads for roof dead load and roof live load shall be clearly indicated on the construction documents.

R404.2.5 Electrical service reserved space. The main electrical service panel shall have a reserved space to allow installation of a dual pole circuit breaker for future solar electric installation and shall be labeled “For Future Solar Electric.” The reserved space shall be positioned at the opposite (load) end from the input feeder location or main circuit location.

R404.2.6 Electrical interconnection. An electrical junction box shall be installed within 24 inches of the main electrical service panel and shall be connected to a capped roof penetration sleeve or a location in the attic that is within 3 feet (914 mm) of the *solar ready zone* by one of the following:

1. Installed conduit with pull string sized to accommodate future renewable energy infrastructure requirements.
2. Minimum #10 Metal copper 3-wire

Where the interconnection terminates in the attic, location shall be no less than 12” (35 mm) above ceiling insulation. Both ends of the interconnection shall be labeled “For Future Solar Electric”.

R404.2.7 Construction documentation certificate. A permanent certificate, indicating the solar-ready zone and other requirements of this section, shall be posted near the electrical distribution panel, water heater or other conspicuous location by the builder or registered design professional.

R404.3 Electric vehicle charging infrastructure. Buildings with a dedicated attached or detached garage or with on-site parking spaces shall be provided with one EV-ready space dwelling unit. The branch circuit shall meet the following requirements:

1. A minimum capacity of 9.6 kVA
2. Terminates at a junction box or receptacle located within 3 feet (914 mm) of the parking space and labelled “For electric vehicle charging”, and
3. The electrical panel directory shall designate the branch circuit as “For electric vehicle charging”.

R404.4 Energy storage infrastructure. Each building site shall have a dedicated location for the installation of future on-site energy storage in accordance with the following:

1. Dedicated floor area not less than 2 feet in one dimension and 4 feet in another dimension and located in accordance with Section 1207 of the 2021 International Fire Code and Section 110.26 of the NFPA 70.
2. The main electrical service panel shall have a reserved space to allow installation of a two-pole circuit breaker for future electrical energy storage system installation. This space shall be labeled “For Future Electric Storage.” The reserved spaces shall be positioned at the end of the panel that is opposite from the panel supply conductor connection.
3. Installed conduit with pull string sized to accommodate future energy storage electrical requirements.

Exception: Where an onsite electrical energy system storage system is installed.

R404.5 Additional electric ready infrastructure. *Combustion equipment* shall be installed in accordance with this section.

R404.5.1 Combustion clothes drying. A dedicated 240-volt branch circuit with a minimum capacity of 30 amps shall terminate within 6 feet (1829 mm) of natural gas clothes dryers and shall be accessible with no obstructions. Both ends of the branch circuit shall be labeled with the words “For Future Electric Clothes Drying” and be electrically isolated.

R404.5.2 Combustion cooking. A dedicated 240-Volt, 40A branch circuit shall terminate within 6 feet (1829 mm) of natural gas cooking equipment and appliances and be accessible with no obstructions. Both ends of the branch circuit shall be labeled with the words “For Future Electric Range” and be electrically isolated.

R404.5.3 Other combustion equipment. *Combustion equipment* and end-uses not covered by Sections R404.6.2-5 shall be provided with a branch circuit sized for an electric *appliance, equipment* or end use with an equivalent capacity that terminates within 6 feet (1829 mm) of the *appliance or equipment*. Both ends of the branch circuit shall

be labeled with the words “For Future Electrification” and be electrically isolated.

INTERNATIONAL FUEL GAS CODE

Section 301.2.1 Appliance Controls. Fuel burning appliances, such as fireplaces and firepits, used for purposes other than space conditioning, water heating, snow melting, and cooking shall be controlled by an occupancy sensing device or a timer switch, so that the appliance shuts off when occupants are not present or within an hour of being turned on.

Exception: A manual override switch may be provided that, when initiated, shall permit the controlled appliance to remain on for not more than 2 hours.

INTERNATIONAL RESIDENTIAL CODE

Section R313 Automatic fire sprinkler systems. (reference Chapter 9 of the Fire Code with the exception of R313.2 as amended herein:)

R313.2 One- and two-family dwellings automatic fire systems. An automatic residential fire sprinkler system shall be installed in one- and two-family dwellings.

R313.2.1 Design and installation. Automatic residential fire sprinkler systems shall be designed and installed in accordance with ~~Section P2904~~ of NFPA 13D.

Chapter 8.49

INTERNATIONAL WILDLAND-URBAN INTERFACE CODE

Sec. 8.49.010. Adoption of the 2021 Edition of the International Wildland-Urban Interface Code.

Pursuant to the powers and authority conferred by the laws of the State and the Charter of the City, there is hereby adopted and incorporated herein by reference as if fully set forth those regulations contained in the International Wildland-Urban Interface Code, 2021 Edition, and all errata as published by the International Code Council, 4051 West Flossmoor Road, Country Club Hills, Illinois, 60478-5795, except as otherwise provided by amendment or deletion as contained in Section 8.49.020 of this Chapter. At least one (1) copy of the International Wildland-Urban Interface Code shall be available for inspection during regular business hours.

Sec. 8.49.020. Amendments.

The International Wildland-Urban Interface Code, 2021 Edition, as adopted by the City at Section 8.49.010, is hereby amended to provide and read as follows:

(a) Section [A]101.1 Title. These regulations shall be known as the International Wildland-Urban Interface Code of City of Aspen hereinafter referred to as “this code.”

(Delete in entirety with the exception of Section 505 as amended below and associated references.)

SECTION 505 CLASS 2 IGNITION-RESISTANT CONSTRUCTION

503.2 Ignition-resistant building material. Ignition-resistant building materials shall comply with any one of the following:

1. Material shall be tested on all sides with the extended ASTM E84 (UL 723) test or ASTM E2768, except panel products shall be permitted to test only the front and back faces. Panel products shall be tested with a ripped or cut longitudinal gap of 1/8 inch (3.2 mm). Materials that, when tested in accordance with the test procedures set forth in ASTM E84 or UL 723 for a test period of 30 minutes, or with ASTM E2768, comply with the following:
 - 1.1. Flame spread. Material shall exhibit a *flame spread index* not exceeding 25 and shall not show evidence of progressive combustion following the extended 30-minute test.
 - 1.2. Flame front. Material shall exhibit a flame front that does not progress more than 10½ feet (3200 mm) beyond the centerline of the burner at any time during the extended 30-minute test.

1.3. Weathering. Ignition-resistant building materials shall maintain their performance in accordance with this section under conditions of use. Materials shall meet the performance requirements for weathering (including exposure to temperature, moisture and ultraviolet radiation) contained in the following standards, as applicable to the materials and the conditions of use:

1.3.1. Method A “Test Method for Accelerated Weathering of Fire-Retardant-Treated Wood for Fire Testing” in ASTM D2898, for fire-retardant treated wood, wood-plastic composite and plastic lumber materials.

1.3.2. ASTM D7032 for wood-plastic composite materials.

1.3.3. ASTM D6662 for plastic lumber materials.

1.4 Identification. Materials shall bear identification showing the fire test results.

Exception: Materials composed of a combustible core and a noncombustible exterior covering made from either aluminum at a minimum 0.019 inch (0.48 mm) thickness or corrosion-resistant steel at a minimum 0.0149 inch (0.38 mm) thickness shall not be required to be tested with a ripped or cut longitudinal gap.

2. Noncombustible material. Material that complies with the requirements for *noncombustible* materials in Section 202.
3. Fire-retardant-treated wood. Fire-retardant-treated wood identified for exterior use and meeting the requirements of Section 2303.2 of the *International Building Code*.
4. Fire-retardant-treated wood *roof coverings*. *Roof assemblies* containing fire-retardant-treated wood shingles and shakes that comply with the requirements of Section 1505.6 of the *International Building Code* and classified as Class A *roof assemblies* as required in Section 1505.2 of the *International Building Code*.

505.1 General. Buildings shall be of Class 2 ignition-resistant construction ~~shall be~~ in accordance with Sections 505.2 through 505.11.

505.2 Roof assembly. Roofs shall have a *roof assembly* that complies with not less than a Class A rating when tested in accordance with ASTM E108 or UL 790, or an *approved noncombustible roof covering*. For *roof assemblies* where the profile allows a space between the roof covering and roof deck, the space at the eave ends shall be firestopped to preclude entry of flames or embers, or have one layer of cap sheet complying with ASTM D3909 installed over the combustible roof deck.

505.2.1 Roof valleys. Where provided, valley flashings shall be not less than 0.019-inch (0.48 mm) (No. 26 galvanized sheet gage) corrosion-resistant metal installed over a minimum 36-inch-wide (914 mm) underlayment consisting of one layer of 72-pound (32.4 kg) mineral-surfaced, nonperforated cap sheet complying with ASTM D3909 running the full length of the valley.

505.3 Protection of eaves. Combustible eaves, fascias and soffits shall be enclosed with solid materials with a minimum thickness of 3/4 inch (19 mm). Exposed rafter tails shall not be permitted unless constructed of heavy timber materials.

505.4 Gutters and downspouts. Gutters and downspouts shall be constructed of noncombustible material. Gutters shall be provided with an approved means to prevent the accumulation of leaves and debris in the gutter.

505.5 Exterior walls. Exterior walls of buildings or structures shall be constructed with one of the following methods:

1. Materials approved for not less than 1-hour fire-resistance-rated construction on the exterior side.
2. Approved noncombustible materials.
3. Heavy timber or log wall construction.
4. Fire-retardant-treated wood on the exterior side. The fire-retardant-treated wood shall be labeled for exterior use and meet the requirements of Section 2303.2 of the *International Building Code*.
5. Ignition-resistant materials on the exterior side.

Such material shall extend from the top of the foundation to the underside of the roof sheathing.

505.6 Underfloor enclosure. Buildings or structures shall have underfloor areas enclosed to the ground, with exterior walls in accordance with Section 505.5.

Exception: Complete enclosure shall not be required where the underside of exposed floors and exposed structural

columns, beams and supporting walls are protected as required for exterior 1-hour fire-resistance-rated construction or heavy timber construction or fire-retardant-treated wood. The fire-retardant-treated wood shall be labeled for exterior use and meet the requirements of Section 2303.2 of the International Building Code.

505.7 Appendages and projections. Unenclosed accessory structures attached to buildings with habitable spaces and projections, such as decks, shall be not less than 1-hour fire-resistance-rated construction, heavy timber construction or constructed of one of the following:

1. Approved noncombustible materials.
2. Fire-retardant-treated wood identified for exterior use and meeting the requirements of Section 2303.2 of the International Building Code.
3. Ignition-resistant building materials in accordance with Section 503.2.

Exception: Coated materials shall not be used as the walking surface of decks.

~~**505.7.1 Underfloor areas.** Where the attached structure is located and constructed so that the structure or any portion thereof projects over a descending slope surface greater than 10 percent, the area below the structure shall have underfloor areas enclosed to within 6 inches (152 mm) of the ground, with exterior wall construction in accordance with Section 505.5.~~

505.8 Exterior glazing. Exterior windows, window walls and glazed doors, windows within exterior doors, and skylights shall be tempered glass, multilayered glazed panels, glass block or have a fire protection rating of not less than 20 minutes.

505.9 Exterior doors. Exterior doors shall be approved non-combustible construction, solid core wood not less than 1 3/4 inches thick (45 mm), or have a fire protection rating of not less than 20 minutes. Windows within doors and glazed doors shall be in accordance with Section 505.8.

Exception: Vehicle access doors.

505.10 Vents. Attic ventilation openings, foundation or underfloor vents or other ventilation openings in vertical exterior walls and vents through roofs shall not exceed 144 square inches (0.0929 m²) each. Such vents shall be covered with noncombustible corrosion-resistant mesh with openings not to exceed 1/4 inch (6.4 mm) or shall be designed and approved to prevent flame or ember penetration into the structure.

505.10.1 Vent locations. Attic ventilation openings shall not be located in soffits, in eave overhangs, between rafters at eaves, or in other overhang areas. Gable end and dormer vents shall be located not less than 10 feet (3048 mm) from lot lines. Underfloor ventilation openings shall be located as close to

505.11 Detached accessory structures. Detached accessory structures located less than 50 feet (15 240 mm) from a building containing habitable space shall have exterior walls constructed with materials approved for not less than 1-hour fire-resistance-rated construction, heavy timber, log wall construction, or constructed with approved noncombustible materials or fire-retardant-treated wood on the exterior side. The fire-retardant-treated wood shall be labeled for exterior use and meet the requirements of Section 2303.2 of the International Building Code.

505.11.1 Underfloor areas. Where the detached accessory structure is located and constructed so that the structure or any portion thereof projects over a descending slope surface greater than 10 percent, the area below the structure shall have underfloor areas enclosed to within 6 inches (152 mm) of the ground, with exterior wall construction in accordance with Section 505.5 or underfloor protection in accordance with Section 505.6.

Exception: The enclosure shall not be required where the underside of exposed floors and exposed structural columns, beams and supporting walls are protected as required for exterior 1-hour fire-resistance-rated construction or heavy-timber construction or fire-retardant-treated wood on the exterior side. The fire-retardant-treated wood shall be labeled for exterior use and meet the requirements of Section 2303.2 of the International Building Code.

Chapter 26.470
GROWTH MANAGEMENT QUOTA SYSTEM (GMQS)

Sections:

Sec. 26.470.010	Purpose.
Sec. 26.470.020	Terminology.
Sec. 26.470.030	Applicability and Prohibitions.
Sec. 26.470.040	Allotment Procedures.
Sec. 26.470.050	Calculations.
Sec. 26.470.060	Procedures for Review.
Sec. 26.470.070	Exempt Development.
Sec. 26.470.080	General Review Standards.
Sec. 26.470.090	Administrative applications.
Sec. 26.470.100	Planning and Zoning Commission applications.
Sec. 26.470.110	City Council applications.
Sec. 26.470.120	Yearly Growth Management accounting procedures.
Sec. 26.470.130	Application contents.
Sec. 26.470.140	Reconstruction limitations.
Sec. 26.470.150	Amendment of a growth management development order.
Sec. 26.470.160	Appeals.

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 **new growth and development** occurs in an orderly and efficient manner in the City; (c) ensure sufficient public facilities are present to accommodate **new growth and development**; (d) ensure that **new growth and development** is designed and constructed to maintain the character and ambiance of the City; (e) ensure the presence of an adequate supply of affordable housing, businesses and events that serve the local, permanent community and the area's tourist base; (f) ensure that growth **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.

26.470.020 Terminology.

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.

Development categories. All development falls into one of four 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. Sub-Categories 1.A – 1.B are all considered part of the Residential Uses category, and therefore conversion between these two sub-categories does not require change in use review.

TABLE 1, Development Categories

<i>Category</i>	<i>Description</i>	<i>Allocation units</i>
<i>1. Residential Uses</i>		
<i>A. Residential – Free-Market</i>	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>A.i Single-family and Duplex Demolition</i>	<u>Dwelling units that are demolished and redeveloped pursuant to 26.580 and subject to 26.470.090. These allotments are a subset of the total Residential, Free-Market allotment total. (See definition of Demolition, Section 26.104.100)</u>	<u>Dwelling units</u>
<i>B. Residential – Affordable Housing</i>	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
<i>2. Commercial</i>	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 square feet
<i>3. Lodging</i>	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. (Each lodging bedroom shall be considered to be two pillows.)
<i>4. Essential Public Facilities</i>	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

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 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.

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.

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.

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 26.470.140, 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 Section 26.412, *Commercial Design Standards*, Conceptual Review by the Historic Preservation Commission, pursuant to Section 26.415, *Historic Preservation*, Project Review or Detailed Review, pursuant to Section 26.445, *Planned Development*, and Subdivision, pursuant to Section 26.480, *Subdivision*, may be reviewed concurrently with review for growth management, pursuant to Paragraph 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, affordable

housing units and commercial space, and there are no remaining allotments for 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 10,000 sq. ft. of commercial allotments when only 5,000 sq. ft. 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 Subsection 26.470.090.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.

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.

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.

G. 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.

H. No reduction in mitigation requirements. Notwithstanding Section 26.470.090(4), *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, shall be exempt from this provision, provided, however, that any reduction is reviewed and approved by City Council.

I. 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 free-market residential development. In this case, four (4) affordable housing units are required.

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 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 percent (2%) 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 development shall be limited to not exceed a two-percent annual growth rate. In order to address continued community growth concerns, a growth limit of one-half percent (0.5%) 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

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

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.

Commercial Development Within the City (square feet)¹	
Commercial Condos	483,549
Total commercial:	1,664,938
2% Annual growth rate for commercial development	33,300

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

Lodging Development Within the City (Pillows)

³ Single ownership duplex and triplex units. 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 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.

Total lodging pillows:	7,500
1.5% Annual growth rate	112.5 pillows

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:

Available development allotments	=	annual allotment	+	Carry-forward allotment from prior year
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The following annual allotments are hereby established:

Table 2, Development Allotments

<i>Development Type</i>	<i>Annual Allotment</i>
Residential — <u>Total Free-Market</u>	19 units <u>divided as follows:</u>
<u>New Residential (Subdivision and multi-family units)</u>	<u>13 units</u>
<u>Single-Family and Duplex Demolition and Redevelopment</u>	<u>6 units</u>
Residential — Affordable Housing	No annual limit
Commercial	33,000 net leasable square feet
Lodging	112 pillows
Essential public facility	No annual limit

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's 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 26.304.070, 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 Subsection 26.470.030.E.

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 analysis and credit for employee generation of the existing project, prior to redevelopment, and an~~ employee generation analysis of the proposed development. ~~The employee mitigation requirement shall be based upon the incremental employee generation difference between the existing development and the proposed development.~~ Unless otherwise exempted 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 – although in some circumstances, redeveloped projects with evidence of previous mitigation will be considered in the employee generation analysis.~~ 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.

Commented [GL1]: Needs to be revisited once mitigation study is finalized.

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

<i>Zone District</i>	<i>Employees Generated per 1,000 Square Feet of Net Leasable Space</i>
Commercial Core (CC)	4.7
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	
Mixed-Use (MU)	3.6
Service Commercial Industrial (S/C/I)	3.9
Public ¹	5.1

<i>Zone District</i>	<i>Employees Generated per 1,000 Square Feet of Net Leasable Space</i>
Lodge Preservation (LP) lodge units	.3 per lodging bedroom
Lodge (L), Commercial Lodge (CL), Ski Base (SKI) and other zone district lodge units	.6 per lodging bedroom
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 percent (25%) 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 26.470.090 and 26.470.100.

C. Employee generation review. All essential public facilities shall be reviewed by the Planning and Zoning Commission to determine employee generation, pursuant to Section 26.470.110D. 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. Employee generation review is not available to residential uses that are not part of a commercial or lodge development. 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.

Commented [GL2]: JG COMMENT: Depending on what's back from RRC, would you add a table of the FTE generation rates, like there is for non-residential uses? That would potentially simplify the later sections.

Commented [GL3R2]: TO ASK JG: What do you mean by this? What type of table? Aren't the generation rates all the same but with different mitigation requirements?

Commented [GL4]: JG COMMENT: Question for JRT: Are you allowed to add this? Will it open the city to a legal challenge since it's allowed for all other use types without limitation?

Commented [GL5R4]: TO DO: Confirm with True

- 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.

~~Whenever employee housing or fee in lieu is required to mitigate for employees generated by a development, there shall be an analysis and credit for employee generation of the existing project, prior to redevelopment, and an employee generation analysis of the proposed development. The employee mitigation requirement shall be based upon the incremental employee generation difference between the existing development and the proposed development. Unless otherwise exempted by this Chapter, the employee mitigation requirement shall be based upon the total employee generation of the proposed development. Except for the conversion between residential and lodge uses outlined in Section 26.470.140, Reconstruction limitations, 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.~~

D. Employees housed. Whenever a project provides residential units on or off site the schedule in Table 4 shall be used to determine the number of employees housed by such units:

Table 4, FTEs Housed

<i>Unit Type</i>	<i>Employees Housed</i>
Studio	1.25
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 livable space

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):

Fee-in-Lieu (per FTE):	Category 1:	\$408,054
	Category 2:	\$376,475
	Category 3:	\$345,691
	Category 4:	\$302,879
	Category 5:	\$250,375

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.

Commented [GL6]: JG COMMENT: Don't you want to keep this section for commercial and lodge? Removing it is a fundamental change to the mitigation requirements for those uses, which is not really a goal of the moratorium.

Commented [GL7R6]: Blanket statement removed, incremental statement included in sections where that's relevant (need to confirm), conversation included in general paragraph

The Fee-In-Lieu rates shall be updated every five years and adopted by city council ordinance. This 5-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 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 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 important assumptions were included for the rental revenue stream: a) revenue (rental income) was calculated over a 15--year period with a 2% annual increase in the rental rate; and b) rental revenue was reduced by 50% 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 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. 10-2021, §1; Ord. No. 12-2021, §1;)

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 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 Subparagraph 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 Subparagraph 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 Subparagraph 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.

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 redevelopment 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 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 26.470.060, subsections 1 and 2. Existing, prior to demolition, Floor Area shall be documented by the City Zoning Officer prior to demolition.~~

~~B.A. _____~~

B. Conversion of an existing single-family residence to a duplex residence or two (2) detached residences or vice-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 vice-versa, ~~which may include demolition~~ 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 26.470.060, subsections 1 and 2. ~~Existing, prior to demolition, Floor Area shall be documented by the City Zoning Officer prior to demolition.~~

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

26.470.060, subsection 2. When demolition occurs, see Paragraph 26.470.070.6, Demolition or redevelopment of multi-family housing. (Also see definition of demolition, Section 26.104.100.)

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, ~~and~~ 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. 6, 2019, §4; Ord. No. 13-2021, §2)

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 Subsection 26.470.040.B. Applications for multi-year development allotment, pursuant to Paragraph 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 percent (65%) 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 percent (65%) 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 26.470.070.F), the mitigation requirements for affordable housing shall be phased at 15% beginning in 2017, and by 3% each year thereafter until 65% is reached, as follows:

Development Order applied for during calendar year -	Mitigation required <i>(percent of employees generated by the existing space that has previously not mitigated)</i>
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 and new multifamily free-market residential development, affordable housing net livable area shall be provided in an amount equal to at least thirty percent (30%) of the additional free-market residential net livable area. See sections 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 26.470.090.A and C.
- 7) For the expansion of existing multi-family units, affordable housing mitigation requirements are established by 26.470.090.B.
- 8) For the demolition or redevelopment of existing multi-family housing, affordable housing mitigation requirements are established by 26.470.100.D.

9) For essential public facility development, mitigation shall be determined based on Section 26.470.110.D.

10) 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 Guidelines of 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.

Commented [GL8]: JG COMMENT: I think this only applies to new subdivisions. I think new free-market residential units within a mixed-use or multi-family project only goes through part F, which is the 30% AH mitigation, but not the unit and bedroom requirements in parts H and I. I would either separate these into 2 sections, or add a sentence saying what section applies to what.

Commented [GL9R8]: Need to discuss further

- 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 Paragraph 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 percent (50%) 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

11) 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).

12) 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.

Commented [BA10]: I moved this here from the several sections in 26.470.090, they all reference back to this section now.

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.

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.

Commented [GL11]: Ben: Do we want to add this? It was in the DW comment version, and I didn't have a note next to it.

(Ord. No. 12, 2019, §2 & 3; Ord. No. 12, 2021, §2; Ord. No. 13-2021, §3)

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 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 of the methods described in subsection 3 below.

- 1) This section applies to the new development of a single-family, two detached residential units, or a duplex dwelling on a lot in one of the following conditions:
 - a. A lot created by a lot split, pursuant to Subsection 26.480.060.A.
 - b. A lot created by a historic lot split, pursuant to Subsection 26.480.060.B, when the subject lot does not itself contain a historic resource.
 - c. A lot that was subdivided or was a legally described parcel prior to November 14, 1977, that complies with the provisions of Subsection 26.480.020, Subdivision: applicability, prohibitions, and lot merger.
- 2) Mitigation shall be based off of (The net increase of Mitigation Floor Area of an existing single-family, two detached residential units on a single lot, or a duplex dwelling, during remodeling and renovation scenarios when the definition of Demolition is not met, regardless of when the lot was subdivided or legally described.
- 3) The applicant shall have four (4) options for providing the required affordable housing mitigation requirements for the two types of free market residential development described above shall be as follows. The applicant shall have four options:
 - a. Recording a resident-occupancy (RO), or lower, deed restriction on the single-family dwelling unit or one of the residences if a duplex or two detached residences are developed

on the property. An existing deed restricted unit does not need to re-record a deed restriction.

b. Providing a deed restricted one-bedroom or larger affordable housing unit within the Aspen Infill Area pursuant to the Aspen/Pitkin County Housing Authority Guidelines (which may require certain improvements) in a size equal to or larger than 30% of the 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. Employment Generation Rate : .12 employees per 1,000 square feet of Mitigation Floor Area.

~~i. The above generation rates are based on a study of employment generation of Aspen residences, from both initial construction and ongoing operation, performed by RRC Associates of Boulder, Colorado, dated May XX, 2022.~~

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 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.

4) Additional Mitigation requirements:

a. 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 26.104.100, Definitions, and further discussed in 25.575.020.XX.

b. See Figure 2, in 26.575.020.D, for a depiction of "Measuring to Face of Framing" in calculating Floor Area from exterior wall.

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 or duplex that does not meet the requirements of Demolition (26.580), only new, additional Mitigation Floor Area shall be calculated towards employee generation and required mitigation.

e. The calculation of the Employment Generation shall be assessed per dwelling unit. Duplex dwelling units do not combine their Mitigation Floor Area for one calculation.

f. An Accessory Dwelling Unit or Carriage House, as defined by and meeting the requirements of this Title, shall be calculated as floor area of the primary dwelling.

~~g. The above generation rates are based on a study of employment generation of Aspen residences, from both initial construction and ongoing operation, performed by RRC Associates of Boulder, Colorado, dated May XX, 2022.~~

Commented [GL12]: Should there be more description of this section?

Commented [GL13]: Check reference

Commented [GL14]: Check ADU section to see if this should be removed.

Commented [GL15]: Ben, Mitigation FA?

—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 .41 FTEs.

$$\frac{3,400}{1,000} \times .12 = .41$$

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

—Example 2: An existing home of 4,500 square feet of Mitigation Floor Area is expanded by 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.

$$\frac{250}{1000} \times .12 = .03$$

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

a.d. An affordable housing mitigation Deferral Agreement may be accepted by the City of Aspen pursuant to section 26.470.080.D.12.

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

- ~~1) The development of a single family, two detached residential units, or a duplex dwelling on a lot in one of the following conditions:
 - ~~a. A lot created by a lot split, pursuant to Subsection 26.480.060.A.~~
 - ~~b. A lot created by a historic lot split, pursuant to Subsection 26.480.060.B, when the subject lot does not itself contain a historic resource.~~
 - ~~e. A lot that was subdivided or was a legally described parcel prior to November 14, 1977, that complies with the provisions of Subsection 26.480.020, Subdivision: applicability, prohibitions, and lot merger.~~~~
- ~~2) The net increase of Floor Area of an existing single family, two detached residential units on a single lot, or a duplex dwelling, regardless of when the lot was subdivided or legally described and regardless of whether demolition occurs. This type of development shall not require a growth management allocation and shall not be deducted from the respective annual development allotments.~~

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

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

~~c. Providing a deed restricted one-bedroom or larger affordable housing unit within the Aspen Infill Area pursuant to the Aspen/Pitkin County Housing Authority Guidelines (which may require certain improvements) in a size equal to or larger than 30% of the Floor Area increase to the Free Market unit. The mitigation unit must be deed restricted as a "for sale" Category 2 (or lower) housing unit and transferred to a qualified purchaser according to the provisions of the Aspen/Pitkin County Housing Authority Guidelines.~~

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

Floor Area per dwelling unit	Employment Generation Rate
First 4,500 square feet (Floor Area)	16 employees per 1,000 square feet of Floor Area.
Above 4,500 square feet (Floor Area)	36 employees per 1,000 square feet of Floor Area.
Notes:	
— The calculation of the Employment Generation shall be assessed per dwelling unit. Duplex dwelling units do not combine their floor area for one calculation.	
— An Accessory Dwelling Unit or Carriage House, as defined by and meeting the requirements of this Title, shall be calculated as floor area of the primary dwelling.	
— When redevelopment of a property adds floor area, the difference between the generation rates of the existing floor area and the proposed floor area shall be the basis for determining the number of employees generated. No refunds shall be provided if Floor Area is reduced.	
— When demolition is proposed, the redevelopment shall be credited the floor area from the demolished residential dwelling unit. Credit from a demolished dwelling unit cannot be allocated to development on a different lot.	
— The above generation rates are based on a study of employment generation of Aspen residences, from both initial construction and ongoing operation.	

performed by RRC Associates of Boulder, Colorado, dated March 4, 2015.

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

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

~~$$\frac{3,400}{1,000} \times .16 = .54$$~~

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

~~*Example 2:* An existing home of 4,400 square feet of Floor Area is expanded by 250 square feet of Floor Area. The applicant must provide affordable housing mitigation for .07 FTEs, the difference in employee generation of the two house sizes.~~

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

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

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

B. Multi-Family Residential Expansion. The following types of free-market residential development does not require the awarding of a development allotment and may proceed directly to building permit. This type of development shall require the provision of affordable housing mitigation in one of the methods described below.

1) 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 and provided Demolition does not occur. (When demolition occurs, see Section 26.470.100.E, Demolition or redevelopment of multi-family housing.)

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

- a. Recording a resident-occupancy (RO), or lower, deed restriction on the dwelling unit(s) being expanded. An existing deed restricted unit does not need to re-record a deed restriction.
- b. Providing a deed restricted one-bedroom or larger affordable housing unit within the Aspen Infill Area pursuant to the Aspen/Pitkin County Housing Authority Guidelines (which may require certain improvements) in a size equal to or larger than 30% of the 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. Employment Generation Rate: .12 employees per 1,000 square feet of Floor Area
 - ii. 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.
 - iii. Affordable housing mitigation must be provided at a Category 2 (or lower) rate. Certificates must be extinguished pursuant to the procedures of Chapter 26.540, Certificates of Affordable Housing Credit. Fee-in-lieu rates shall be those stated in Section 26.470.050 – Calculations; Employee Generation and Mitigation, in effect on the date of application acceptance. Providing a fee-in-lieu payment in excess of .10 FTE shall require City Council approval, pursuant to Section 26.470.110.C.

Example 1: A multi-family unit of 1,400 square feet of Floor Area is expanded by 400 square feet of Mitigation Floor Area. The applicant must provide affordable housing mitigation for .05 FTEs.

$$\frac{400}{1,000} \times .12 = .05$$

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

Example 2: A multi-family unit of 1,400 square feet of Floor Area is expanded by 1,000 square feet of Mitigation Floor Area. The applicant must provide affordable housing mitigation for .12 FTEs, the difference in employee generation of the two unit sizes.

$$\frac{1000}{1,000} \times .12 = .12$$

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

~~a.~~

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

4) Additional mitigation requirements and information:

a. The above generation rates are based on a study of employment generation of Aspen residences, from both initial construction and ongoing operation, performed by RRC Associates of Boulder, Colorado, dated May XX, 2022.

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 26.104.100, Definitions, and further discussed in 25.575.020.XX.

~~**B. Multi Family Residential Expansion.** The following types of free market residential~~

~~development shall require the provision of affordable housing in one of the methods described below:~~

~~4) The net increase of Floor Area of an existing free market multi family unit or structure, regardless of when the lot was subdivided or legally described and provided demolition does not occur. (When demolition occurs, see Section 26.470.100.E, Demolition or redevelopment of multi family housing.) This type of development shall not require a growth management allocation and shall not be deducted from the respective annual development allotments established pursuant to Section 26.470.040.~~

~~5) Affordable housing mitigation requirements for the type of free market residential development described above shall be as follows. The applicant shall have four options:~~

~~b. 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.~~

~~e. Providing a deed restricted one bedroom or larger affordable housing unit within the Aspen Infill Area pursuant to the Aspen/Pitkin County Housing Authority Guidelines (which may require certain improvements) in a size equal to or larger than 30% of the Floor Area increase to the Free Market unit(s). The mitigation unit(s) must be deed restricted as a "for sale" Category 2 (or lower) housing unit and transferred to a qualified purchaser according to the provisions of the Aspen/Pitkin County Housing Authority Guidelines.~~

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

Floor Area per dwelling unit	Employment Generation Rate
square feet of expansion (Floor Area)	.18 employees per 1,000 square feet of Floor Area
<p>Notes:</p> <ul style="list-style-type: none"> — The calculation of the Employment Generation shall be assessed per dwelling unit. Multiple dwelling units do not combine their floor area for one calculation. — When a unit adds floor area, the difference between the generation rates of the existing floor area and the proposed floor area shall be the basis for determining the number of employees generated. No refunds shall be provided if Floor Area is reduced. — When demolition is proposed, please see Section 26.470.100.E — Demolition or Redevelopment of Multi-Family Housing Projects — The above generation rates are based on a study of employment generation of Aspen residences, from both initial construction and ongoing operation, performed by RRC Associates of Boulder, Colorado, dated March 4, 2015. 	

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

~~Example 1: A multi-family unit of 1,400 square feet of Floor Area is expanded by 400 square feet of Floor Area. The applicant must provide affordable housing mitigation for .09 FTEs.
 $500 / 1,000 \times .18 = .09$
 In this example the applicant may provide a Certificate of Affordable Housing Credit or a fee in lieu payment.~~

~~Example 2: A multi-family unit of 1,400 square feet of Floor Area is expanded by 2,600 square feet of Floor Area. The applicant must provide affordable housing mitigation for .47 FTEs, the difference in employee generation of the two unit sizes.
 $2,600 / 1,000 \times .18 = .47$
 In this example the applicant may provide a Certificate of Affordable Housing Credit or request City Council accept a fee in lieu payment.~~

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

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

C. Single-Family and Duplex Redevelopment or Expansion that does trigger Demolition as defined by Section 26.580. Demolition and Redevelopment of Single-Family and Duplex properties shall require a land use application pursuant to Section 26.304, the allocation of a Growth Management allotment, and shall provide affordable housing mitigation in one of the methods described below.

1. Applicability

This review shall apply to all applications for development and redevelopment of single-family and duplex development that is established as Demolition in Section 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 26.304, 26.580 and 26.470.090.C) and will be 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 detached dwellings, or Duplex residential structure shall require one 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 Section 26.580 – Demolition. An applicant must request a Pre-application conference summary outlining application requirements when a project triggers Demolition pursuant to Section 26.580 - Demolition.
- c. Timing.* Applications for a Demolition Allotment shall be received and processed on a first come, first serve basis. An application shall not be reviewed or considered until determined “Complete” per 26.304. An application may be submitted concurrently with a building permit application for the project. Once determined “Complete” the application will be considered in order with any other “Complete” applications, based on the date and time at which the applications were determined “Complete”. Once in review, the ordering of applications for consideration of an allotment will remain.
- 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 26.304. The Special Review (26.430.040.J) shall be considered a public hearing for which notice has been provided pursuant to 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 26.470.110.A.

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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 Section 26.304, in addition to the following:

- a. Demolition diagrams depicting total area to be demolished consistent with the methodology outlined in Section 26.580.050.
- 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 Section 26.580.

Commented [GL17]: TO DO: Ensure the following is clear: Review is fairly conceptual – identify the requirements of the building performance standards that need to be met at land use, with most standards being conditions of approval to be dialed at building permit, along with waste diversion, BIQ, and embodied carbon conditions of approval. Intent of review is to be highly conceptual – big picture building, FA/mitigation is close, allotment granted, along with approval of other associated reviews, as required.

5. Affordable Housing Mitigation Requirements:

- A. Affordable housing mitigation requirements for free-market residential development that triggers Demolition pursuant to 26.580, shall be as follows. The applicant shall have four options:

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

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 30% 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: .12 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 (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.

B. Additional Mitigation requirements and information:

i. See Figure 2, in 26.575.020.D, for a depiction of "Measuring to Face of Framing" in calculating Floor Area from exterior wall.

i.

ii. 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 26.104.100, Definitions, and further discussed in 25.575.020.XX

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

- iv. Demolition that occurs as a result of an act of nature or through any manner not purposefully accomplished by the owner, shall be evaluated by Community Development Director, and a credit for existing Mitigation Floor Area may be issued toward the reconstruction of the home. See 26.580.
- v. The calculation of the Employment Generation shall be assessed per dwelling unit. Duplex dwelling units do not combine their Mitigation Floor Area for one calculation.
- iii-vi. An Accessory Dwelling Unit or Carriage House, as defined by and meeting the requirements of this Title, shall be calculated pursuant to Section 26.575.020.D.

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

$$\underline{\underline{(5,700/1000 \times .12) = .68 FTE}}$$

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

D. 100% Affordable Housing Development. All applications for the development of projects that are comprised of 100% 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 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. A combination of “for sale” and rental units.

b. The units in the project comply with the Aspen Pitkin County Housing Authority 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 26.575.020, Calculations and Measurements.

d. The project meets all provisions of 26.410, Residential Design Standards and is compliant with Commercial Lodging and Historic District Design Standards and Guidelines (if 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 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 percent (50%) or more of each unit’s net livable area is at or above natural or finished grade, whichever is higher.

2) For properties subject to Historic Preservation review pursuant to Section 26.415.XXX, the application will be subject to the following:

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a. For historically designated properties, the following apply:

i. See section 26.470.100.C & Section 26.415.XXX for applicable review requirements.

ii. The project shall include all application requirements in Section 26.304, Section 26.415.XXX and Section 26.470.090.C.3.

b. For projects proposed on non-historically designated properties in the Main Street or Commercial Core Historic Districts, the following apply:

i. The following review criteria from Section 26.415 will apply:

- 1. ...
 - 2. ...
 - ii. The project shall include all application requirements in, Section 26.415.XXX and Section 26.470.090.C.3.
 - iii. The review process for 100% Affordable Housing Project in the district will be...
- 3) Application Materials. In addition to the application materials required by section 26.470.130, the following shall be included in an application for administrative review of a 100% 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 26.470.090.C.1.a-i.
- 4) Review Process.
 - a. Application is submitted and accepted for review consistent with 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. 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.
 - e. Public Notice of the Development Order shall be made consistent with the requirements of 26.304. Common Development 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.

- a. 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.
- b. The expansion involves no residential units.
- c. This shall be cumulative and shall include administrative GMQS approvals granted prior to the adoption of Ordinance No. 22, Series of 2013.
- d. When demolition is triggered, the application shall be reviewed pursuant to Section 25.470.100(F), Expansion or new commercial development.

E.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.

D.G. Outdoor food/beverage vending license. Outdoor food/beverage vending shall be

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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) foot 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 Section 26.510, Signs, but not excluding *Prohibited Signs*. The total amount of signage shall be the lesser of fifty percent (50%) 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 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 (1) year period beginning on the same date that the Notice of Approval is signed by the Community Development Director. This one (1) 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.

E.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 12-month period, and approved pursuant to Chapter 26.450 – Temporary and Seasonal Uses. Erection of these enclosures for longer than 14 days in a 12-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 12-month period. Cash-in-lieu may be paid by-right. The mitigation calculation shall include the expected lifespan of a building, which is currently 30 years. For instance, a 500 sq. ft. tent proposed to be up for 21 days shall only require mitigation for seven (7) days. The calculation would be as follows:

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Methodology:

- 500 sq. ft. / 1000 sq. ft. = .5 sq. ft.
- .5 sq. ft. x 4.7 FTEs = 2.35 FTEs generated
- 2.35 FTEs x 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
- .004184931x 7 days = .029294517FTEs
- .029294517x \$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, §5; Ord. No. 12, 2019, §4, §5, §6, §7)

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. 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

Affordable Housing. The development of affordable housing that does not qualify for administrative review and approval under the criteria established in 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 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.

~~C. **Affordable housing.** The development of 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 general requirements outlined in Section 26.470.080.~~

~~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 Guidelines. The owner may be entitled to select the first purchasers, subject to the aforementioned qualifications, pursuant to the Aspen/Pitkin County Housing Authority Guidelines. 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 Affordable Housing Guidelines established by the Aspen/Pitkin County Housing Authority, as amended.~~

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

~~b. Units owned by the Aspen/Pitkin County Housing Authority, the City of Aspen, Pitkin County or other similar governmental or quasi-municipal agency shall not be subject to this mandatory "for sale" provision.~~

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 two (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-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 percent (100%) 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-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 26.470.110, subsection H or I, Residential Development – sixty (60%) or seventy (70%) percent affordable as required.

- b. *Fifty-percent replacement.* In the event of the demolition of free-market multi-family housing and replacement of less than one hundred percent (100%) 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 percent (50%) 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 50% of the new units, bedrooms and net livable area allowed as

free market units and 50% 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 Paragraph 26.470.100.C, Affordable housing.

When this fifty-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 percent affordable housing replacement.* When one-hundred-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 26.470.110.D, Affordable Housing; all of the units in the redevelopment are eligible for a Certificate of Affordable Housing Credit, pursuant to Section 26.540 Certificate 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 Sec. 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

1,000 square foot three-bedroom unit at the 50% rate using credits, the following calculations shall be used:

- 50% of 1,000 square feet = 500 square feet to be replaced. At the Code mandated rate of 1 FTE per 400 square feet of net livable area, this requires the extinguishments of 1.25 credits; or
- A three-bedroom unit = 3.0 FTE's. 50% of 3.0 FTE's = 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 50% 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 Paragraph 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 Subparagraph 4, 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.

(Ord. No. 12, 2021, §1)

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 above.

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:

Sixty-five percent (65%) of the employees generated by the lodge, timeshare lodge, exempt timeshare units, and associated commercial development, according to Paragraph 26.470.050.B, Employee generation, shall be mitigated through the provision of affordable housing. 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. Affordable housing units provided shall be approved pursuant to Paragraph 26.470.100.D, Affordable housing.

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 (excepting lot splits) or new multifamily units shall have the choice of using either subsection 26.470.100. H or 26.470.100.I, as specified below. These development types require the granting of development allotments.

H. New Residential development – sixty percent (60%) affordable.—The development of a residential project or an addition of units to an existing residential project, in which a minimum of

sixty percent (60%) of the additional units and thirty percent (30%) 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:

- a. A minimum of sixty percent (60%) of the total additional units and thirty percent (30%) 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 Paragraph 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.
- b. If the project consists of only one (1) free-market residence, then a minimum of one (1) affordable residence representing a minimum of thirty percent (30%) 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. ~~New Residential development – seventy percent (70%) affordable.~~

 The development of a residential project or an addition to an existing residential project, in which seventy percent (70%) of the project's additional units and seventy percent (70%) 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:

- a. Seventy percent (70%) of the total additional units and total additional bedrooms shall be affordable housing. At least forty percent (40%) of the units shall average Category 4 rates as defined in the Aspen/Pitkin County Housing Authority Guidelines. The remaining thirty-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 Paragraph 26.470.070.4, Affordable housing. An applicant may choose to provide mitigation units at a lower category designation.
- b. 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. 6, 2019, §6; Ord. No. 12, 2019, §8, §9, §10; Ord. No. 13-2021, §4)

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.

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 Guidelines 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 Section 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 Efficient Building Code or for LEED certification, as applicable. A recommendation from the Building 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 reasonable 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 reasonable 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 requirements of Section 26.470.100.E. 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.

- a. The project shall comply with the review standards outlined in Section 26.425.035, *Conditional Use – Boutique Lodge* – but shall not be subject to a Conditional Use review unless required by the underlying zone district or overlay zone district.
- b. The proposed use meets the definition of Boutique Lodge or Lodge in section 26.104.110, as applicable.

c. 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.

d. 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.

(Ord. No. 12, 2019, §11, §12)

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.

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.

~~7)~~

~~8)~~

~~9)~~ Copies of required approvals from the Planning and Zoning Commission, Historic Preservation Commission and the City Council, as necessary.

~~8)~~

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

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

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

E. 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.

~~26.470.140. — Reconstruction 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 credit, an applicant must submit a complete building permit application for reconstruction on or before the one year anniversary of the issuance date of the demolition permit. The City Council may extend this deadline upon demonstration of good cause. This time limitation shall not apply to the reconstruction of single family and duplex development.~~

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

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

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

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

26.470.150. 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. 12, 2019, §13)

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; Ord. No. 14, 2007, §10; Ord. No. 31, 2016, §1; Ord. 23, 2017, §14-17)

TITLE 26
LAND USE REGULATIONS
PART 500 — SUPPLEMENTARY REGULATIONS

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- Sec. 26.500.020 Authority
- Sec. 26.500.030 Applicability
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WIRELESS COMMUNICATION FACILITIES AND EQUIPMENT

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- Sec. 26.510.090 Definition, sign types and characteristics
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- Sec. 26.515.010 General provisions
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Chapter 26.520

ACCESSORY DWELLING UNITS AND CARRIAGE HOUSES

- Sec. 26.520.010 Purpose

Sec. 26.520.020	General
Sec. 26.520.030	Authority
Sec. 26.520.040	Applicability
Sec. 26.520.050	Design standards
Sec. 26.520.060	Calculations and measurements
Sec. 26.520.070	Deed restrictions and enforcement
Sec. 26.520.080	Procedure
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Chapter 26.530 RESERVED

Chapter 26.535 TRANSFERABLE DEVELOPMENT RIGHTS (TDR)

Sec. 26.535.010	Purpose
Sec. 26.535.020	Terminology
Sec. 26.535.030	Applicability and prohibitions
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Chapter 26.540 CERTIFICATES OF AFFORDABLE HOUSING CREDIT

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Sec. 26.540.020	Terminology
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~~**G. Measurement of Demolition.** The City Zoning Officer shall determine if a building is intended to be or has been demolished by applying the following process of calculation:~~

~~At the request of the Zoning Officer, the applicant shall prepare and submit a diagram showing the following:~~

- ~~1. The surface area of all existing (prior to commencing development) exterior wall assemblies above finished grade and all existing roof assemblies. Not counted in the existing exterior surface area calculations shall be all existing fenestration (doors, windows, skylights, etc.).~~
- ~~2. The exterior surface area, as described above, to be removed. Wall area or roof area being removed to accommodate new or relocated fenestration shall be counted as exterior surface area being removed.~~
- ~~3. The diagram shall depict each exterior wall and roof segment as a flat plane with an area tabulation.~~

~~Exterior wall assembly and roof assembly shall constitute the exterior surface of that element in addition to the necessary subsurface components for its structural integrity, including such items as studs, joists, rafters etc. If a portion of a wall or roof structural capacity is to be removed, the associated exterior surface area shall be diagrammed as being removed. If a portion of a wall or roof involuntarily collapses, regardless of the developer's intent, that portion shall be calculated as removed. Recalculation may be necessary during the process of development and the Zoning Officer may require updated calculations as a project progresses.~~

~~Replacement of fenestration shall not be calculated as wall area to be removed. New, relocated or expanded fenestration shall be counted as wall area to be removed.~~

~~Only exterior surface area above finished grade shall be used in the determination of demolition. Sub-grade elements and interior wall elements, while potentially necessary for a building's integrity, shall not be counted in the computation of exterior surface area.~~

~~According to the prepared diagram and area tabulation, the surface area of all portions of the exterior to be removed shall be divided by the surface area of all portions of the exterior of the existing structure and expressed as a percentage. The Zoning Officer shall use this percentage to determine if the building is to be or has been demolished according to the definition in Section 26.104.100, Demolition. If portions of the building involuntarily collapse, regardless of the developer's intent, that portion shall be calculated as removed.~~

~~It shall be the responsibility of the applicant to accurately understand the structural capabilities of the building prior to undertaking a remodel. Failure to properly understand the structural capacity of elements intended to remain may result in an involuntary collapse of those portions and a requirement to recalculate the extent of demolition. Landowner's intent or unforeseen circumstances shall not affect the calculation of actual physical demolition. Additional requirements or restrictions of this Title may result upon actual demolition.~~

H.G. Measurement of Net Leasable Area and Net Livable Area. The calculation of net leasable area and net livable area shall include all interior space of a building measured from interior wall to interior wall, including interior partitions. Net leasable area and net livable area shall be attributed to

the lot or parcel upon which it is developed. Net leasable area includes all interior areas which can be leased to an individual tenant with the exceptions noted below. Net livable area includes those areas of a building that are used or intended to be used for habitation with the exceptions noted below. Garages and carports are exempt from net leasable area and net livable area calculations.

1. Permanently installed interior airlock spaces are exempt from the calculation of net leasable space up to a maximum exemption of 100 square feet. Seasonal airlocks of more than 10 square feet, installed on the exterior of a building, shall be considered net leasable area and shall be subject to all requirements of the Land Use Code, including employee mitigation, prorated according to the portion of the year in which it is installed.
2. Unless specifically exempted through other provisions of this Title, outdoor displays, outdoor vending, and similar commercial activities located outside (not within a building) shall also be included in the calculation of net leasable area. The calculation of such area shall be the maximum footprint of the display or vending apparatus. For vending carts or similar commercial activities requiring an attendant, the calculation shall also include a reasonable amount of space for the attendant. Exterior decks and exterior seating are not included in the calculation of net leasable area. Vending machines, gas pumps, and similar devices without an attendant shall not be considered net leasable area.

The calculation of net leasable area and net livable area shall exclude areas of a building that are integral to the basic physical function of the building. All other areas are attributed to the measurement of net leasable commercial space or net livable area. When calculating interior stairways or elevators, the top most interior level served by the stairway or elevator is exempt from net livable or net leasable area calculations.

Shared areas that count toward net leasable area and net livable area shall be allocated on a proportionate basis of the use category using the percentages that are generated pursuant to Section 26.575.020.D.14 *Allocation of non-unit space in a mixed use building*.

Examples:

1. A broom closet of a minimum size to reasonably accommodate the storage of janitorial supplies for the entire building is considered integral to the physical function of the building and does not count toward net leasable area.
2. A shared commercial storage area that is larger than needed for the basic functionality of the building counts toward net leasable area because it is useable by the businesses.
3. A shared stairway and a shared circulation corridor (that access more than one use) are integral to the physical function of the building and do not count in the measurement of net livable area or net leasable area.
4. A stairway that is entirely within one residential unit counts toward the measurement of net livable area.
5. A private elevator that serves more than one residential unit, and does not provide access to other uses, does not count toward the measurement of net livable area.

6. A private elevator that serves only one residential unit, and does not provide access to other uses, counts toward the measurement of net livable area.
7. A shared mechanical room that is larger than the minimum space required to reasonably accommodate the mechanical equipment counts toward the measurement of net livable area or net leasable area as applicable. The area of the mechanical room that is the minimum size required for the mechanical equipment does not count in net livable area or net leasable area.

I.H. Exceptions for Energy Efficiency. The Community Development Director may approve exceptions to the dimensional restrictions of this Section to accommodate the addition of energy production systems or energy efficiency systems or equipment in or on existing buildings when ~~no other practical solution exists~~ the site is constrained, or it's determined flexibility is warranted to improve efficiency of the equipment or structure. The Community Development Director must first determine that the visual impact of the exemption is minimal and that no other reasonable way to implement energy production or efficiency exists that is more effective and less impactful. ~~The Director may require notice be provided to adjacent landowners. Approval shall be in the form of a recordable administrative decision.~~ Exception for Energy Efficiency may be approved during building permit review, or as part of a site-specific development approval.

J.I. Exceptions for Building Code Compliance. The Community Development Director may approve exceptions to the dimensional restrictions of this Section to accommodate improvements required to achieve compliance with building, fire, energy, or accessibility codes in or on existing buildings when no other practical solution exists. The Community Development Director must first determine that the visual impact of the exemption is minimal and that no other reasonable way to implement code compliance exists that is more effective and less impactful. ~~The Director may require notice be provided to adjacent landowners. Approval shall be in the form of a recordable administrative decision.~~ Exception for Building Code Compliance may be approved during building permit review, or as part of a site-specific development approval.

K.J. Appeals. An applicant aggrieved by a decision made by the Community Development Director regarding this Calculations and Measurements Section may appeal the decision to the Administrative Hearing Officer, pursuant to Chapter 26.316.

(Ord. No. 44-1999, §7; Ord. No. 55-2000, §14; Ord. No. 56-2000, §§5, 6, 8; Ord. No. 25-2001, §§6, 7; Ord. No. 46-2001, §4; Ord. No. 55, 2003, §§2—4; Ord. No. 12-2006, §19; Ord. No. 12, 2007, §32; Ord. No. 27-2010, §1; Ord. No. 12-2012, §3; Ord. No. 25-2012, §4; Ord. No. 7-2014; §§ 1-9; Ord. No. 31-2014, §2; Ord. No. 4-2015, §1; Ord. No. 46-2015, §§ 12-20; Ord. No. 30, 2016, §6)

Chapter 26.580
ENGINEERING DEPARTMENT REGULATIONSDEMOLITION

26.580.010. – Purpose.

The purpose of the Chapter is to describe and define Demolition as it relates to all land use types in the City of Aspen. The definition of Demolition and the application of this definition is impactful to several sections of the Land Use Code including, but not limited to: Non-Conformities (26.312) and the Growth Management Quota System (26.470). While the definitions and processes described below apply to all use types, particular attention is given to the Demolition of Single-Family and Duplex Residential Units. The definitions and regulation in this section and the relationship to other sections of the Land Use Code are meant to regulate impactful development activities and to mitigate negative impacts of complex and significant construction projects to protect the health, safety and welfare of the public. These negative impacts include ecological, economic, transportation, and social impacts. Ensuring impactful development activities are adequately mitigated and consistent with Aspen’s small-town character, furthers the City’s Climate goals by improving regulatory responses to natural resource consumption, reduces traffic impacts,- encourages a more sustainable diversion of solid waste from the landfill, reduces general construction impacts to the community, and ensures that Aspen continues to be a leader in efficient design practices.

26.580.020. Future Amendments to Chapter 26.580 All future amendments to this Chapter shall be exempt from the requirement of Policy Resolution for code amendments (Section 26.310.020(b)(1), (2)). Future amendments may proceed directly to a First and Second Reading, pursuant to Section 26.310.020(b)(3).

26.580.030 Applicability.

This chapter applies to land use applications and building permit submissions for development within the City limits for projects that that meets or exceeds the definition of Demolition, unless exempted by Subsection 26.580.

26.580.040. – Measurement of Demolition.

- A. The City Zoning Officer shall determine if a building is intended to be, or has been Demolished by applying the following process of calculation:
 - 1. Anytime Demolition is proposed the applicant shall calculate the area of the existing surfaces as follows:
 - a. The surface area of all existing (prior to commencing development) exterior wall assemblies above finished grade. Not counted in the existing exterior surface area calculations shall be all existing fenestration (doors, windows, skylights, etc.).
 - b. The surface area of all existing (prior to commencing development) roof assemblies.

2. The applicant shall calculate the area of existing surfaces that are proposed to be removed and determine the overall percentage that is removed.

a. The exterior wall surface area and roof surface area, as described above, to be removed.

b. Wall area or roof area being removed to accommodate new or relocated fenestration shall be counted as exterior surface area being removed.

3. If the percentage removed exceeds 40%, then the development shall be considered Demolition, pursuant to Section 26.104.100.

4. Demolition shall also include the removal of a dwelling unit in a multi-family or mixed-use building, its conversion to nonresidential use, or any action which penetrates demising walls or floors between Multi-Family Housing Units if such action is undertaken to combine the units. See the requirements of Section 26.470.100.D – Demolition or Redevelopment of Multi-Family Housing.

B. Anytime Demolition is proposed, the applicant shall prepare and submit a diagram showing the calculation. The diagram shall depict each exterior wall and roof segment as a flat plane with an area tabulation.

1. According to the prepared diagram and area tabulation, the surface area of all portions of the exterior to be removed shall be divided by the surface area of all portions of the exterior of the existing structure and expressed as a percentage. The Zoning Officer shall use this percentage to determine if the building is to be or has been Demolished according to the definition in Section 26.104.100, Demolition. If portions of the building involuntarily collapse, regardless of the developer's intent, that portion shall be calculated as removed.

C. For the purposes of the calculation of Demolition, the following provisions shall apply:

1. Exterior wall assembly and roof assembly shall constitute the exterior surface of that element including such items as studs, joists, rafters etc.

2. If a portion of a wall or roof stud is to be removed, the associated exterior surface area shall be diagrammed as being removed.

3. If a portion of a wall or roof involuntarily collapses, regardless of the developer's intent, that portion shall be calculated as removed.

4. Recalculation may be necessary during the process of development and the Zoning Officer may require updated calculations as a project progresses.

5. Replacement of fenestration shall not be calculated as wall area to be removed. New, relocated or expanded fenestration shall be counted as wall area to be removed.

6. Only exterior surface area above finished grade shall be used in the determination of demolition. Sub-grade elements and interior wall or structural elements, while potentially necessary for a building's integrity, shall not be counted in the computation of exterior surface area.
7. Replacement of exterior sheeting when the structural components of that area are to remain, do not count toward the calculation of Demolition.
8. It shall be the responsibility of the applicant to accurately understand the structural capabilities of the building prior to undertaking a remodel. Failure to properly understand the structural capacity of elements intended to remain may result in an involuntary collapse of those portions and a requirement to recalculate the extent of demolition. Applicant's intent or unforeseen circumstances shall not affect the calculation of actual physical demolition.
9. Additional requirements or restrictions of this Title may result upon actual Demolition.

26.580.050. – Exemptions

The Community Development Director may exempt projects, or a portion thereof, from the calculation of Demolition if any of the following circumstances exist:

- A. Dangerous Structures. Any building or structure that has been determined to be dangerous, structurally unsafe or otherwise hazardous to human life, and is required to be abated by demolition. This may include structures destroyed or damaged by fire, flood or other natural disaster. [The Chief Building Official shall make this determination.](#)
- B. The project is a 100% deed restricted affordable housing ~~unit~~, or after completion of the project will be 100% deed restricted [affordable housing](#).
- C. De Minimus Exception. The Community Development Director may waive any of the requirements of this chapter if documentation satisfactory to the Director is provided to establish that the scope of work is minimal and providing Demolition documentation is inappropriate or unreasonable.
- D. If an existing structure is to be temporarily relocated, on or off-site, and placed back on an existing or reconfigured foundation that action shall not be considered Demolition for the purposes of this chapter.
- E. Exception for Necessary Repairs or Life/Safety concerns. If Demolition is triggered not due to remodel or renovation 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 allow

an increase to the height, floor area, net livable area of a building beyond what is the minimum necessary required to comply with the Building Code.

- F. Exception for the removal of Non-Historic Additions to Designated Historic Structures. If the Historic Preservation Commission has determined that in the development of a structure that is designated on Aspen’s list of Historic Landmarks, that non-historic elements of the project shall be removed in returning the historic resource to its original configuration or character – the portion of the project attributed to the non-historic elements shall not be calculated toward the 40% threshold.

Upon a finding by the Community Development Director that a project qualifies for an exemption, the project may proceed with any other required reviews as determined by this Title or the submission of a building permit.

26.580.060. – Enforcement and Penalties

- A. The Community Development Director, City Engineer, Construction Mitigation Officer, or their assigned staff shall have responsibility for enforcement of this chapter and are authorized to take any and all other actions reasonable and necessary to enforce this chapter.
- B. Violation of any provision of this chapter shall be subject to the provisions and penalties set forth in Section 26.1.04 of the Municipal Code unless otherwise specified.

26.580.070. – 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 that a project triggers Demolition and is subject to the requirements of this Chapter 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.

26.580.080– Adoption of Residential Demolition and Redevelopment Standards for Projects that meet the definition of Demolition.

Pursuant to the powers and authority conferred by the Charter of the City, the City Council hereby adopts and incorporates by reference redevelopment standards, hereinafter referred to as the *Residential Demolition and Redevelopment Performance Standards*, which are incorporated by reference into the City of Aspen Land Use Code. The *Residential Demolition and Redevelopment Standards* set forth the design parameters to ensure residential redevelopment improves solid waste diversion, increases the energy efficiency of structures, and reduces negative impacts of construction. The *Residential Demolition and Redevelopment Standards* may be amended, updated, and expanded from time to time by City Council Resolution. The *Residential Demolition and Redevelopment Standards* shall be available for public inspection at the [Community Development Departments web page](#). Projects that are

pursuing a Demolition Allotment as described in Section 26.470.090.C will be reviewed these standards.

(Ord. 13, Series of 2022)

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(Ord. No. 21-2002 § 1 (part), 2002; Ord. No. 36 -2013, § 17; Ord. No. 36-2015 § 5)

Chapter 26.710
LAND USE REGULATIONS
PART 700 — ZONE DISTRICTS

Sections:

- 26.710.010 General purpose
- 26.710.020 Zone Districts established
- 26.710.022 Zoning of lands containing more than one underlying Zone District
- 26.710.024 Zoning of vacated areas
- 26.710.030 Official Zone District Map
- 26.710.040 Medium-Density Residential (R-6)
- 26.710.050 Moderate-Density Residential (R-15)
- 26.710.060 Moderate-Density Residential (R-15A)
- 26.710.070 Moderate-Density Residential (R-15B)
- 26.710.080 Low-Density Residential (R-30)
- 26.710.090 Residential Multi-Family (RMF)
- 26.710.100 Residential Multi-Family-A (RMFA)
- 26.710.110 Affordable Housing/Planned Development (AH/PD)
- 26.710.120 High Density Residential (R-3)
- 26.710.130 Rural Residential (RR)
- 26.710.140 Commercial Core (CC)
- 26.710.150 Commercial (C-1)
- 26.710.160 Service/Commercial/Industrial (S/C/I)
- 26.710.170 Neighborhood Commercial (NC)
- 26.710.180 Mixed Use (MU)
- 26.710.190 Lodge (L)
- 26.710.200 Commercial Lodge (CL)
- 26.710.220 Conservation (C)
- 26.710.230 Academic (A)
- 26.710.240 Park (P)
- 26.710.250 Public (PUB)
- 26.710.260 Open Space (OS)
- 26.710.270 Wildlife Preservation (WP)
- 26.710.280 Transportation Overlay (T) Zone District
- 26.710.290 Drainage Overlay (D) Zone District
- 26.710.300 Golf Course Support Overlay (GCS) Zone District
- 26.710.310 Lodge Overlay (LO) Zone District
- 26.710.320 Lodge Preservation Overlay (LP) Zone District
- 26.710.330 Ski Area Base (SKI)
- 26.710.340 Essential Business Overlay

26.710.010 General purpose.

In order to ensure that all development is consistent with the goals and objectives of the Aspen Area Community Plan and this Title, it is necessary and proper to establish a series of Zone Districts to ensure that each permitted and conditional use is compatible with surrounding land uses, is served by adequate public facilities and is consistent with the environmental sensitivity of the City and its surrounding area's natural resources. All development within each Zone District shall be consistent with the purposes stated for that Zone District in this Chapter. Any use which is not specifically listed in this Chapter as a permitted or conditional use in a Zone District shall be considered prohibited, unless otherwise interpreted by the Community Development Director pursuant to Chapter 26.306.

26.710.020 Zone Districts established.

The City is hereby divided in several zones, known and designated as detailed in this Chapter, to serve the purposes stated above and in each Section of this Chapter describing the individual Zone Districts.

26.710.022 Zoning of lands containing more than one underlying Zone District.

Whenever any parcel of land shall contain more than one underlying Zone District, the following rules shall apply:

A. Proposed use not allowed in all Zone Districts. When a parcel of land contains more than one underlying Zone District and the proposed use is not allowed in all of the respective Zone Districts, then:

- a. The use can only be developed on land in which it is a permitted or a conditional use.
- b. The external floor area and density which shall apply to the use shall be calculated based only on the land area of the Zone District in which the use is a permitted or conditional use. The off-street parking requirements and other dimensional requirements which shall apply to the use shall be those of the Zone District in which the use is a permitted or conditional use, but shall be calculated on the basis of the land area and development of the entire parcel.

B. Proposed use allowed in all Zone Districts. When a parcel of land contains more than one underlying Zone District and the proposed use is allowed in all of the respective Zone Districts, then:

- a. The use shall be developed by comparing each dimensional and parking requirement of the respective Zone Districts and applying the more restrictive of each requirement. These requirements shall, however, be calculated based on the land area and development of the entire parcel.
- b. The only exception shall be when the area of the parcel which is designated with the Zone District which permits the higher density constitutes more than seventy-five percent (75%) of the entire land area of the parcel. In this case, the use shall be developed using the dimensional requirements and off-street parking requirements of

the Zone District permitting the higher density, which shall be calculated on the basis of the land area and development of the entire parcel.

26.710.024 Zoning of vacated areas.

Whenever any street, alley or other public way within the City is vacated by the City Council, the land on which the street, alley or public way is located shall become a part of the Zone District of the lands adjoining such street, alley or public way. Those lands shall then become subject to the regulations that apply to that Zone District. In determining land available for development, however, vacated lands shall be excluded from the calculation of allowable floor area, density or required open space.

26.710.030 Official Zone District Map.

A. Establishment of Zone District map. The location and boundaries of the Zone Districts established in this Title shall be set forth on the Official Zone District Map of the City which is incorporated herein by reference into this Title as if fully described and set forth herein. A copy of the official Zone District map shall be located in the office of the Community Development Department at all times for inspection by the general public during regular business hours. The official Zone District map shall be the final authority as to the current zoning of land in the City.

B. Amendment to Zone District map. If pursuant to the terms of this Title, amendments are made to the boundaries of the official Zone District map, such amendments shall be entered on the official Zone District map promptly after amendment.

26.710.040 Medium-Density Residential (R-6).

A. Purpose. The purpose of the Medium-Density Residential (R-6) Zone District is to provide areas for long-term residential purposes, short term vacation rentals, and customary accessory uses. Recreational and institutional uses customarily found in proximity to residential uses are included as conditional uses. Lands in the Medium-Density Residential (R-6) Zone District are generally limited to the original Aspen Townsite, contain relatively dense settlements of predominantly detached and duplex residences and are within walking distance of the center of the City.

B. Permitted uses. The following uses are permitted as of right in the Medium-Density Residential (R-6) Zone District:

1. Detached residential dwelling.
2. Duplex.
3. Two (2) detached residential dwellings.
4. Triplex or Fourplex, if 100% deed-restricted affordable housing.
- 3-5. Existing multi-family housing, if 100% deed-restricted affordable housing. Existing multi-family housing that is not 100% deed-restricted affordable housing remains a non-conforming use.
- 4-6. Home occupations.
- 5-7. Accessory buildings and uses.
- 6-8. Accessory dwelling units and carriage houses meeting the provisions of Chapter 26.520.
- 7-9. Vacation rentals. Pursuant to Section 26.575.220

C. Conditional uses. The following uses are permitted as conditional uses in the Medium-Density Residential (R-6) Zone District, subject to the standards and procedures established in Chapter 26.425:

1. Arts, cultural and civic uses.
2. Academic uses.
3. Recreational uses.
4. Group home.
5. Child care center.
6. For historic landmark properties: bed and breakfast and boardinghouse.

D. Dimensional requirements. The following dimensional requirements shall apply to all permitted and conditional uses in the Medium-Density Residential (R-6) Zone District:

1. Minimum Gross Lot Area (square feet): six thousand (6,000) square feet. For lots created by Section 26.480.030.A.4, Historic landmark lot split: Three thousand (3,000). For properties that include or are proposed for 100% deed-restricted affordable housing: three thousand (3,000).
1. Minimum Net Lot Area per dwelling unit (square feet):
 - a. *Detached residential dwelling*: 4,500. For Historic Landmark Properties: 3,000.
 - b. *Duplex*: 4,500. For Historic Landmark Properties: 3,000. For properties subdivided as of April 28, 1975: 4,000. For properties annexed subsequent to January 1, 1989: 3,750.
 - c. 100% deed-restricted affordable housing; triplex, fourplex: No requirement.
 - ~~b.d.~~ 100% deed-restricted affordable housing; existing multifamily: No requirement.
 - ~~e.e.~~ *Bed and breakfast, boardinghouse*: No requirement.
1. Minimum lot width (feet): Sixty (60). For lots created by Section 26.480.030.A.4, Historic Landmark Lot Split: Thirty (30). For lots proposed for 100% deed restricted affordable housing: Thirty: (30)
2. Minimum front yard (feet): Principal buildings: 10. Accessory buildings: 15.
3. Minimum rear yard (feet): Principal buildings: 10. For the portion of a principal building used solely as a garage: 5. Accessory buildings: 5.
4. Minimum side yard:

Gross Lot Area (Square Feet)	Minimum Size for Each Side Yard	Total of Both Side Yards*
0—4,500	5 feet	10 feet
4,500—6,000	5 feet	10 feet, plus 1 foot for each additional 300 square feet of Gross Lot Area, to a maximum of 15 feet of total side yard
6,000—8,000	5 feet	15 feet, plus 1 foot for each additional 200 square feet of Gross Lot Area, to a maximum of 25 feet of total side yard
8,000—10,000	10 feet	25 feet, plus 1 foot for each additional 200 square feet of Gross Lot Area, to a maximum of 35 feet of total side yard.
10,000+	15 feet	35 feet, plus 1 foot for each additional 400 square feet of Gross Lot Area, to a maximum of 50 feet of total side yard.

The following requirements shall apply on a lot annexed subsequent to January 1, 1989.

Gross Lot Area (Square Feet)	Minimum Size for Each Side Yard	Total of Both Side Yards*
0—7,500	10 feet	20 feet
7,500—10,000	10 feet	20 feet, plus 1 foot for each additional 200 square feet of Gross Lot Area, to a maximum of 32.5 feet of total side yard
10,000+	15 feet	32.5 feet, plus 1 foot for each additional 400 square feet of Gross Lot Area, to a maximum of 50 feet of total side yard

* Two detached residential dwellings located on one lot shall not be subject to the combined side yard setback requirements, provided that the minimum setback between the two detached dwellings on the lot shall be ten (10) feet.

For purposes of calculating the minimum side yard setback for lots within the Hallam Lake Bluff environmentally sensitive area (ESA), the area below the top of slope shall be subtracted from lot size.

7. Maximum site coverage:

Gross Lot Area (Square Feet)	Maximum Site Coverage (%)
0 -5,999	No limitation
6,000 – 9,000	50%, minus 1% for each additional 300 square feet of Gross Lot Area, to a maximum site coverage of 40%
9,000 – 12,000	40%, minus 1% for each additional 300 square feet of Gross Lot Area, to a maximum site coverage of 30%

12,000 – 18,000	30%, minus 1% for each additional 1,200 square feet of Gross Lot Area, to a maximum site coverage of 25
18,000 +	25%

8. Maximum height (feet): 25; Existing multi-family that is 100% Deed-Restricted Affordable Housing is limited to its existing height, or 25 feet, whichever is greater.
9. Minimum distance between detached buildings on the lot (feet): 5 feet.
10. Percent of open space required for building site: No requirement.
11. Floor area ratio (applies to conforming and nonconforming lots of record):
 - a. Single-Family, Duplex, or Two Detached Dwellings

Net Lot Area (Square Feet)	Allowable Floor Area for Single-Family Residence*	Allowable Floor Area for Two Detached Dwellings or One Duplex*
0—3,000	80 square feet of floor area for each 100 square feet in Net Lot Area, up to a maximum of 2,400 square feet of floor area	90 square feet of floor area for each 100 square feet in Net Lot Area, up to a maximum of 2,700 square feet of floor area
3,000—6,000	2,400 square feet of floor area, plus 28 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 3,240 square feet of floor area	2,700 square feet of floor area, plus 30 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 3,600 square feet of floor area
6,000—9,000	3,240 square feet of floor area, plus 14 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 3,660 square feet of floor area	3,600 square feet of floor area, plus 16 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,080 square feet of floor area
9,000—15,000	3,660 square feet of floor area, plus 6 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,020 square feet of floor area	4,080 square feet of floor area, plus 6 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,440 square feet of floor area
15,000—50,000	4,020 square feet of floor area, plus 5 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 5,770 square feet of floor area.	4,440 square feet of floor area, plus 5 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 6,190 square feet of floor area
50,000+	5,770 square feet of floor area, plus 2 square feet of floor area for each additional 100 square feet in Net Lot Area.	6,190 square feet of floor area, plus 3 square feet of floor area for each additional 100 square feet in Net Lot Area

*Total external floor area for multiple detached residential dwellings on one (1) lot shall not exceed the floor area allowed for one (1) duplex. Total external floor area for multiple

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detached residential dwellings on a lot less than nine thousand (9,000) square feet listed on the inventory of historic landmark sites and structures shall not exceed the floor area allowed for one (1) detached residential dwelling.

- i. Each City of Aspen Historic Transferable Development Right certificate extinguished, pursuant to Section 26.535, Transferable Development Rights, shall allow an additional two hundred and fifty (250) square feet of Floor Area. Each residence on the parcel, excluding accessory dwelling units and carriage houses, shall be eligible for one (1) floor area increase in exchange for the extinguishment of one (1) historic TDR. Properties listed on the inventory of historic sites and structures shall not be eligible for this Floor Area increase. Non-conforming uses and structures shall not be eligible for this Floor Area increase. No more than one (1) floor area increase shall be allowed per residence, with the following exceptions:
- ii. Non-historic properties with a net lot area of 9,000 sf or larger that contain only a single family residence are eligible to extinguish up to two (2) historic TDRs.
- iii. Properties within the same subdivision or planned development as a sending site may be specified as eligible for up to two (2) floor area increases per residence pursuant to the subdivision or planned development approval. The properties to be specified as eligible for up to two (2) floor area increases per residence shall be located within the same subdivision or planned development so as to enhance preservation of the historic resource, considering a recommendation from the Historic Preservation Commission, shall not be located adjacent to the sending site and shall be described and depicted in the subdivision or planned development approvals granted by City Council. The total number of floor area increases permitted within the subdivision or planned development shall not exceed an aggregate total of one (1) per non-historic residence within the entire subdivision or planned development.

b. 100% Deed-Restricted Affordable Housing; Triplex or Fourplex: Allowable Floor Area shall be consistent with the Allowable Floor Area for a Duplex or Two Detached Dwellings as indicated in the table above.

c. 100% Deed-Restricted Affordable Housing; Existing Multifamily: May be expanded up to a maximum of 0.75:1 FAR. Existing multifamily that is not 100% Deed-Restricted Affordable Housing remains a non-conforming use and is limited to its existing floor area.

(Ord. No. 56-2000, §§ 1, 7 [part], 10; Ord. No. 25-2001, §§ 1, 5 [part]; Ord. No. 1-2002, § 20 [part]; Ord. No. 54-2003, § 6; Ord. No. 48-2004, § 1; Ord. No. 50-2005, § 1; Ord. No. 27-2010, §4; Ord. No. 34-2011, §3; Ord. No. 33-2014, §2)

26.710.050 Moderate-Density Residential (R-15).

A. Purpose. The purpose of the Moderate-Density Residential (R-15) Zone District is to provide areas for long-term residential purposes, short term vacation rentals, and customary accessory uses. Recreational and institutional uses customarily found in proximity to residential uses are included as conditional uses. Lands in the Moderate-Density Residential (R-15) Zone District typically consist of additions to the Aspen Townsite and subdivisions on the periphery of the City. Lands within the Townsite which border Aspen Mountain are also included in the Moderate-Density Residential (R-15) Zone District.

B. Permitted uses. The following uses are permitted as of right in the Moderate-Density Residential (R-15) Zone District.

1. Detached residential dwelling.
2. Duplex.
3. Two detached residential dwellings.
4. Triplex or Fourplex, if 100% deed-restricted affordable housing.
- 3-5. Existing multi-family housing, if 100% deed-restricted affordable housing. Existing multi-family housing that is not 100% deed-restricted affordable housing remains a non-conforming use.
- 4-6. Home occupations.
- 5-7. Accessory buildings and uses.
- 6-8. Accessory dwelling units and carriage houses meeting the provisions of section 26.520.040
- 7-9. Vacation rentals. Pursuant to Section 26.575.220.

C. Conditional uses. The following uses are permitted as conditional uses in the Moderate-Density Residential (R-15) Zone District, subject to the standards and procedures established in Chapter 26.425:

1. Arts, cultural and civic uses.
2. Academic uses.
3. Agricultural uses.
4. Recreational uses.
5. Group home.
6. Child care center.
7. For historic landmark properties: bed and breakfast and boardinghouse.

D. Dimensional requirements. The following dimensional requirements shall apply to all permitted and conditional uses in the Moderate-Density Residential (R-15) Zone District.

1. Minimum Gross Lot Area (square feet): fifteen thousand (15,000). For lots created by Section 26.480.030.A.4, Historic landmark lot split: three thousand (3,000). For properties that include or are proposed for 100% deed-restricted affordable housing: three thousand (3,000).
2. Minimum Net Lot Area per dwelling unit (square feet):
 - a. *Detached residential dwelling:* 15,000. For historic landmark properties: 3,000.
 - b. *Duplex:* 7,500. For historic landmark properties: 3,000.
 - c. *100% deed-restricted affordable housing; triplex, fourplex:* No requirement.
 - ~~b-d.~~ *100% deed-restricted affordable housing; existing multifamily:* No requirement.
 - ~~e-e.~~ *Bed and breakfast, boardinghouse:* No requirement.
3. Minimum lot width (feet): Seventy-five (75). For lots created by Section 26.480.030.A.4, Historic landmark lot split: Thirty (30). For lots proposed for 100% deed-restricted affordable housing: Thirty: (30)
3. Minimum front yard setback (feet):
 - a. *Residential dwellings:* twenty-five (25).
 - b. *Accessory buildings and all other buildings:* thirty (30).
4. Minimum side yard setback (feet): Ten (10).
5. Minimum rear yard setback (feet):
 - a. *Principal buildings:* 10
 - b. *Accessory buildings:* 5
6. Maximum height (feet): Twenty-five (25).
7. Minimum distance between detached buildings on the lot (feet): Ten (10).
8. Percent of open space required for building site: No requirement.

External floor area ratio (applies to conforming and nonconforming lots of record):

- a. Single-Family, Duplex or Two Detached Dwellings:

Net Lot Area (Square Feet)	Allowable Floor Area for Single-Family Residence*	Allowable Floor Area for Two Detached Dwellings or One Duplex*
0—3,000	80 square feet of floor area for each 100 square feet in Net Lot Area, up to a maximum of 2,400 square feet of floor area	90 square feet of floor area for each 100 square feet in Net Lot Area, up to a maximum of 2,700 square feet of floor area
3,000—9,000	2,400 square feet of floor area, plus 28 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,080 square feet of floor area	2,700 square feet of floor area, plus 30 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,500 square feet of floor area.
9,000—15,000	4,080 square feet of floor area, plus 7 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,500 square feet of floor area	4,500 square feet of floor area, plus 7 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,920 square feet of floor area
15,000—50,000	4,500 square feet of floor area, plus 6 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 6,600 square feet of floor area	4,920 square feet of floor area, plus 6 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 7,020 square feet of floor area
50,000+	6,600 square feet of floor area, plus 2 square feet of floor area for each additional 100 square feet in Net Lot Area.	7,020 square feet of floor area, plus 3 square feet of floor area for each additional 100 square feet in Net Lot Area.

* Total external floor area for multiple detached residential dwellings on one (1) lot shall not exceed the floor area allowed for one (1) duplex. Total external floor area for multiple detached residential dwellings on a lot less than twenty thousand (20,000) square feet listed on the inventory of historic landmark sites and structures shall not exceed the floor area allowed for one (1) detached residential dwelling.

Each City historic transferable development right certificate extinguished, pursuant to Chapter 26.535, Transferable development rights, shall allow an additional two hundred and fifty (250) square feet of floor area. Each residence on the parcel, excluding accessory dwelling units and carriage houses, shall be eligible for one (1) floor area increase in exchange for the extinguishment of one (1) historic TDR. Properties listed on the inventory of historic sites and structures shall not be eligible for this floor area increase. Nonconforming uses and structures shall not be eligible for this floor area increase. No more than one (1) floor area increase shall be allowed per residence, with the following exceptions:

i. Non-historic properties with a net lot area of 15,000 sf or larger that contain only a single family residence are eligible to extinguish up to two (2) historic TDRs.

-b. 100% Deed-Restricted Affordable Housing; Triplex or Fourplex: Allowable Floor Area shall be consistent with the Allowable Floor Area for a Duplex or Two Detached Dwellings as indicated in the table above.

c. 100% Deed--Restricted Affordable Housing; Existing Multifamily: May be expanded to a maximum of 0.75:1 FAR. Existing multifamily that is not 100% Deed-Restricted Affordable Housing remains a non-conforming use and is limited to its existing floor area.

(Ord. No. 56-2000, §§ 2, 7 [part]; Ord. No. 25-2001, §§ 2, 5 [part]; Ord. No. 1-2002, § 20 [part]; Ord. No. 54-2003, § 7; Ord. No. 50-2005, § 2; Ord. No. 27-2010, §4; Ord. No. 34-2011, §4; Ord. No. 33-2014, §3)

26.710.060 Moderate-Density Residential (R-15A).

A. Purpose. The purpose of the Moderate-Density Residential (R-15A) Zone District is to provide areas for long-term residential purposes, short term vacation rentals, and customary accessory uses. Recreational and institutional uses customarily found in proximity to residential uses are included as conditional uses. Lands in the Moderate-Density Residential (R-15A) Zone District are similarly situated to those in the Moderate-Density Residential (R-15) Zone District and are lands annexed from Pitkin County from Zone Districts in which duplexes are a prohibited use.

B. Permitted uses. The following uses are permitted as of right in the Moderate-Density Residential (R-15A) Zone District:

1. Detached residential dwelling.
2. Duplex, provided fifty percent (50%) of the duplex units are restricted to affordable housing.
- ~~3.~~ Two (2) detached residential dwellings.
- ~~4.~~ Triplex or Fourplex, if 100% deed-restricted affordable housing.
- ~~3.5.~~ Existing multi-family housing, if 100% deed-restricted affordable housing. Existing multi-family housing that is not 100% deed-restricted affordable housing remains a non-conforming use.
- ~~4.6.~~ Home occupations.
- ~~5.7.~~ Accessory buildings and uses.
- ~~6.8.~~ Accessory dwelling units and carriage houses meeting the provisions of section 26.520.
- ~~7.9.~~ Vacation rentals. Pursuant to Section 26.575.220

C. Conditional uses. The following uses are permitted as conditional uses in the Moderate-Density Residential (R-15A) Zone District, subject to the standards and procedures established in Chapter 26.425:

1. Arts, cultural and civic uses.
2. Academic uses.
3. Agricultural uses.
4. Recreational uses.
5. Group home.
6. Child care center.
7. For historic landmark properties: bed and breakfast and boardinghouse.

D. Dimensional requirements. The following dimensional requirements shall apply to all permitted and conditional uses in the Moderate-Density Residential (R-15A) Zone District:

1. Minimum Gross Lot Area (square feet): fifteen thousand (15,000). For lots created by Subsection 26.480.030.A.4, Historic landmark lot split: three thousand (3,000). For properties that include or are proposed for 100% deed-restricted affordable housing: three thousand (3,000).
2. Minimum Net Lot Area per dwelling unit (square feet):
 - a. *Detached residential dwelling:* 15,000. For historic landmark properties: three thousand (3,000).
 - b. *Duplex:* 7,500. For historic landmark properties: 3,000.
 - c. 100% deed-restricted affordable housing; triplex, fourplex: No requirement.
 - d. 100% deed-restricted affordable housing; existing multifamily: No requirement.
 - e. *Bed and breakfast, boardinghouse:* No requirement.
4. Minimum lot width (feet): seventy-five (75) feet. For lots created by Subsection 26.480.030.A.4, Historic landmark lot split: thirty (30). For lots proposed for 100% deed-restricted affordable housing: Thirty: (30)
3. A minimum front yard setback (feet):
 - a. *Residential dwelling:* twenty-five (25).
 - b. *Accessory buildings and all other buildings:* thirty (30).
5. Minimum side yard setback (feet): 10.
6. Minimum rear yard setback (feet):
 - a. *Residential dwellings:* ten (10).
 - b. *Accessory buildings and all other buildings:* five (5).
7. Maximum height (feet): twenty-five (25).
8. Minimum distance between principal and accessory buildings (feet): ten (10).
9. Percent of open space required for building site: No requirement.
10. Floor area ratio (applies to conforming and nonconforming lots of record):
Single-Family, Duplex or Two Detached Dwellings

Net Lot Area (Square Feet)	Allowable Floor Area for Single-Family Residence*	Allowable Floor Area for Two Detached Dwellings or One Duplex*
0—3,000	80 square feet of floor area for each 100 square feet in Net Lot Area, up to a maximum of 2,400 square feet of floor area	90 square feet of floor area for each 100 square feet in Net Lot Area, up to a maximum of 2,700 square feet of floor area
3,000—9,000	2,400 square feet of floor area, plus 28 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,080 square feet of floor area	2,700 square feet of floor area, plus 30 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,500 square feet of floor area
9,000—15,000	4,080 square feet of floor area, plus 7 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,500 square feet of floor area	4,500 square feet of floor area, plus 7 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,920 square feet of floor area
15,000—50,000	4,500 square feet of floor area, plus 6 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 6,600 square feet of floor area	4,920 square feet of floor area, plus 6 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 7,020 square feet of floor area
50,000+	6,600 square feet of floor area, plus 2 square feet of floor area for each additional 100 square feet in Net Lot Area.	7,020 square feet of floor area, plus 3 square feet of floor area for each additional 100 square feet in Net Lot Area.

* Total external floor area for multiple detached residential dwellings on one (1) lot shall not exceed the floor area allowed for one (1) duplex. Total external floor area for multiple detached residential dwellings on a lot less than twenty thousand (20,000) square feet listed on the inventory of historic landmark sites and structures shall not exceed the floor area allowed for one (1) detached residential dwelling.

Each City historic transferable development right certificate extinguished, pursuant to Chapter 26.535, Transferable development rights, shall allow an additional two hundred and fifty (250) square feet of floor area. Each residence on the parcel, excluding accessory dwelling units and carriage houses, shall be eligible for one (1) floor area increase in exchange for the extinguishment of one (1) historic TDR. Properties listed on the inventory of historic sites and structures shall not be eligible for this floor area increase. Nonconforming uses and structures shall not be eligible for this floor area increase. No

more than one (1) floor area increase shall be allowed per residence, with the following exceptions:

i. Non-historic properties with a net lot area of 15,000 sf or larger that contain only a single family residence are eligible to extinguish up to two (2) historic TDRs.

b. 100% Deed-Restricted Affordable Housing; Triplex or Fourplex: Allowable Floor Area shall be consistent with the Allowable Floor Area for a Duplex or Two Detached Dwellings as indicated in the table above.

c. 100% Deed--Restricted Affordable Housing; Existing Multifamily: May be expanded to a maximum of 0.75:1 FAR. Existing multifamily that is not 100% Deed-Restricted Affordable Housing remains a non-conforming use and is limited to its existing floor area.

(Ord. No. 56-2000, § 7 [part]; Ord. No. 25-2001, § 5 [part]; Ord. No. 1-2002, § 20 [part]; Ord. No. 54-2003, § 8; Ord. No. 50-2005, § 3; Ord. No. 27-2010, §4; Ord. No. 34-2011, §5; Ord. No. 33-2014, §4)

26.710.070 Moderate-Density Residential (R-15B).

A. Purpose. The purpose of the Moderate-Density Residential (R-15B) Zone District is to provide areas for long-term residential purposes, short term vacation rentals, and customary accessory uses. Lands in the Moderate-Density Residential (R-15B) Zone District are similarly situated to those in the Moderate-Density Residential (R-15) and (R-15A) Zone Districts, but are those in which single-family structures are a permitted use and duplexes are prohibited.

B. Permitted uses. The following uses are permitted as of right in the Moderate-Density Residential (R-15B) Zone District:

1. Detached residential dwelling.
2. Home occupations.
3. Accessory buildings and uses.
4. Vacation rentals. Pursuant to Section 26.575.220.

C. Conditional uses. The following uses are permitted as conditional uses in the Moderate-Density Residential (R-15B) Zone District, subject to the standards and procedures established in Chapter 26.425:

1. Agricultural uses.

D. Dimensional requirements. The following dimensional requirements shall apply to all permitted and conditional uses in the Moderate-Density Residential (R-15B) Zone District:

1. Minimum Gross Lot Area (square feet): fifteen thousand (15,000).
2. Minimum Net Lot Area per dwelling unit (square feet): fifteen thousand (15,000).
3. Minimum lot width (feet): seventy-five (75).
4. Minimum front yard setback (feet): thirty (30). For properties located between Eastwood Drive and Highway 82 (Lots 6-19, Eastwood Subdivision) and properties located on the northwest portion of Skimming Lane (Lots 8-11, Block 1, Aspen Grove subdivision): ten (10).
5. Minimum side yard setback (feet): five (5).
6. Minimum rear yard setback (feet):
 - a. Residential dwellings: ten (10)
 - b. Accessory buildings and all other buildings: five (5).For properties located between Eastwood Drive and Highway 82 (Lots 6-19, Eastwood Subdivision) and properties located on the northwest portion of Skimming Lane (Lots 8-11, Block 1, Aspen Grove subdivision): thirty (30).
7. Maximum height (feet): twenty-five (25).
8. Minimum distance between principal and accessory buildings: No requirement.

9. Percent of open space required for building site: No requirement.
10. Floor area ratio (applies to conforming and nonconforming lots of record):

Net Lot Area (Square Feet)	Allowable Floor Area for Single-Family Residence
0—3,000	80 square feet of floor area for each 100 square feet in Net Lot Area, up to a maximum of 1,680 square feet of floor area
3,000—9,000	1,680 square feet of floor area, plus 20 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 2,880 square feet of floor area
9,000—15,000	2,880 square feet of floor area plus 5 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 3,180 square feet of floor area
15,000—50,000	3,180 square feet of floor area, plus 4 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,580 square feet of floor area
50,000+	4,580 square feet of floor area, plus 1 square foot of floor area for each additional 100 square feet in Net Lot Area.

Each City historic transferable development right certificate extinguished, pursuant to Chapter 26.535, Transferable development rights, shall allow an additional two hundred and fifty (250) square feet of floor area. Each residence on the parcel, excluding accessory dwelling units and carriage houses, shall be eligible for one (1) floor area increase in exchange for the extinguishment of one (1) historic TDR. No more than one (1) floor area increase shall be allowed per residence. Properties listed on the inventory of historic sites and structures shall not be eligible for this floor area increase. Nonconforming uses and structures shall not be eligible for this floor area increase.

(Ord. No. 56-2000, § 7 [part]; Ord. No. 25-2001, § 5 [part]; Ord. No. 54-2003, § 9; Ord. 51-2005, § 1; Ord. No. 27-2010, §4; Ord. No. 34-2011, §6)

26.710.080 Low-Density Residential (R-30).

A. Purpose. The purpose of the Low-Density Residential (R-30) Zone District is to provide areas for long-term residential purposes, short term vacation rentals, and customary accessory uses. Recreational and institutional uses customarily found in proximity to residential uses are included as conditional uses. Lands in the Low-Density Residential (R-30) Zone District are typically located along river frontages in outlying areas of the City.

B. Permitted uses. The following uses are permitted as of right in the Low-Density Residential (R-30) Zone District:

1. Detached residential dwelling.
- ~~2.~~ Duplex.
- ~~3.~~ Triplex or Fourplex, if 100% deed-restricted affordable housing.
- ~~2-4.~~ Existing multi-family housing, if 100% deed-restricted affordable housing. Existing multi-family housing that is not 100% deed-restricted affordable housing remains a non-conforming use.
- ~~3-5.~~ Home occupations.
- ~~4-6.~~ Accessory buildings and uses.
- ~~5-7.~~ Accessory dwelling units and carriage houses meeting the provisions of Chapter 26.520.
- ~~6-8.~~ Vacation Rentals. Pursuant to Section 26.575.220

C. Conditional uses. The following uses are permitted as conditional uses in the Low-Density Residential (R-30) Zone District, subject to the standards and procedures established in Chapter 26.425:

1. Arts, cultural and civic uses.
2. Academic uses.
3. Agricultural uses.
4. Recreational uses.
5. Group home.
6. Child care center.

D. Dimensional requirements. The following dimensional requirements shall apply to all permitted and conditional uses in the Low-Density Residential (R-30) Zone District:

1. Minimum Gross Lot Area (square feet): thirty thousand (30,000).
2. Minimum Net Lot Area per dwelling unit (square feet):
 - a. Detached residential dwelling: thirty thousand (30,000).
 - b. Duplex: fifteen thousand (15,000).

c. 100% deed-restricted affordable housing; triplex, fourplex: No requirement.

d. 100% deed-restricted affordable housing; existing multifamily: No requirement.

3. Minimum lot width (feet): one hundred (100). For lots proposed for 100% deed-restricted affordable housing: Thirty: (30)
4. Minimum front yard setback (feet):
 - a. Residential dwellings: twenty-five (25).
 - b. Accessory buildings and all other buildings: thirty (30).
5. Minimum side yard setback (feet): ten (10).
6. Minimum rear yard setback (feet):
 - a. Residential dwellings: fifteen (15).
 - b. Accessory buildings: five (5).
 - c. All other buildings: thirty (30).
7. Maximum height (feet): twenty-five (25).
8. Minimum distance between principal and accessory buildings (feet): ten (10).
9. Percent of open space required for building site: No requirement.
10. Floor area ratio (applies to conforming and nonconforming lots of record):
 - a. Single-Family and Duplex:

Net Lot Area (Square Feet)	Allowable Floor Area for Single-Family Residence	Allowable Floor Area for Duplex
0—3,000	80 square feet of floor area for each 100 square feet in Net Lot Area, up to a maximum of 2,400 square feet of floor area	90 square feet of floor area for each 100 square feet in Net Lot Area, up to a maximum of 2,700 square feet of floor area
3,000—9,000	2,400 square feet of floor area, plus 28 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,080 square feet of floor area	2,700 square feet of floor area, plus 30 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,500 square feet of floor area
9,000—15,000	4,080 square feet of floor area, plus 7 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,500 square feet of floor area	4,500 square feet of floor area, plus 7 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 4,920 square feet of floor area
15,000—50,000	4,500 square feet of floor area, plus 6 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 6,600 square feet of floor area	4,920 square feet of floor area, plus 6 square feet of floor area for each additional 100 square feet in Net Lot Area, up to a maximum of 7,020 square feet of floor area
50,000+	6,600 square feet of floor area, plus 2 square feet of floor area for each additional 100 square feet in Net Lot Area	7,020 square feet of floor area, plus 3 square feet of floor area for each additional 100 square feet in Net Lot Area

Each City historic transferable development right certificate extinguished, pursuant to Chapter 26.535, Transferable development rights, shall allow an additional two hundred and fifty (250) square feet of floor area. Each residence on the parcel, excluding accessory dwelling units and carriage houses, shall be eligible for one (1) floor area increase in exchange for the extinguishment of one (1) historic TDR. Properties listed on the Inventory of Historic Landmark Sites and Structures shall not be eligible for this floor area increase. Nonconforming uses and structures shall not be eligible for this floor area increase. No more than one (1) floor area increase shall be allowed per residence, with the following exceptions:

- i. Non-historic properties with a net lot area of 30,000 sf or larger that contain only a single family residence are eligible to extinguish up to two (2) historic TDRs.

-b. 100% Deed-Restricted Affordable Housing; Triplex or Fourplex: Allowable Floor Area shall be consistent with the Allowable Floor Area for a Duplex or Two Detached Dwellings as indicated in the table above.

c. 100% Deed--Restricted Affordable Housing; Existing Multifamily: 0.75:1 FAR.
Existing multifamily that is not 100% Deed-Restricted Affordable Housing remains a
non-conforming use and is limited to its existing floor area.

(Ord. No. 56-2000, §7 [part]; Ord. No. 25-2001, §5 [part]; Ord. No. 54-2003, §10; Ord. No. 27-2010, §4; Ord. No.34-2011, §7; Ord. No.33-2014, §5)

26.710.090 Residential Multi-Family (RMF).

A. Purpose. The purpose of the Residential Multi-Family (RMF) Zone District is to provide for the use of land for intensive long-term residential purposes, short term vacation rentals, and customary accessory uses. Recreational and institutional uses customarily found in proximity to residential uses are included as conditional uses. Lands in the Residential Multi-Family (RMF) Zone District are typically those found in the Aspen infill area, within walking distance of the center of the City or lands on transit routes and other lands with existing concentrations of attached residential dwellings and mixed attached and detached residential dwellings.

B. Permitted uses. The following uses are permitted as of right in the Residential Multi-Family (RMF) Zone District:

1. Detached residential dwelling.
2. Two (2) detached residential dwellings.
3. Duplex dwelling.
4. Multi-family dwellings.
5. Home occupations.
6. Accessory buildings and uses.
7. Dormitory.
8. Accessory dwelling units and carriage houses meeting the provisions of Chapter 26.520.
9. For historic landmark properties: bed and breakfast.
10. Vacation Rentals. Pursuant to Section 26.575.220

C. Conditional uses. The following uses are permitted as conditional uses in the Residential Multi-Family (RMF) Zone District, subject to the standards and procedures established in Chapter 26.425:

1. Arts, cultural and civic uses.
2. Academic uses.
3. Recreational uses.
4. Group home.
5. Child care center.

D. Dimensional requirements. The following dimensional requirements shall apply to all permitted and conditional uses in the Residential Multi-Family (RMF) Zone District:

2. Minimum Gross Lot Area (square feet): six thousand (6,000). For lots created by Paragraph 26.480.030.A.4, Historic landmark lot split: three thousand (3,000). For

properties that include or are proposed for 100% deed-restricted affordable housing: three thousand (3,000).

3. Minimum Net Lot Area per dwelling unit (square feet):
 - a. *Detached residential dwelling*: four thousand five hundred (4,500). For historic landmark properties: three thousand (3,000).
 - b. *Duplex dwelling unit*: four thousand five hundred (4,500). For historic landmark properties: three thousand (3,000).
 - c. *Multi-family dwellings*: No requirement.
 - d. *Bed and breakfast*: No requirement.
5. Minimum lot width (feet): sixty (60). For lots created by Paragraph 26.480.030.A.4, Historic landmark lot split: thirty (30). For lots containing or proposed for 100% deed-restricted affordable housing: Thirty: (30)
4. Minimum front yard setback (feet):
 - a. *Detached residential and duplex dwellings*: Same as R-6 Zone District.
 - b. *Multi-family*: five (5).
5. Minimum side yard setback (feet):
 - a. *Detached residential and duplex dwellings*: same as R-6 Zone District.
 - b. *Multi-family*: five (5).
6. Minimum rear yard setback (feet):
 - a. *Detached residential and duplex dwellings*: same as R-6 Zone District.
 - b. *Multi-family*: five (5).
7. Maximum height (according to density) (feet):
 - a. *Detached residential and duplex dwellings*: same as R-6 Zone District.
 - b. *Multi-family* – parcel density less than one (1) unit per one thousand five hundred (1,500) square feet of Gross Lot Area: twenty-five (25).
 - c. *Multi-family* – parcel density equal to or greater than one (1) unit per one thousand five hundred (1,500) square feet of Gross Lot Area: thirty-two (32).
8. Minimum distance between buildings on the lot (feet):
 - a. *Detached residential and duplex dwellings*: same as R-6 Zone District.
 - b. *Multi-family*: No requirement. (Building and Fire Codes may apply.)
9. Public amenity space: Pursuant to Section 26.575.030.
10. Floor area ratio (FAR). This Paragraph applies to each type of use according to density and applies to conforming and nonconforming lots of record:

- a. *Existing detached residential and duplex dwellings:* one hundred percent (100%) of the allowable floor area of an equivalent-sized lot located in the R-6 Zone District. (See Section 26.710.040, R-6 Zone District.) City historic transferable development rights shall not permit additional floor area for detached residential and duplex dwellings.
 - b. *New or replacement after demolition detached residential and duplex dwellings:* eighty percent (80%) of the allowable floor area of an equivalent-sized lot located in the R-6 Zone District. (See Section 26.710.040, R-6 Zone District.) City historic transferable development rights shall not permit additional floor area for detached residential and duplex dwellings.
 - c. *Multi-family* – parcel density of less than one (1) unit per one thousand five hundred (1,500) square feet of Gross Lot Area: 0.75:1.
 - d. *Multi-family* – parcel density equal to or greater than one (1) unit per one thousand five hundred (1,500) square feet of Gross Lot Area: 1.25:1.
 - e. *Multi-family* – parcel density equal to or greater than one (1) unit per seven hundred fifty (750) square feet of Gross Lot Area: 1.5:1.
11. Maximum multi-family unit size (square feet): For properties in the Aspen infill area, two thousand (2,000) square feet of net livable area. For properties outside the Aspen infill area, two thousand five hundred (2,500) square feet of net livable area.
- a. The property owner may increase individual multi-family unit size by extinguishing historic transferable development right certificates ("certificate" or "certificates"), subject to the following:
 - 1) The transfer ratio is five hundred (500) square feet of net livable area for each certificate that is purchased.
 - 2) The additional square footage accrued may be applied to multiple units. However, the maximum individual unit size attainable by transferring development rights is two thousand five hundred (2,500) square feet of net livable area for properties within the Aspen infill area and three thousand (3,000) square feet of net livable area for properties outside the Aspen infill area (i.e., no more than five hundred [500] additional square feet may be applied per unit).
 - 3) This incentive applies only to individual unit size. Transferring development rights does not allow an increase in the floor area ratio (FAR) of the lot.

Commentary: Refer to Chapter 26.535 for the procedures for extinguishing certificates.

(Ord. No. 56-2000, §7 [part]; Ord. No. 25-2001, §5 [part]; Ord. No. 1-2002, §20 [part]; Ord. No. 29-2002, §1; Ord. No. 27-2004, §1; Ord. No. 50-2005, §10; Ord. No. 9, 2007, §1; Ord. No. 27-2010, §4; Ord. No. 34-2011, §8)

26.710.100 Residential Multi-Family-A (RMFA).

A. Purpose. The purpose of the Residential Multi-Family-A (RMFA) Zone District is to provide for the use of land for intensive long-term residential purposes, short term vacation rentals, and customary accessory uses. Recreational and institutional uses customarily found in proximity to residential uses are included as conditional uses. Lands in the Residential Multi-Family-A (RMFA) Zone District are typically those found in the Aspen infill area, within walking distance of the center of the City or lands on transit routes and other lands with existing concentrations of attached residential dwellings and mixed attached and detached residential dwellings.

B. Permitted uses. The following uses are permitted as of right in the Residential Multi-Family-A (RMFA) Zone District:

1. Detached residential dwelling.
2. Two (2) detached residential dwellings.
3. Duplex dwelling.
4. Multi-family dwellings.
5. Home occupations.
6. Accessory buildings and uses.
7. Dormitory.
8. Accessory dwelling units and carriage houses meeting the provisions of Chapter 26.520.
9. For historic landmark properties: bed and breakfast.
10. Vacation Rentals. Pursuant to Section 26.575.220

C. Conditional uses. The following uses are permitted as conditional uses in the Residential Multi-Family-A (RMFA) Zone District, subject to the standards and procedures established in Chapter 26.425:

1. Arts, cultural and civic uses.
2. Academic uses.
3. Recreational uses.
4. Group home.
5. Child care center.

D. Dimensional requirements. The following dimensional requirements shall apply to all permitted and conditional uses in the Residential Multi-Family-A (RMFA) Zone District:

11. Minimum Gross Lot Area (square feet): six thousand (6,000). For historic landmark properties: three thousand (3,000). For properties that include or are proposed for 100% deed-restricted affordable housing: three thousand (3,000).
1. Minimum Net Lot Area per dwelling unit (square feet):
 - a. *Detached residential dwelling:* 4,500. For historic landmark properties: 3,000.
 - b. *Duplex dwelling unit:* 4,500. For historic landmark properties: 3,000.
 - c. *Multi-family dwellings:* No requirement.
 - d. *Bed and breakfast:* No requirement.
6. Minimum lot width (feet): sixty (60). For historic landmark properties: thirty (30). For lots containing or proposed for 100% deed-restricted affordable housing: Thirty: (30)
3. Minimum front yard setback (feet):
 - a. *Detached residential and duplex dwellings:* Same as R-6 Zone District.
 - b. *Multi-family:* 5.
4. Minimum side yard setback (feet):
 - a. *Detached residential and duplex dwellings:* Same as R-6 Zone District.
 - b. *Multi-family:* 5.
5. Minimum rear yard setback (feet):
 - a. *Detached residential and duplex dwellings:* Same as R-6 Zone District.
 - b. *Multi-family:* 5.
6. Maximum height (according to density) (feet):
 - a. *Detached residential and duplex dwellings:* Same as R-6 Zone District.
 - b. *Multi-family* – parcel density less than one (1) unit per 1,500 square feet of Gross Lot Area: 25.
 - c. *Multi-family* – parcel density equal to or greater than one (1) unit per 1,500 square feet of Gross Lot Area: 32.
7. Minimum distance between buildings on the lot (feet):
 - a. *Detached residential and duplex dwellings:* Same as R-6 Zone District.
 - b. *Multi-family:* No requirement. (Building and Fire Codes may apply).
8. Public amenity space: Pursuant to Section 26.575.030.
9. Floor area ratio (FAR). This Paragraph applies to each type of use according to density and applies to conforming and nonconforming lots of record:
 - a. *Existing detached residential and duplex dwellings:* One hundred percent (100%) of the allowable floor area of an equivalent-sized lot located in the R-6 Zone

District. (See Section 26.710.040, R-6 Zone District.) City historic transferable development rights shall not permit additional floor area for detached residential and duplex dwellings.

- b. *New or replacement after demolition detached residential and duplex dwellings:* Eighty percent (80%) of the allowable floor area of an equivalent-sized lot located in the R-6 Zone District. (See Section 26.710.040, R-6 Zone District.) City historic transferable development rights shall not permit additional floor area for detached residential and duplex dwellings.
 - c. *Multi-family* – parcel density of less than one (1) unit per one thousand five hundred (1,500) square feet of Gross Lot Area: 0.75:1.
 - d. *Multi-family* – parcel density equal to or greater than one (1) unit per one thousand five hundred (1,500) square feet of Gross Lot Area: 1.25:1.
 - e. *Multi-family* – parcel density equal to or greater than one (1) unit per seven hundred fifty (750) square feet of Gross Lot Area: 1.5:1.
10. Maximum multi-family unit size (square feet): For properties in the Aspen infill area, two thousand (2,000) square feet of net livable area. For properties outside the Aspen infill area, two thousand five hundred (2,500) square feet of net livable area.
- a. The property owner may increase individual multi-family unit size by extinguishing historic transferable development right certificates ("certificate" or "certificates"), subject to the following:
 - 1) The transfer ratio is 500 square feet of net livable area for each certificate that is purchased.
 - 2) The additional square footage accrued may be applied to multiple units. However, the maximum individual unit size attainable by transferring development rights is 2,500 square feet of net livable area for properties within the Aspen infill area and 3,000 square feet of net livable area for properties outside the Aspen infill area (i.e., no more than five hundred [500] additional square feet may be applied per unit).
 - 3) This incentive applies only to individual unit size. Transferring development rights does not allow an increase in the floor area ratio (FAR) of the lot.
Commentary: Refer to Chapter 26.535 for the procedures for extinguishing certificates.

(Ord. No. 56-2000, §7 [part]; Ord. No. 25-2001, §5 [part]; Ord. No. 27-2004, §2; Ord. No. 9, 2007, §2; Ord. No. 27-2010, §4; Ord. No. 34-2011, §9)

26.710.110 Affordable Housing/Planned Development (AH/PD).

A. Purpose. The purpose of the Affordable Housing/Planned Development (AH/PD) Zone District is to provide for the use of land for the production of category affordable housing and resident occupied lots and units. The Zone District also permits a limited component of free market lots/units to offset the cost of developing affordable housing. It is contemplated that land may also be subdivided in connection with a development plan. The AH/PD Zone District is intended for residential use primarily by permanent residents of the community and in some instances allows for short term vacation rentals. Recreational and institutional uses customarily found in proximity to residential uses are included as conditional uses. Lands in the AH/PD Zone District should be scattered throughout the City to ensure a mix of housing types, including those which are affordable by its working residents; at the same time the AH/PD Zone District can protect the City's neighborhoods from rezoning pressures that other non-community-oriented Zone Districts may produce. Further, lands in the AH/PD Zone District should be located within walking distance of the center of the City or on transit routes.

B. Permitted uses. The following uses are permitted as of right in the AH/PD Zone District:

1. Residential uses restricted to category affordable housing guidelines and resident occupied units which comply with the following requirements:
 - a. Minimum bedroom mix. A minimum of seventy percent (70%) of the project's total bedrooms shall be deed restricted affordable housing consistent with the Affordable Housing Guidelines. The mix between categories of housing shall be consistent with the Affordable Housing Guidelines. The remaining bedrooms that are not deed restricted to affordable housing may be free market residential units.
 - b. Permissible reduction in bedroom mix for exemplary projects. A project may be eligible for a reduction of the minimum affordable housing bedroom mix requirement to a level of sixty percent (60%) of the project's total bedrooms if the applicant can demonstrate to the satisfaction of the City Council that the project meets the requirements for an exceptional project as set forth in the Affordable Housing Guidelines.
2. Home occupations.
3. Accessory buildings and uses.
4. Accessory dwelling units meeting the provisions of Chapter 26.520.
5. Vacation rentals. Pursuant to Section 26.575.220

C. Conditional uses. The following uses are permitted as conditional uses in the Affordable Housing (AH) Zone District, subject to the standards and procedures established in Chapter 26.425:

1. Park and open use recreation site.
2. Child care center.

3. Satellite dish antennae.
4. Dormitory.
5. Transit facilities.

D. Dimensional requirements. The following dimensional requirements shall be established by adoption of a Final PD Development Plan and shall apply to all permitted and conditional uses in the Planned Development:

1. Minimum Gross Lot Area.
2. Minimum Net Lot Area per dwelling unit.
3. Maximum allowable density.
4. Minimum lot width.
6. Minimum front yard.
7. Minimum side yard.
8. Minimum rear yard.
9. Maximum site coverage.
10. Maximum height (including view planes).
11. Minimum distance between buildings on the lot.
12. Minimum percent open space required for the building site.
13. Trash access area.
14. Allowable floor area.
15. Minimum off-street parking spaces.
16. Other dimensions determined necessary to establish through the PD process.

Note #1: The maximum allowable density permitted in this zone shall be established by adoption of a Final PD Development Plan by using the following table applied to the proposed fathering parcel as a guide:

Unit Type	Minimum Net Lot Area* Per Dwelling Unit (Square Feet)
Dormitory	300
Studio	400
One Bedroom	500
Two Bedroom	1000
Three Bedroom	1500
3+ Bedrooms	500 /Bedroom

Note #2: The allowable floor area permitted in this zone shall be established by adoption of a Final PD Development Plan by using the following table applied to the proposed fathering parcel as a guide:

Fathering Parcel Net Lot Area*	Allowable Floor Area Ratio
0—15,000 square feet	1.1:1
15,001—25,000 square feet	1:1
25,001—43,560 square feet	.8:1
>1 acre—3 acres	.6:1
>3 acres—6 acres	.36:1
>6 acres	.3:1

* Net Lot Area as defined in the Land Use Code.

(Ord. No. 27-2010, §4; Ord. No. 34-2011, §10)

26.710.120 High Density Residential (R-3).

A. Purpose. The purpose of the High Density Residential (R-3) Zone District is to provide for the use of land to locate manufactured housing for intensive long-term residential purposes, short term vacation rentals, and customary accessory uses and less intensive office uses. Recreational and institutional uses customarily found in proximity to residential uses are included as conditional uses. The High Density Residential (R-3) Zone District shall be located in areas where the effect on surrounding property shall be minimized, where the health, safety and general welfare of the High Density Residential (R-3) Zone District residents and others will be protected and where the topography is suitable for the permitted uses and conditional uses allowed in the High Density Residential (R-3) Zone District.

B. Permitted uses. The following uses are permitted as of right in the High Density Residential (R-3) Zone District:

- ~~1.~~ Mobile home park.
- ~~2.1.~~ Home occupations.
- ~~3.2.~~ Accessory buildings and uses.
2. Accessory dwelling units meeting the provisions of Chapter 26.520.
3. Vacation Rentals. Pursuant to Section 26.575.220.

C. Conditional uses. The following uses are permitted as conditional uses in the High Density Residential (R-3) Zone District, subject to the standards and procedures established in Chapter 26.425:

1. Park and open use recreation site.
2. Public and private academic school.
2. Church.
3. Child care center.

D. Dimensional requirements. The following dimensional requirements shall apply to all permitted and conditional uses in the High Density Residential (R-3) Zone District:

1. Minimum Gross Lot Area: three thousand (3,000) square feet.
2. Minimum Net Lot Area per dwelling unit: three thousand (3,000) square feet.
2. Minimum lot width: forty (40) feet.
3. Minimum front yard setback: five (5) feet (excluding hitch on mobile home).
4. Minimum side yard setback: five (5) feet.
5. Minimum rear yard setback: five (5) feet.
6. Maximum height:

Administrative service buildings: twenty-five (25) feet.

All other structures: fifteen (15) feet.

7. Minimum distance between principal and accessory buildings: five (5) feet.
8. Percent of open space required for building site: No requirement.
9. External floor area ratio: No requirement.

(Ord. No. 56-2000, § 7 [part]; Ord. No. 39-2001, § 1; Ord. No. 27-2010, §4; Ord. No.34-2011, §11)

26.710.130 Rural Residential (RR).

A. Purpose. Purpose. The purpose of the Rural Residential (RR) Zone District is to allow utilization of land for low density, long-term residential and short term vacation rental purposes with the recreational, institutional, public and other compatible uses customarily found in proximity to those uses allowed as permitted uses or conditional uses.

B. Permitted uses. The following uses are permitted as of right in the Rural Residential (RR) Zone District:

1. Detached residential dwelling.
2. Farm building and use, provided that all such buildings and storage areas are located at least one hundred (100) feet from pre-existing dwellings on other lots.
2. Nursery.
3. Greenhouse.
4. Home occupations.
5. Accessory buildings and uses.
6. Accessory dwelling units meeting the provisions of Section 26.520.040.
7. Vacation Rental. Pursuant to Section 26.575.220

C. Conditional uses. The following uses are permitted as conditional uses in the Rural Residential (RR) Zone District, subject to the standards and procedures established in Chapter 26.425:

1. Public building.
2. Public and private academic school.
3. Church.
4. Radio tower.
5. Recreation club.
6. Child care center.
2. Park and open use recreation site including ski runs, ski lifts and other skiing facilities and structures.
3. Sewage disposal.
4. Water storage and reservoir.
5. Electric substation or gas regulator station (not including building for offices, repair or storage).
6. Veterinary clinic.

D. Dimensional requirements. The following dimensional requirements shall apply to all permitted and conditional uses in the Rural Residential (RR) Zone District:

1. Minimum Gross Lot Area: two (2) acres.
2. Minimum Net Lot Area per dwelling unit: two (2) acres.
3. Minimum lot width: two hundred (200) feet.
4. Minimum front yard setback: thirty (30) feet.
5. Minimum side yard setback: twenty (20) feet.
6. Minimum rear yard setback: twenty (20) feet.
7. Maximum height: twenty-eight (28) feet.
8. Minimum distance between principal and accessory buildings: No requirement.
9. Percent of open space required for building site: No requirement.
10. External floor area ratio (applies to conforming and nonconforming lots of record): same as R-15 Zone District.

(Ord. No. 56-2000, § 3; Ord. No. 25-2001, § 3; Ord. No. 27-2010, §4; Ord. No. 34-2011, §12)

26.710.140 Commercial Core (CC).

A. Purpose. The Commercial Core (CC) serves as the highest intensity commercial area, fulfilling the policies of the Aspen Area Community Plan geared towards a strong and sustainable local and visitor economy, a diversity of commercial opportunities and the maintenance of Aspen’s historic character. The CC zone provides for the use of land for retail, service, commercial, and institutional purposes within mixed-use buildings oriented to local and tourist populations. The balance of uses is designed to enhance the business and commercial character in the historic core of the City and provide commercial opportunities proximate to multi-modal transit infrastructure. This mix of uses creates economic, cultural and social vitality,

B. Permitted uses. The following uses are permitted by right in the Commercial Core (CC) Zone District:

1. Uses allowed on basement floors: General retail, specialty retail, restaurant, bar and entertainment uses, office uses, and building elements necessary and incidental to uses on other floors. Lodging uses, only when the entire building is dedicated to lodging and associated commercial use.
2. Uses allowed on the ground floor: General retail, specialty retail, restaurant, bar and entertainment uses, and uses and building elements necessary and incidental to uses on other floors. Lodging uses, only when the entire building is dedicated to lodging and associated commercial use. Office uses are prohibited on the ground floor except within spaces set back a minimum of forty (40) feet from the front property line and recessed behind the front-most street-facing façade. This prohibition shall not apply to split-level buildings (see definition) or properties north of Main Street. Parking shall not be allowed as the sole use of the ground floor. Automobile drive-through service is prohibited.
3. Uses allowed on upper floors: General retail, specialty retail, restaurant, bar and entertainment uses, office uses, lodging, and affordable multi-family housing.
4. Uses allowed on all floors: General retail, specialty retail, restaurant, bar and entertainment uses, arts, cultural, civic and community uses, public uses, academic uses, service uses, accessory uses and structures, storage accessory to a permitted use, and uses and building elements necessary and incidental to uses on other floors, including parking accessory to a permitted use.
5. Free-Market Residential Units: No new Free-Market Residential Units may be established. Free-Market Residential units are permitted on any level if they were legally established (having received a Certificate of Occupancy, Development Order, or applied for a Development Order) prior to Ordinance 25 (Series of 2012).
- ~~6. Affordable Housing Units: Affordable housing is permitted by right on upper floors, where accessory to a commercial use on the property or required for on-site affordable housing mitigation requirements. Affordable housing created pursuant to this~~

~~subsection is not eligible to be used for the creation of Certificates of Affordable Housing Credit, pursuant to Chapter 26.540, unless for a fraction of a unit.~~

~~7.6.~~

~~8.7.~~ Home Occupations and Vacation Rentals: Home Occupations and Vacation Rentals are permitted only in legally established residential units.

C. Conditional uses. The following uses are permitted as conditional uses in the Commercial Core (CC) Zone District, subject to the standards and procedures established in Chapter 26.425:

1. Gasoline service station.
2. Commercial parking facility, pursuant to Chapter 26.515.
3. Automobile showroom and dealership.
4. Formula uses, which shall be subject to the provisions contained in Section 26.425.045.
5. Lodge, Boutique.

D. Dimensional requirements. The following dimensional requirements shall apply to all permitted and conditional uses in the Commercial Core (CC) Zone District. The dimensional standards and allotments provided in this section for commercial and mixed-use developments are the maximum allowable for the zone and may not be achieved for all developments. Site constraints, historic resources, on-site mitigation and replacement requirements, and other factors may prevent development from achieving some or all of the maximum allowable dimensional standards.

1. Minimum Gross Lot Area (square feet): No requirement.
2. Minimum Net Lot Area per dwelling unit (square feet): No requirement.
3. Minimum lot width (feet): No requirement.
4. Minimum front yard setback (feet): No requirement.
5. Minimum side yard setback (feet): No requirement.
6. Minimum rear yard setback (feet): No requirement
7. Minimum utility/trash/recycle area: Pursuant to Chapter 12.06.
8. Maximum height (feet): Twenty-eight (28) feet.
9. Minimum distance between buildings on the lot (feet): No requirement.
10. Public amenity space: Pursuant to Section 26.412.
11. Floor area ratio (FAR): The following FAR schedule applies to uses cumulatively up to a total maximum FAR of 2.25:1.

- a. *Commercial uses*: 2.25:1.
- b. *Arts, cultural, civic and community uses, public uses, recreational uses, academic uses, child care center and similar uses*: 2:1.
- c. *Affordable multi-family housing*: Greater of existing FAR or 1:1.
- d. *Lodging*: 0.5:1, which may be increased to 1.5:1 if the individual lodge units on the parcel average five hundred (500) net livable square feet or less, which may be comprised of lock-off units.
- e. *Free-Market multi-family housing*: Limited to the existing free-market multi-family FAR. No expansion to FAR shall be permitted, except at-grade patios, and decks (other than roof-top decks), balconies, exterior stairways, trellis, and other similar features up to 15% of the total free-market residential floor area. Any subsequent reduction in floor area occupied by such residential use shall be deemed a new limitation and the use shall not thereafter be enlarged to occupy a greater floor area. Free-market residential units shall not be able to utilize any exemptions to floor area outlined in Section 26.575.020(D), *Measuring Floor Area*, except as noted above.

12. Maximum lodge unit size (square feet): 1,500. When units are comprised of lock-off units, this maximum shall apply to the largest possible combination of units.

13. Net Livable Area (square feet):

- a) Category 1-57 Affordable multi-family housing: No limitation.
- b) Resident Occupied Affordable multi-family housing: Individual units shall be limited to 2,000 sq. ft. of net livable area.
- c) Free-Market Residential: Overall net livable area for a building or project is limited to the existing net livable square footage. No expansion to overall net livable area shall be permitted, except for as described below. Any subsequent reduction in net livable area occupied by such residential use shall be deemed a new limitation and the use shall not thereafter be enlarged to occupy a greater net livable area. Individual units shall be limited to 2,000 sq. ft. of net livable area. Combination of Free-Market residential units is permitted, but subject to the net livable size limitations herein, as well as other provisions of this title.
- d) Expansions Allowed: Notwithstanding the above, individual multi-family unit sizes may be increased by extinguishing Historic Transferable Development Right Certificates (“certificate” or “certificates”), subject to the following:
 - 1) The transfer ratio is 500 sq. ft. of net livable area for each certificate that is extinguished.

- 2) The additional square footage accrued may be applied to multiple units. However, the maximum individual unit size attainable by transferring development rights is 2,500 sq. ft. of net livable area (i.e., no more than 500 additional square feet may be applied per unit).
- 3) This incentive applies only to individual unit size. Transferring development rights does not allow an increase in the Floor Area Ratio (FAR) of the lot or the use.

14. Commercial/residential ratio: When development includes mixed-uses, the total residential net livable area shall be no greater than 65% of the total above-grade commercial net leasable and lodge net livable area on the same parcel.

Compliance with City of Aspen Charter. Any property located east of Castle Creek that was in the Commercial Core (CC) zone district on January 1, 2015, is subject to the provisions of Article XIII Section 13.14, *Voter authorization of certain land use approvals*, of the City of Aspen Charter.

(Ord. No. 56-2000, §§7 [part], 11; Ord. No. 25-2001, §5 [part]; Ord. No. 1-2002, §20 [part]; Ord. No. 21-2002, §§5 and 6 [part]; Ord. No. 28a-2004, §2; Ord. No. 12-2006, §10; Ord. No. 11, 2007, §1; Ord. No. 27-2010, §4; Ord. No. 34-2011, §13; Ord. No.12-2012, §1; Ord. No.25-2012, §1; Ord. No.20-2015, 2; Ord. No.25-2015, 1; Ord. No. 29, 2016, §1; Ord. 23, 2017, §4)

26.710.150 Commercial (C-1).

Purpose. The Commercial (C-1) zone district provides for a diversity of commercial uses in mixed-use buildings outside of the historic context of the Commercial Core (CC) zone district. The C-1 zone advances Aspen Area Community Plan policies geared toward a strong and sustainable local and visitor economy, a diversity of commercial opportunities and the maintenance of Aspen as a recreation and cultural destination. The C-1 zone creates economic vitality by providing a mix of commercial uses with greater flexibility in architecture and design, enhancing Aspen’s community character. The C-1 creates a transition from the more intense activity of the CC zone district to the surrounding mixed-use, residential and lodge related uses.

B. Permitted uses. The following uses are permitted by right in the Commercial (C-1) Zone District:

1. Uses allowed on all floors: General retail, specialty retail, restaurant, bar and entertainment uses, service uses, lodging uses, office uses, arts, cultural, civic and community uses, public uses, recreational uses, academic uses, bed and breakfast, accessory uses and structures, and uses and building elements necessary and incidental to uses on other floors, including parking accessory to a permitted use, storage accessory to a permitted use. Parking shall not be allowed as the sole use of the ground floor. Automobile drive-through service is prohibited.
2. Uses allowed on upper floors: Affordable multi-family housing.
3. Free-Market Residential Units: No new Free-Market Residential Units may be established. Free-Market Residential units are permitted on any level if they were legally established (having received a Certificate of Occupancy, Development Order, or applied for a Development Order) prior to Ordinance 25 (Series of 2012).
4. ~~Affordable Housing Units: Affordable housing is permitted by right, where accessory to a commercial use on the property or required for on-site affordable housing mitigation requirements. Affordable housing created pursuant to this subsection is not eligible to be used for the creation of Certificates of Affordable Housing Credit, pursuant to Chapter 26.540, unless for a fraction of a unit.~~
5. Home Occupations and Vacation Rentals: Home Occupations and Vacation Rentals are permitted on any building level only in legally established residential units.

C. Conditional uses. The following uses are permitted as conditional uses in the Commercial (C-1) Zone District, subject to the standards and procedures established in Chapter 26.425:

1. Affordable multi-family housing or home occupations on the ground floor.
2. Commercial parking facility, pursuant to Section 26.515.
3. Automobile showroom and dealership.
4. Formula uses, which shall be subject to the provisions in Section 26.425.045.

5. Lodge, Boutique.

D. Dimensional requirements. The following dimensional requirements shall apply to all permitted and conditional uses in the Commercial (C-1) Zone District. The dimensional standards and allotments provided in this section for commercial and mixed-use developments are the maximum allowable for the zone and may not be achieved for all developments. Site constraints, historic resources, on-site mitigation and replacement requirements, and other factors may prevent development from achieving some or all of the maximum allowable dimensional standards.

1. Minimum Gross Lot Area (square feet):
 - a. *Bed and breakfast:* 3,000.
 - b. *All other uses:* No requirement.
2. Minimum Net Lot Area per dwelling unit (square feet):
 - a. *Bed and breakfast:* Same as R-6 Zone District.
 - b. *All other uses:* No requirement.
3. Minimum lot width (feet):
 - a. *Bed and breakfast:* Same as R-6 Zone District.
 - b. *All other uses:* No requirement.
4. Minimum front yard setback (feet):
 - a. *Bed and breakfast:* Same as R-6 Zone District.
 - b. *All other uses:* No requirement.
5. Minimum side yard setback (feet):
 - a. *Bed and breakfast:* Same as R-6 Zone District.
 - b. *All other uses:* No requirement.
6. Minimum rear yard setback (feet):
 - a. *Bed and breakfast:* Same as R-6 Zone District.
 - b. *All other uses:* No requirement.
7. Minimum utility/trash/recycle area: Pursuant to chapter 12.06
8. Maximum height:
 - a. *Bed and breakfast:* Same as R-6 Zone District.
 - b. *All other uses:* Twenty-Eight (28) feet
9. Minimum distance between buildings on the lot (feet):
 - a. *Bed and breakfast:* Same as R-6 Zone District.
 - b. *All other uses:* No requirement.

10. Public amenity space: Pursuant to Section 26.412.
11. Floor area ratio (FAR): The following FAR schedule applies to uses cumulatively up to a total maximum FAR of 2:1.
- a. Commercial uses: 2:1.
 - b. Arts, cultural, civic and community uses, public uses, recreational uses, academic uses, and similar uses: 1.75:1.
 - c. Affordable multi-family housing: Greater of existing FAR or 1:1
 - d. Lodging: .5:1, which may be increased to 1.5:1 if the individual lodge units on the parcel average five hundred (500) net livable square feet or less, which may be comprised of lock-off units.
 - e. Bed and breakfast (as the sole use of parcel and not cumulative with other uses): Eighty percent (80%) of allowable floor area of a same-sized lot located in the R-6 Zone District. (See R-6 Zone District.) Extinguishment of historic TDRs shall not permit additional FAR for single-family or duplex development.
 - f. Free-Market multi-family housing: Limited to the existing free-market multi-family FAR. No expansion to FAR shall be permitted except at-grade patios, and decks (other than roof-top decks), balconies, exterior stairways, trellis, and other similar features up to 15% of the total free-market residential floor area. Any subsequent reduction in floor area occupied by such residential use shall be deemed a new limitation and the use shall not thereafter be enlarged to occupy a greater floor area. Free-market residential units shall not be able to utilize any exemptions to floor area outlined in Section 26.575.020(D), *Measuring Floor Area*, except as noted above.
12. Maximum lodge unit size (square feet): 1,500. When units are comprised of lock-off units, this maximum shall apply to the largest possible combination of units.
13. Net Livable Area (square feet):
- a) Category 1-57 Affordable multi-family housing: No limitation.
 - b) Resident Occupied Affordable multi-family housing: Individual units shall be limited to 2,000 sq. ft. of net livable area.
 - c) Free-Market Residential: Overall net livable area for a building or project is limited to the existing net livable square footage. No expansion to overall net livable area shall be permitted. Any subsequent reduction in net livable area occupied by such residential use shall be deemed a new limitation and the use shall not thereafter be enlarged to occupy a greater net livable area. Individual

units shall be limited to 2,000 sq. ft. of net livable area. Combination of Free-Market residential units is permitted, but subject to the net livable size limitations herein, as well as other provisions of this title.

- d) Expansions Allowed: Notwithstanding the above, individual multi-family unit sizes may be increased by extinguishing Historic Transferable Development Right Certificates (“certificate” or “certificates”), subject to the following:
- 1) The transfer ratio is 500 sq. ft. of net livable area for each certificate that is extinguished.
 - 2) The additional square footage accrued may be applied to multiple units. However, the maximum individual unit size attainable by transferring development rights is 2,500 sq. ft. of net livable area (i.e., no more than 500 additional square feet may be applied per unit).
 - 3) This incentive applies only to individual unit size. Transferring development rights does not allow an increase in the Floor Area Ratio (FAR) of the lot or the use.

14. Commercial/residential ratio: When development includes mixed-uses, the total residential net livable area shall be no greater than 65% of the total commercial net leasable and lodge net livable area on the same parcel.

E. Compliance with City of Aspen Charter. Any property located east of Castle Creek that was in the Commercial (C-1) zone district on January 1, 2015, is subject to the provisions of Article XIII Section 13.14, *Voter authorization of certain land use approvals*, of the City of Aspen Charter.

(Ord. No. 56-2000, §§7 [part], 12, 15; Ord. No. 25-2001, §5 [part]; Ord. No. 1-2002, §20; Ord. No. 28b-2004, §1; Ord. No. 12-2006, §11; Ord. No. 11, 2007, §2; Ord. No. 27-2010, §4; Ord. No. 34-2011, §14; Ord. No. 12-2012, §2; Ord. No. 25-2012, §2; Ord. No. 20-2015, §3; Ord. No.25-2015, 2; Ord. No. 29, 2016, §2; Ord. No. 23, 2017, §5)

26.710.160 Service/Commercial/Industrial (S/C/I).

A. Purpose. The S/C/I zone supports Aspen Area Community Plan policies related to a sustainable, local serving economy and the preservation of a diversity of commercial opportunities for locals and visitors. In response to the decreased intensity of commercial uses in the zone and relative distance from the CC and C1 zones, both multi-modal and automobile parking improvements are appropriate on site in the S/C/I. In order to enhance the City’s commercial diversity, the zone allows for uses not found in other zones including light industrial, manufacturing, production, repair and similar service-related uses. The S/C/I zone is designed to provide commercial space to those uses not appropriate in other commercial zones, but which provide an essential or unique service to support the local economy. Flexibility and adaptability are important features of the zone to respond to changing commercial sector dynamics and meet the space needs of the City’s service, creative and production economies.

B. Permitted and Conditional Uses.

1. The following uses may have, in combination, a limited percent of the floor area, devoted to retail sales, showroom, or customer reception, and such uses shall be ancillary to the primary commercial use. This floor area percentage may be increased through Special Review by the Planning and Zoning Commission, pursuant to Section 26.430.050, and according to the standards of Section 26.710.160(E)1.

<p>% retail sales, showroom, or customer reception <i>(maximum – net leasable area)</i></p>	<p>Uses include the manufacturing, repair, customization, servicing, alteration, detailing, rental or sale of consumer goods, such as:</p>
<p>100%</p>	<ul style="list-style-type: none"> • Vehicle sales. • Building materials, components, hardware, fixtures, interior finishes and equipment. • Fabric and sewing supply. • Household appliances such as ranges, refrigerators, dishwashers, etc. • Outdoor recreational items, which may be in combination with a service use related to guiding or touring.
<p>25%</p>	<ul style="list-style-type: none"> • Animal boarding facility. • Animal grooming establishment. • Artist studio. • Brewery and brewing supply. • Coffee roasting and supply. • Commercial dry cleaning. • Commercial Kitchen or Bakery. • Design Studio (limited to the Andrews-McFarlin Subdivision). • Laundromat. • Locksmith.

<p>% retail sales, showroom, or customer reception <i>(maximum – net leasable area)</i></p>	<p>Uses include the manufacturing, repair, customization, servicing, alteration, detailing, rental or sale of consumer goods, such as:</p>
	<ul style="list-style-type: none"> • Marijuana Cultivation Facility, Marijuana Product Manufacturing Facility, or Marijuana Testing Facility. • Consumer electronics service and repair. • Post Office branch. • Printing and copy center. • Shipping, packing and receiving services. • Veterinary clinic.
<p>10%</p>	<ul style="list-style-type: none"> • Automobile washing facility. • Building/landscape maintenance facility. • Warehousing and storage.

2. Primary Care Physician’s Office Uses permitted:
 - a. On Upper Floors, pursuant to Section 26.710.160 (D)11(b).
 - b. Limited to a cap of 3,500 square feet at the Obermeyer Place PD, upon execution of an Insubstantial PD Amendment.

3. Affordable Housing Units: Affordable housing is permitted as a mixed use with other approved S/C/I uses. See 26.710.160.D.11 for Affordable Housing FAR requirements. Additionally, the project must demonstrate that the residential use and individual units are substantially removed and physically separated from Commercial Uses on the same parcel, to the extent practicable, so as to isolate residential uses from commercial impacts and to adequately provide for on-loading, off-loading, circulation and parking for commercial uses.

3.4. Permitted Accessory Uses:

- a) Service yard accessory to a permitted use.
- b) Sales and rental accessory and incidental to a permitted use.
- c) Accessory buildings and uses.
- d) Home occupations and Vacation Rentals: Home Occupations and Vacation Rentals are permitted only in legally established residential units.
- e) Offices, accessory to a permitted or conditional use, may occupy up to 10% of a commercial unit.

C. Conditional uses. The following uses are permitted as conditional uses in the Service/Commercial/ Industrial (SCI) zone district, subject to the procedures established in Chapter 26.425.050 Procedures for Review, and the standards established in Section 26.710.160(F).

~~1. Affordable Housing Units: Affordable housing is permitted as a conditional use where accessory to a commercial use on the property or required for on-site affordable housing mitigation requirements. See 26.710.160.D.11 for affordable housing Floor~~

~~Area Ratio requirements. Affordable housing created pursuant to this subsection is not eligible to be used for the creation of Certificates of Affordable Housing Credit, pursuant to Chapter 26.540, unless for a fraction of a unit.~~

- ~~2. Free-Market Residential Units: No new Free-Market Residential Units may be established. Free-Market Residential units are permitted on any level if they were legally established (having received a Certificate of Occupancy, Development Order, or applied for a Development Order) prior to Ordinance 29, Series 2016.~~
3. Consignment retail establishment.
4. Commercial Parking Facility, pursuant to Section 26.515.
5. Gasoline service station.
6. Grocery store.

D. Dimensional requirements. The following dimensional requirements shall apply to all permitted and conditional uses in the Service/Commercial/ Industrial (SCI) zone district. The dimensional standards and allotments provided in this section for commercial and mixed-use developments are the maximum allowable for the zone and may not be achieved for all developments. Site constraints, historic resources, on-site mitigation and replacement requirements, and other factors may prevent development from achieving some or all of the maximum allowable dimensional standards.

1. Minimum Gross Lot Area (square feet): 3,000
2. Minimum Net Lot Area per dwelling unit (square feet): No requirement.
3. Minimum lot width (feet): No requirement.
4. Minimum front yard setback (feet): No requirement.
5. Minimum side yard setback (feet): No requirement.
6. Minimum rear yard setback (feet): No requirement.
7. Minimum Utility/Trash/Recycle area: Pursuant to Chapter 12.06.
8. Maximum height: Thirty-five (35) feet.
9. Minimum distance between buildings on the lot (feet): No Requirement.
10. Pedestrian Amenity Space: Pursuant to Section 26.412.
11. Floor Area Ratio (FAR): The following FAR schedule applies to uses cumulatively up to a total maximum FAR of 2.25:1. Achieving the maximum floor area ratio is subject to compliance with applicable design standards, view plane requirements,

public amenity requirements and other dimensional standards. Accordingly, the maximum FAR is not an entitlement and is not achievable in all situations.

- a. *Commercial Uses*: 2.25:1.
- b. *Primary Care Physician's Office uses*: .25:1 FAR, only if a minimum of .75:1 FAR of Commercial uses, listed in Section 26.710.160(B)1-3, exist on the same parcel.
- c. *Affordable Multi-Family Housing (as a mixed use)*: Greater of existing FAR or ~~.5~~1:1.
- d. *Free-Market Multi-Family Housing*: Limited to the existing free-market multi-family FAR. No expansion to FAR shall be permitted except at-grade patios, and decks (other than roof-top decks), balconies, exterior stairways, trellis, and other similar features up to 15% of the total free-market residential floor area. Any subsequent reduction in floor area occupied by such residential use shall be deemed a new limitation and the use shall not thereafter be enlarged to occupy a greater floor area. Free-market residential units shall not be able to utilize any exemptions to floor area outlined in Section 26.575.020(D), Measuring Floor Area, except as noted above.

12. Maximum multi-family residential dwelling unit size (square feet):

- a) Category 1-~~57~~ Affordable multi-family housing: No limitation.
- b) Resident Occupied Affordable multi-family housing: Individual units shall be limited to 2,000 sq. ft. of net livable area.
- c) Free-Market multi-family housing: Individual units shall be limited to 2,000 sq. ft. of net livable area. Combination of Free-Market residential units is permitted, but subject to the net livable size limitations herein, as well as other provisions of this title.
- d) Expansions Allowed: Notwithstanding the above, individual multi-family unit sizes may be increased by extinguishing Historic Transferable Development Right Certificates ("certificate" or "certificates"), subject to the following:
 - 1) The transfer ratio is 500 sq. ft. of net livable area for each certificate that is extinguished.
 - 2) The additional square footage accrued may be applied to multiple units. However, the maximum individual unit size attainable by transferring development rights is 2,500 sq. ft. of net livable area (i.e., no more than 500 additional square feet may be applied per unit).
 - 3) This incentive applies only to individual unit size. Transferring development rights does not allow an increase in the Floor Area Ratio (FAR) of the lot or the use.

E. Special Review Standards. Whenever the dimensional standards of a proposed development within the SCI Zone District are subject to Special Review, the development application shall be processed as a Special Review, pursuant to Section 26.430.050. The following additional criteria apply:

1. To increase the allowable percentage of interior space assigned to retail, showroom, or customer reception area, the applicant shall demonstrate the need and appropriateness for such additional space and shall demonstrate consistency with the purpose of the SCI Zone District.
2. The additional approved percentage for a specific use shall be limited to that use and not applicable to subsequent uses in the same space.

F. Conditional Use Review Standards.

1. Retail, Showroom or Customer Reception Area. In addition to meeting the standards in Chapter 26.425, *Conditional Use*, the following Standards shall be met:

- a. For consignment retail establishment, commercial parking facility (pursuant to Chapter 26.575), and gasoline service station, the Commission shall establish the appropriate amount of floor area to be devoted to retail sales, showroom, or customer reception as a condition of conditional use review.
- b. To establish the allowable percentage of interior space assigned to retail, showroom, or customer reception area, the applicant shall demonstrate the need and appropriateness for the space and shall demonstrate consistency with the purpose of the SCI Zone District. The approved percentage for a specific use is limited to that use and not applicable to subsequent uses in the same space.

~~2. **Multi-Family Housing.** In addition to meeting the standards in Chapter 26.425, *Conditional Use*, the following Standards shall be met:~~

- ~~a. The applicant must demonstrate that the residential use and individual units are substantially removed and physically separated from Commercial Uses on the same parcel, to the extent practicable, so as to isolate residential uses from commercial impacts and to adequately provide for on loading, off loading, circulation and parking for commercial uses.~~

G. Compliance with City of Aspen Charter. Any property located east of Castle Creek that was in the Service/Commercial/Industrial (S/C/I) zone district on January 1, 2015, is subject to the provisions of Article XIII Section 13.14, *Voter authorization of certain land use approvals*, of the City of Aspen Charter.

(Ord. No. 2-1999, §1; Ord. No. 22-2005, §1; Ord. No. 4-2008; Ord. No. 27-2010, §4; Ord. No. 39-2013, §3; Ord. No. 20-2015, §4; Ord. No. 29, 2016, §3)

26.710.170 Neighborhood Commercial (NC).

A. Purpose. The Neighborhood Commercial (NC) zone supports Aspen Area Community Plan policies related to a sustainable, local serving economy and the preservation of a diversity of commercial opportunities for locals and visitors. The zone district provides opportunities for mixed-use development in close proximity to downtown at higher intensity than the Mixed Use or surrounding residential neighborhood zone districts. The NC allows for a mix of essential goods and services oriented businesses in close proximity to multi-modal transit infrastructure.

The mix of uses in the NC is designed to provide for the daily needs of residents and visitors in a built environment that enhances the community character of Aspen. Greater design flexibility and increased setbacks from the CC and C1 zones allows for mixed-use development which creates a transition from the downtown commercial areas and can accommodate retail, service commercial, food service and related uses in conjunction with affordable housing on upper floors as an ancillary use to the primarily commercial purpose of the zone. Limited on-site parking is appropriate in conjunction with high traffic volume or residential uses and in addition to multi-modal improvements.

B. Permitted uses. The following uses are permitted as of right in the Neighborhood Commercial (NC) Zone District:

1. Uses allowed on all building levels: General retail, restaurant, bar and entertainment uses, service uses, office uses, arts, cultural, civic and community uses, public uses, recreational uses, academic uses, accessory uses and structures, uses and building elements necessary and incidental to uses on other floors, including parking accessory to a permitted use, storage accessory to a permitted use.
2. Uses allowed on upper floors: Affordable multi-family housing. ~~is permitted by right where accessory to a commercial use on the property or required for on-site affordable housing mitigation requirements. See 26.710.170.D.11 for affordable housing Floor Area Ratio requirements. Affordable housing created pursuant to this subsection is not eligible to be used for the creation of Certificates of Affordable Housing Credit, pursuant to Chapter 26.540, unless for a fraction of a unit.~~
3. Free-Market Residential Units: No new Free-Market Residential Units may be established. Free-Market Residential units are permitted on any level if they were legally established (having received a Certificate of Occupancy, Development Order, or applied for a Development Order (prior to Ordinance 29, Series of 2016).
4. Home Occupations and Vacation Rentals: Home Occupations and Vacation Rentals are permitted only in legally established residential units.

C. Conditional uses. The following uses are permitted as conditional uses in the Neighborhood Commercial (NC) Zone District, subject to the standards and procedures established in Chapter 26.425:

1. Commercial parking facility, pursuant to Chapter 26.515.

2. Automobile showroom and dealership.

D. Dimensional requirements. The following dimensional requirements shall apply to all permitted and conditional uses in the Neighborhood Commercial (NC) Zone District. The dimensional standards and allotments provided in this section for commercial and mixed-use developments are the maximum allowable for the zone and may not be achieved for all developments. Site constraints, historic resources, on-site mitigation and replacement requirements, and other factors may prevent development from achieving some or all of the maximum allowable dimensional standards.

1. Minimum Gross Lot Area (square feet): No requirement.
2. Minimum Net Lot Area per dwelling unit (square feet): No requirement.
3. Minimum lot width (feet): No requirement.
4. Minimum front yard setback (feet): five (5).
5. Minimum side yard setback (feet): five (5).
6. Minimum rear yard setback (feet): five (5).
7. Minimum utility/trash/recycle area: Pursuant to Chapter 12.06.
8. Maximum height: twenty-eight (28) feet.
9. Minimum distance between buildings on the lot (feet): No requirement.
10. Public amenity space: Pursuant to Section 26.412.
11. Floor area ratio (FAR): The following FAR schedule applies to uses cumulatively up to a total maximum FAR of 1.5:1. Achieving the maximum floor area ratio is subject to compliance with applicable design standards, view plane requirements, public amenity requirements and other dimensional standards. Accordingly, the maximum FAR is not an entitlement and is not achievable in all situations.
 - a. *Commercial uses:* 1.5:1.
 - b. *Arts, cultural, civic and community uses, public uses, recreational uses, academic uses, and similar uses:* 1:1.
 - c. *Affordable multi-family housing:* Greater of existing FAR and .5:1.
 - d. *Free-market multi-family housing:* Limited to the existing free-market multi-family FAR. No expansion to FAR shall be permitted except at-grade patios, and decks (other than roof-top decks), balconies, exterior stairways, trellis, and other similar features up to 15% of the total free-market residential floor area. Any subsequent

reduction in floor area occupied by such residential use shall be deemed a new limitation and the use shall not thereafter be enlarged to occupy a greater floor area. Free-market residential units shall not be able to utilize any exemptions to floor area outlined in Section 26.575.020(D), Measuring Floor Area, except as noted above.

12. Maximum multi-family residential dwelling size (square feet):

- a) Category 15-7 Affordable multi-family housing: No limitation.
- b) Resident Occupied Affordable multi-family housing: Individual units shall be limited to 1,500 sq. ft. of net livable area.
- c) Free-Market multi-family housing: Individual units shall be limited one thousand five hundred (1,500) square feet of net livable area. Combination of Free-Market residential units is permitted, but subject to the net livable size limitations herein, as well as other provisions of this title.
- d) Expansions Allowed: Notwithstanding the above, individual multi-family unit sizes may be increased by extinguishing Historic Transferable Development Right Certificates (“certificate” or “certificates”), subject to the following:
 - 1) The transfer ratio is 500 sq. ft. of net livable area for each certificate that is extinguished.
 - 2) The additional square footage accrued may be applied to multiple units. However, the maximum individual unit size attainable by transferring development rights is 2,000 sq. ft. of net livable area (i.e., no more than 500 additional square feet may be applied per unit).
 - 3) This incentive applies only to individual unit size. Transferring development rights does not allow an increase in the Floor Area Ratio (FAR) of the lot or the use.

13. Commercial/residential ratio: When development includes mixed-uses the total residential net livable area shall be no greater than 65% of the total commercial net leasable and lodging net livable on the same parcel.

E. Compliance with City of Aspen Charter. Any property located east of Castle Creek that was in the Neighborhood Commercial (NC) zone district on January 1, 2015, is subject to the provisions of Article XIII Section 13.14, *Voter authorization of certain land use approvals*, of the City of Aspen Charter.

(Ord. No. 38-2000, §2; Ord. No. 12-2005, §1; Ord. No. 12-2006, §14, 15; Ord. No. 11, 2007; Ord. No. 27-2010, §4; Ord. No. 34-2011, §15; Ord. No. 20-2015, §5; Ord. No. 29, 2016, §4)

26.710.180 Mixed-Use (MU).

A. Purpose. The Mixed Use (MU) zone serves as a transition from the more intense commercial areas of the CC and C-1 zones, and the residential and lodging zones surrounding Main Street. By allowing for a mix of commercial and residential uses and smaller-scale development, the Mixed Use zone reflects Aspen’s historic character and provides different economic and residential opportunities from more traditional commercial zones. Particularly along Main Street, the Mixed Use zone serves as a buffer from the traffic of Highway 82 while allowing for smaller scale commercial and residential opportunities.

Buildings in the Mixed Use zone consist primarily of commercial, service and office uses on the ground floor, and residential and office uses on upper floors and off of the primary street frontage. Uses in the MU zone should not erode the character of the neighborhood or create excessive impacts to the surrounding residential and lodging zone. Standalone residential uses are permitted on properties as a reflection of the historic residential nature of the zone district.

B. Permitted uses. The following uses are permitted as of right in the Mixed-Use (MU) Zone District:

1. On historic landmark properties: Bed and breakfast.
2. General retail uses.
3. Specialty retail uses.
4. Restaurant, bar and entertainment uses.
5. Service uses.
6. Office uses.
7. Lodging.
8. Arts, cultural, civic and community uses.
9. Public uses.
10. Recreational uses.
11. Academic uses.
12. Affordable multi-family residential.
- ~~13. Free market multi family housing is permitted in a mixed use building if the housing was legally established (having received a Certificate of Occupancy, Development Order, or applied for a Development Order) prior to Ordinance 29, Series 2016. No new Free Market Residential Units may be established in mixed use buildings.~~
- ~~14.13. Free market multi family residential when a stand alone use, or in conjunction with affordable multi family residential. Free-Market Residential Units: No new Free-Market Residential Units (single-family, duplex, multi-family) may be established. Free-Market Residential units are permitted if they were legally established (having received a Certificate of Occupancy, Development Order, or applied for a Development Order) prior to Ordinance XX (Series of 2022). Demolition of existing free-market residential uses shall be subject to 26.312.020, Non-Conforming uses.~~

~~15.14. Single family residence, Duplex residence, or Two (2) detached single family residences.~~ Accessory dwelling unit in a separate building accessed off the rear of a lot as an accessory use, meeting the provisions of Chapter 26.520.

~~16.15.~~ Home occupations.

~~17.16.~~ Accessory uses and structures.

~~18.17.~~ Storage accessory to a permitted use.

~~19.18.~~ Vacation rentals. Pursuant to Section 26.575.220

C. Conditional uses. The following uses are permitted as conditional uses in the Mixed-Use (MU) Zone District, subject to the standards and procedures established in Chapter 26.425:

1. Commercial parking facility, pursuant to Chapter 26.515.
2. Automobile showroom and dealership.
3. Formula uses in the Main Street Historic District, subject to the provisions contained in Section 26.425.045.
4. Lodge, Boutique.

D. Dimensional requirements. The following dimensional requirements shall apply to all permitted and conditional uses in the Mixed-Use (MU) Zone District. The dimensional standards and allotments provided in this section for commercial and mixed-use developments are the maximum allowable for the zone and may not be achieved for all developments. Site constraints, historic resources, on-site mitigation and replacement requirements, and other factors may prevent development from achieving some or all of the maximum allowable dimensional standards.

1. Minimum Gross Lot Area (square feet): 3,000.
2. Minimum Net Lot Area per dwelling unit (square feet):
 - a. *Detached residential dwellings:* 4,500. 3,000 for historic landmark properties.
 - b. *Duplex dwellings (square feet):* 4,500. 3,000 for historic landmark properties.
 - c. *All other uses:* Not applicable.
3. Minimum lot width (feet): 30.
4. Minimum front yard setback (feet): 10, which may be reduced to 5, pursuant to Special Review, Chapter 26.430.
5. Minimum side yard setback (feet): 5.
6. Minimum rear yard setback (feet): 5.
7. Minimum utility/trash/recycle area: Pursuant to Chapter 12.06.
8. Maximum height:

- a. *Detached residential and duplex dwellings:* 25 feet.
- b. *All other uses:* 28 feet.

9. Minimum distance between buildings on the lot (feet): 10.

10. Public amenity space: Pursuant to Section 26.412.

11. Floor Area Ratio (FAR):

- a. The following FAR schedule applies to uses cumulatively and individually when part of a commercial, lodging, or mixed-use development, as follows:

Use	Maximum (allowed by right)	Maximum by special review (see Subsection 26.430.040.A)	
		Main Street Historic District	All Other Locations
Cumulative total of all uses	1:1	1.25:1	1.5:1
Commercial	1:1	1.25:1	1.5:1
Civic	1:1	1.25:1	1.5:1
Lodging	0.75:1	1:1	1:1
Affordable Housing	No limitation other than cumulative total of all uses Maximum (allowed by right) Main Street Historic District: 1.25:1; All other locations: 1.5:1		

~~b. Free-Market multi-family housing: Limited to the existing free-market as calculated per 26.575.020.D. No expansion shall be permitted, except at-grade patios, and decks (other than roof-top decks), balconies, exterior stairways, trellis, and other similar features up to 15% of the total free-market residential floor area. Any subsequent reduction in floor area occupied by such residential use shall be deemed a new limitation and the use shall not thereafter be enlarged to occupy a greater floor area. Free-market residential units shall not be able to utilize any exemptions to floor area outlined in Section 26.575.020(D), *Measuring Floor Area*, except as noted above. City historic transferable development rights shall not permit additional floor area for detached residential and duplex dwellings.~~

~~b. The following FAR schedule applies to affordable housing and free market residential uses when developed as the only use of the parcel:~~

- ~~i. Affordable Housing, multi family housing: Limited to cumulative total outlined in Section 26.710.180.11.a, above.~~
- ~~ii. Free market, affordable housing: 0.5:1, which may be increased to 0.75:1 if affordable housing floor area equal to 100% of the free market residential floor area is developed on the same parcel.~~

~~c. The following FAR schedule applies to single family and duplex uses when developed as the only use of the parcel:~~

~~i. Detached residential and duplex dwellings established prior to the adoption of Ordinance No. 7, Series of 2005: 100% of the allowable floor area of an equivalent sized lot located in the R-6 Zone District. (See R-6 Zone District.) Receipt of a development order shall constitute the date the use was established. Replacement after demolition shall not effect a new establishment date for the purposes of this Section. City historic transferable development rights shall not permit additional floor area for detached residential and duplex dwellings.~~

~~ii.i. Detached residential and duplex dwellings established after the adoption of Ordinance No. 7, Series of 2005: 80% of the allowable floor area of an equivalent sized lot located in the R-6 Zone District. (See R-6 Zone District.) City historic transferable development rights shall not permit additional floor area for detached residential and duplex dwellings.~~

12. Maximum multi-family residential dwelling unit size (square feet):

- a) Category 1-5 Affordable multi-family housing: No limitation.
- b) Resident Occupied Affordable multi-family housing: Individual units shall be limited to 2,000 sq. ft. of net livable area.
- c) Free-Market multi-family housing: Individual units shall be limited to 2,000 sq. ft. of net livable area. Combination of Free-Market residential units is permitted, but subject to the net livable size limitations herein, as well as other provisions of this title.
- d) Expansions Allowed: Notwithstanding the above, individual, **free-market** multi-family unit sizes may be increased by extinguishing Historic Transferable Development Right Certificates (“certificate” or “certificates”), subject to the following:
 - 1) The transfer ratio is 500 sq. ft. of net livable area for each certificate that is extinguished.
 - 2) The additional square footage accrued may be applied to multiple units. However, the maximum individual unit size attainable by transferring development rights is 2,500 sq. ft. of net livable area (i.e., no more than 500 additional square feet may be applied per unit).
 - 3) This incentive applies only to individual unit size. Transferring development rights does not allow an increase in the Floor Area Ratio (FAR) of the lot or the use.

Commercial/residential ratio: When development includes mixed-uses, the total residential net livable area shall be no greater than 150% the total commercial net leasable and lodging net livable area located on the same parcel.

E. Compliance with City of Aspen Charter. Any property located east of Castle Creek that was in the Mixed-Use (MU) zone district on January 1, 2015, is subject to the provisions of

Article XIII Section 13.14, *Voter authorization of certain land use approvals*, of the City of Aspen Charter.

(Ord. No. 56-2000, §7 [part]; Ord. No. 25-2001, §5 [part]; Ord. 1-2002, §20; Ord. No. 7-2005, §1 [part]; Ord. No. 12-2006, 13; Ord. No. 11, 2007; Ord. No. 27-2010, §4; Ord. No.34-2011, §16; Ord. No. 17-2014, §2; Ord. No. 20-2015, §6; Ord. No. 29, 2016, §5; Ord. No. 23, 2017, §6)

26.710.190 Lodge (L).

A. Purpose. The purpose of the Lodge (L) Zone District is to encourage construction, renovation and operation of lodges, tourist-oriented multi-family buildings through short term vacation rentals, high occupancy timeshare facilities and ancillary uses compatible with lodging to support and enhance the City's resort economy. The City encourages high-occupancy lodging development in this zone district. Therefore, certain dimensional incentives are provided in this zone district, as well as other development incentives in Chapter 26.470, Growth Management Quota System (GMQS).

B. Permitted uses. The following uses are permitted as of right in the Lodge (L) Zone District:

1. Hotel or lodge.
2. Timeshare lodge.
3. Exempt timesharing.
4. Offices and activities accessory to timeshare unit sales (see Section 26.590).
5. Bed and breakfast.
6. Conference facilities.
7. Uses associated with outdoor recreation facilities and events.
8. Accessory uses and structures. (Food service for on-site lodge guests is an accessory use.)
9. Storage accessory to a permitted use.
10. Affordable multi-family housing accessory to a lodging or timeshare operation and for employees of the operation.
- ~~10.11.~~ 100% Deed-Restricted Affordable Housing, multi-family (as a single use)
- ~~11.12.~~ Free-market multi-family housing.
- ~~12.13.~~ Home occupations.
- ~~13.14.~~ Vacation rentals. Pursuant to Section 26.575.220

C. Conditional uses. The following uses are permitted as conditional uses in the Lodge (L) Zone District, subject to the standards and procedures established in Chapter 26.425:

1. Retail and restaurant uses.
2. Neighborhood commercial uses.
3. Service uses.
4. Arts, cultural and civic uses.
5. Public uses.

6. Academic uses.
7. Child care center.
8. Commercial parking facility, pursuant to Chapter 26.515.
9. Affordable multi-family housing not accessory to a lodging or timeshare operation.
10. Formula uses, which shall be subject to the provisions contained in Section 26.425.045.
11. Lodge, Boutique.

D. Dimensional requirements. The following dimensional requirements shall apply to all permitted and conditional uses in the Lodge (L) Zone District:

1. Minimum Gross Lot Area (square feet): 3,000.
2. Minimum Net Lot Area per dwelling unit (square feet):
 - a. *Free-market multi-family residential:* 3,000.
 - b. *Affordable multi-family residential:* No requirement.
 - c. *Lodge, timeshare lodge and exempt timesharing:* No requirement.
3. Minimum lot width (feet): 30.
4. Minimum front yard setback (feet): 5.
5. Minimum side yard setback (feet): 5.
6. Minimum rear yard setback (feet): 5.
7. Minimum utility/trash/recycle area: pursuant to Section 26.575.060.
8. Maximum height:
 - a. *Bed and breakfast (as a single use):* 25 feet.
 - b. *Multi-family (as a single use):* 28 feet.
 - c. *Lodge, timeshare lodge, exempt timesharing and mixed-use projects, with less than one lodge unit per 500 square feet of Gross Lot Area:* 28 feet.
 - d. *Lodge, timeshare lodge, exempt timesharing and mixed-use projects, with one (1) or more lodge units per 500 square feet of Gross Lot Area:* 36 feet, which may be increased to 40 feet through Commercial Design Review. See Chapter 26.412. Also see Subsection 26.710.190.E.
 - e. *Lodge, timeshare lodge, exempt timesharing and mixed-use projects, with one or more lodge units per 500 square feet of Gross Lot Area and an average lodge unit size of 450 square feet or less:* 38 feet, which may be increased to 40 feet through commercial design review. See Chapter 26.412. Also see Subsection E below.
9. Minimum distance between buildings on the lot (feet): 10.

10. Public amenity space: Pursuant to Section 26.575.030.

11. Floor area ratio (FAR):

a. The following FAR schedule applies to commercial, lodge, timeshare lodge, exempt timesharing and mixed-use projects with one (1) or more lodge units per five hundred (500) square feet of Gross Lot Area. This FAR schedule is cumulative, up to a total maximum FAR of 2.75:1 for parcels of twenty-seven thousand (27,000) square feet or less in size and 2.5:1 for parcels greater than twenty-seven thousand (27,000) square feet. Also see Subsection 26.710.190.E. Unless otherwise stated below, a development's non-unit space shall not count towards the FAR cap of an individual use category; however, the maximum FAR cap for the parcel shall not be exceeded. Achieving the maximum floor area ratio is subject to compliance with applicable design standards, view plane requirements, public amenity requirements and other dimensional standards. Accordingly, the maximum FAR is not an entitlement and is not achievable in all situations.

- 1) General retail and specialty retail uses; restaurant, bar and entertainment uses; service uses; arts, assembly, cultural, civic and community uses; public uses; academic uses; child care centers: 0.25:1, which may be increased to 0.5:1 by special review, pursuant to Section 26.430.
- 2) Lodge units, timeshare lodge units, exempt timesharing units: 2:1.
- 3) Commercial parking facility: 1:1.
- 4) Affordable multi-family housing: 0.25:1, which may be increased by special review, pursuant to Chapter 26.430.
- 5) Free-market multi-family housing: The allowable floor area shall be based on a percentage of the total net livable area of lodging units and affordable housing units on the parcel and according to average lodge unit size on the parcel, as defined in Table 26.710.109.1, below:

**Table 26.710.109.1
Allowable Free-Market Residential FAR**

Table 26.710.190.1	
<i>Average net livable area of individual lodge units on the parcel</i>	<i>Free-market residential FAR as a percentage of total lodge unit and affordable housing net livable area</i>
Greater than 600 square feet	5%
600 square feet	15%
500 square feet	40%
400 square feet	50%
300 square feet or less	60%

When the average lodge unit size falls between the square footage categories, the allowable free-market multi-family or large lodge/timeshare unit floor area

shall be determined by interpreting the above schedule proportionately. For example, a lodge project with an average unit size of 450 square feet shall be allowed to develop a free-market residential floor area up to 45% of the total lodge unit net livable area.

This percentage of free-market residential FAR may not be otherwise established for a project through a planned development review.

All non-unit space attributable to free-market residential or large lodge/timeshare units shall count towards the individual FAR allowance for free-market residential or large lodge/timeshare units.

- b. The following FAR schedule applies to commercial, lodge, timeshare lodge, exempt timesharing and mixed-use projects, with less than one lodge unit per 500 square feet of Gross Lot Area. This FAR schedule is cumulative, up to a total maximum FAR of 1.5:1 for parcels of twenty-seven thousand 27,000 square feet or less in size and 1:1 for parcels greater than 27,000 square feet. Unless otherwise stated below, a development's non-unit space shall not count towards the FAR cap of an individual use category; however, the maximum FAR cap for the parcel shall not be exceeded.
 - 1) Commercial uses; arts, cultural and civic uses; public uses; academic uses; child care center: .25:1, which may be increased to .5:1 by special review, pursuant to Section 26.430.
 - 2) Lodge units, Timeshare Lodge units, Exempt Timesharing units: 1:1.
 - 3) Commercial Parking Facility: 1:1.
 - 4) Affordable multi-family housing: .25:1, which may be increased by special review, pursuant to Section 26.430.030.a
 - 5) Free-market multi-family housing: .25:1. All non-unit floor area attributable to free-market multi-family housing shall count towards the individual FAR allowance for free-market multi-family housing.
- c. The following FAR schedule applies to Free-Market multi-family (as a single use) projects established prior to the adoption of Ordinance No. 9, Series of 2005, ~~cumulatively~~, up to a total maximum FAR of 1:1. Receipt of a development order shall constitute the date the use was established.
 - ~~1) Affordable Multi Family Housing: 1:1.~~
 - ~~2) Free Market Multi Family Housing: 1:1.~~
- d. The following FAR schedule applies to Free-Market, multi-family (as a single use) projects established after the adoption of Ordinance 9, Series of 2005, ~~cumulatively~~, up to a total maximum FAR of ~~.575~~:1. Receipt of a development order shall constitute the date the use was established.
 - ~~1) Affordable Multi Family Housing: .5:1.~~
 - ~~2) Free Market Multi Family Housing: .5:1.~~
- e. The following FAR schedule applies to 100% Deed--Restricted Affordable Housing (as a single-use): 1.5:1.

e.f. The following FAR schedule applies to bed and breakfast as a single use of the parcel: 100% of the allowable floor area of a single-family residence on an equivalent-sized lot located in the R-6 Zone District. (See R-6 Zone District.)

12. Maximum Multi-Family Residential Dwelling Unit Size (square feet): 1,500 sq. ft. of net livable area.

- a. The property owner may increase individual multi-family unit size by extinguishing historic transferable development right certificates ("certificate" or "certificates"), subject to the following:
 - 1) The transfer ratio is 500 square feet of net livable area for each certificate that is extinguished.
 - 2) The additional square footage accrued may be applied to multiple units. However, the maximum individual unit size attainable by transferring development rights is 2,000 square feet of net livable area (i.e., no more than 500 additional square feet may be applied per unit).
 - 3) This incentive applies only to individual unit size. Transferring development rights does not allow an increase in the FAR of the lot.

Commentary: Refer to Chapter 26.535 for the procedures for extinguishing certificates

E. Special review for density standard. The Planning and Zoning Commission may approve an adjustment of the "density standard," and the project shall remain qualified for the height, floor area, and growth management incentives associated with this standard. The review shall be pursuant to the review procedures for special review, Chapter 26.430, and the following criteria:

1. The density standard may be amended by a maximum of 10% to one lodge unit per 550 square feet of Gross Lot Area. An adjustment in excess of this increase may be approved through adoption of a PD plan, but the project shall no longer be qualified for the associated incentives.
2. The project includes a generous amount of non-unit space, amenities and services for guests of the lodging operation. This can include both internal and external amenities.
3. The project provides a range of unit sizes and configurations to be attractive to a broad segment of potential guests. Flexible units are encouraged.

F. Compliance with City of Aspen Charter. Any property located east of the Castle Creek River that was in the Lodge (L) zone district on January 1, 2015, is subject to the provisions of Article XIII Section 13.14, *Voter authorization of certain land use approvals*, of the City of Aspen Charter.

(Ord. No. 41-2000, §§1, 2; Ord. 56-2000, §§7 [part], 13; Ord. No. 25-2001, §5 [part]; Ord. No. 21-2002, §§5, 6 [part]; Ord. No. 9-2005, §3; Ord. No. 50a-2005, §§7, 8; Ord. No. 25, 2006, §2; Ord. No. 10, 2007, §1; Ord. No. 27-2010, §4; Ord. No.34-2011, §17; Ord. No.20-2015, §7; Ord. No. 23, 2017, §7-8)

26.710.200 Commercial Lodge (CL).

A. Purpose. The purpose of the Commercial Lodge (CL) Zone District is to provide for the establishment of mixed-use commercial and lodge development by permitting commercial uses on the ground floor with lodging development above. The City encourages high-occupancy lodging development in this zone district through hotel, lodge and timeshare uses and short term vacation rentals

B. Permitted uses. The following uses are permitted as of right in the Commercial Lodge (CL) Zone District:

1. Uses allowed in basement and ground floors: Lodge uses, conference facilities, restaurant, bar and entertainment uses, office uses, service uses, arts, assembly, cultural, civic and community uses, recreational uses, academic uses, and child care center. Uses and facilities necessary and incidental to uses on Upper Floors. Parking shall not be allowed as the sole use of the ground floor. Automobile drive-through service is prohibited.
2. Uses allowed on upper floors: Lodge uses, exempt timesharing, offices and activities accessory to timeshare unit sales (see Chapter 26.590), accessory uses, storage accessory to a permitted use, affordable multi-family housing, free-market multi-family housing, vacation rentals. (Food service for on-site lodge guests is an accessory use.)

C. Conditional uses. The following uses are permitted as conditional uses in the Commercial Lodge (CL) Zone District, subject to the standards and procedures established in Chapter 26.425:

1. The following uses may be located only on upper floors: general retail and specialty retail uses, restaurant, bar and entertainment uses, service uses, office uses, arts, assembly, cultural, civic, and community uses, public uses, academic uses or child care centers.
2. Commercial parking facility, pursuant to Chapter 26.515.
3. Formula uses.
4. Lodge, Boutique.

D. Dimensional requirements. The following dimensional requirements shall apply to all permitted and conditional uses in the Commercial Lodge (CL) Zone District:

1. Minimum Gross Lot Area (square feet): No requirement.
2. Minimum Net Lot Area per dwelling unit (square feet): No requirement.
3. Minimum lot width (feet): No requirement.
4. Minimum front yard setback (feet): No requirement.
5. Minimum side yard setback (feet): No requirement.
6. Minimum rear yard setback (feet): No requirement.

7. Minimum utility/trash/recycle area: pursuant to Section 26.575.060.
8. Maximum height: 28 feet for two-story elements of a building. 36 feet for three-story elements of a building, which may be increased to 40 feet through Commercial Design Review. See Chapter 26.412. For projects with an average lodge unit size of four hundred fifty (450) square feet or less, three-story elements of a building may be 38 feet, which may be increased to 40 feet through commercial design review.
9. Minimum distance between buildings on the lot (feet): No requirement.
10. Public amenity space: Pursuant to Section 26.575.030.
11. Floor area ratio (FAR): The following FAR schedule applies to uses cumulatively up to a total maximum FAR of 2.5:1. Unless otherwise stated below, non-unit space associated with individual uses shall be attributable to the individual FAR allowance. Unless otherwise stated below, a development's non-unit space shall not count towards the FAR cap of an individual use category; however, the maximum FAR cap for the parcel shall not be exceeded. Achieving the maximum floor area ratio is subject to compliance with applicable design standards, view plane requirements, public amenity requirements and other dimensional standards. Accordingly, the maximum FAR is not an entitlement and is not achievable in all situations.
 - a. *Commercial uses; arts, assembly, cultural, civic and community uses; public uses; academic uses; child care centers; commercial parking facility:* 1:1.
 - b. *Lodging units, timeshare lodging units and exempt timesharing units:* 2:1.
 - c. *Affordable multi-family housing:* .25:1, which may be increased by special review, pursuant to Section 26.430.d
 - d. *Free-market multi-family housing:* .25:1. All non-unit space attributable to Free-Market Multi-Family Housing shall count towards the individual FAR allowance for Free-Market Multi-Family Housing.
12. Maximum Residential Unit Size (square feet): 1,500 sq. ft. of net livable area.
 - a. The property owner may increase individual multi-family unit size by extinguishing historic transferable development right certificates ("certificate" or "certificates"), subject to the following:
 - 1) The transfer ratio is five hundred (500) square feet of net livable area for each certificate that is extinguished.
 - 2) The additional square footage accrued may be applied to multiple units. However, the maximum individual unit size attainable by transferring development rights is 2,000 sq. ft. of net livable area (i.e., no more than 500 additional square feet may be applied per unit).
 - 3) This incentive applies only to individual unit size. Transferring development rights does not allow an increase in the FAR of the lot.

Commentary: Refer to Chapter 26.535 for the procedures for extinguishing certificates

E. Special review for density standard. The Planning and Zoning Commission may approve an adjustment of the "density standard," and the project shall remain qualified for the growth management incentives associated with this standard. The review shall be pursuant to the review procedures for special review, Chapter 26.430, and the following criteria:

1. The density standard may be amended by a maximum of 10% to one lodge unit per 550 square feet of Gross Lot Area. An adjustment in excess of this increase may be approved through adoption of a PD plan, but the project shall no longer be qualified for the associated incentives.
2. The project includes a generous amount of non-unit space, amenities and services for guests of the lodging operation. This can include both internal and external amenities.
3. The project provides a range of unit sizes and configurations to be attractive to a broad segment of potential guests. Flexible units are encouraged.

F. Compliance with City of Aspen Charter. Any property located east of the Castle Creek River that was in the Lodge (L) zone district on January 1, 2015, is subject to the provisions of Article XIII Section 13.14, *Voter authorization of certain land use approvals*, of the City of Aspen Charter.

(Ord. No. 21-2002, §§5 and 6 [part]; Ord. No. 9-2005, §2; Ord. No. 50a-2005, §9; Ord. No. 10, 2007, §2; Ord. No. 27-2010, §4; Ord. No.34-2011, §18; Ord. No.25-2012, §3; Ord. No.20-2015, §8; Ord. No. 23, 2017, §9-11)

26.710.220 Conservation (C).

A. Purpose. The purpose of the Conservation (C) Zone District is to provide areas of low density development to enhance public recreation, conserve natural resources, encourage the production of crops and animals and to contain urban development.

B. Permitted uses. The following uses are permitted as of right in the Conservation (C) Zone District:

1. Detached residential dwelling.
2. Park, playfield, playground and golf course.
3. Riding stable.
4. Cemetery.
5. Crop production orchards, nurseries, flower production and forest land.
6. Pasture and grazing land.
7. Dairy.
8. Fishery.
9. Animal production.
10. Husbandry services (not including commercial feedlots) and other farm and agricultural uses.
11. Railroad right-of-way, but not a railroad yard.
12. Home occupations.
13. Accessory buildings and uses.
14. Accessory dwelling units meeting the provisions of Section 26.520.040.
15. Temporary special events associated with ski areas including, but not limited to, such events as ski races, bicycle races and concerts; with Special Event Committee approval.

C. Conditional uses. The following uses are permitted as conditional uses in the Conservation (C) District, subject to the standards and procedures established in Chapter 26.425.

1. Guest ranches.
2. Recreational uses including a riding academy, stable, club, country club and golf course.
3. Ski lift and other ski facilities.
4. Sewage disposal area.

5. Water treatment plant and storage reservoir.
6. Electric substations and gas regulator stations (not including business or administration offices).

D. Dimensional requirements. The following dimensional requirements shall apply to all permitted and conditional uses in the Conservation (C) Zone District.

1. Minimum Gross Lot Area (acres): 10.
2. Minimum Net Lot Area per dwelling unit (acres): 10
3. Minimum lot width (feet): 400.
4. Minimum front yard setback (feet): 100.
5. Minimum side yard setback (feet): 30.
6. Minimum rear yard setback (feet): 30.
7. Maximum height: twenty-five (25) feet.
8. Minimum distance between principal and accessory buildings (feet): No requirement.
9. Percent of open space required for building site: No requirement.
10. External floor area ratio: (applies to conforming and nonconforming lots of record): same as R-15 Zone District.

(Ord. No. 32-1999, § 2; Ord. No. 56-2000, §§ 4, 7 [part], 14; Ord. No. 25-2001, §§ 3, 5 [part]; Ord. No. 13-2005, § 4; Ord. No. 27-2010, §4)

26.710.230 Academic (A).

A. Purpose. The purpose of the Academic (A) Zone District is to establish lands for education and cultural activities with attendant research, housing and administrative facilities. All development in the Academic Zone District shall be in compliance with a Final Planned Development approval granted pursuant to the provisions of Chapter 26.445, Planned Development.

B. Permitted uses. The following uses are permitted as of right in the Academic (A) Zone District:

1. Private school or university, teaching hospital, research facility or testing laboratory, provided that such facilities are enclosed and there are no adverse noise or environmental effects.
2. Auditorium and other facilities for performances and lectures.
3. Gallery;
4. Museum;
5. Library;
6. Administrative offices.

C. Conditional uses. The following uses are permitted as conditional uses in the Academic (A) Zone District, subject to the standards and procedures established in Chapter 26.425.

1. Boardinghouse and dormitory for housing students and faculty of schools and other academic institutions;
2. Student health care facility; and
3. Student and faculty dining hall.

D. Dimensional requirements. The dimensional requirements which shall apply to all permitted and conditional uses in the Academic (A) Zone District shall be set by the adoption of a Final Planned Development approval granted pursuant to the provisions of Chapter 26.445, Planned Development.

(Ord. No.36-2013, §18)

26.710.240 Park (P).

A. Purpose. The purpose of the Park (P) Zone District is to ensure that land intended for recreation use is developed so as to serve its intended use, while not exerting a disruptive influence on surrounding land uses.

1. When a Park (P) Zone District is designated with a Transportation Overlay (T) Zone District designation, its purpose is to provide for the use of for both parks and public transportation facilities in the most compatible manner practicable, but with the park character remaining dominant.
2. When a Park (P) Zone District is designated with a Drainage Overlay (D) Zone District designation, its purpose is to provide for the use of both park and drainage system facilities in the most compatible manner practicable, with the park character remaining dominant.
3. When the Park (P) Zone District is designated both with the Transportation Overlay (T) Zone District and the Drainage Overlay (D) Zone District, its purpose is to provide for the use of parks, public transportation facilities and drainage system facilities in the most compatible manner practicable, with the park character remaining dominant.
4. When the Park (P) Zone District is designated Golf Course Support (GCS) Overlay Zone District, its purpose is to provide for the use of public golf courses and adjacent support facilities in the most compatible manner practicable, with the park character remaining dominant.

B. Permitted uses. The following uses are permitted as of right in the Park (P) Zone District:

1. Open-use recreational facility, park, playfield, playground, swimming pool, golf course, riding stable, nursery, botanical garden; and
2. Accessory buildings and uses.

C. Conditional uses. The following uses are permitted as conditional uses in the Park (P) Zone District, subject to the standards and procedures established in Chapter 26.425:

1. Recreation building.
2. Sport shop.
3. Restaurant facility.
4. Park maintenance building.
5. Farmers' market, as defined in Section 26.04.100, provided:
 - a. It operates no more than two (2) days per week, unless modified by the Commission under the conditional use review;
 - b. It opens to the public no earlier than 7 a.m. and closes no later than 2 p.m., unless modified by the Commission under the conditional use review; and

- c. It shall be limited to those weeks that fall between the first Saturday in June and the weekend following the Thanksgiving holiday, inclusive, unless modified by the Commission under the conditional use review.

D. Dimensional requirements. The dimensional requirements which shall apply to all permitted and conditional uses in the Park (P) Zone District shall be set by the adoption of a Final Planned Development approval granted pursuant to the provisions of Chapter 26.445, Planned Development.

(Ord. No. 36-2013, § 19)

26.710.250 Public (PUB).

A. Purpose. The purpose of the Public (PUB) Zone District is to provide for the development of governmental, quasi-governmental and nonprofit facilities for cultural, educational, civic and other nonprofit purposes.

B. Permitted uses. The following uses are permitted as of right in the Public (PUB) Zone District:

1. Library;
2. Museum;
3. Post office;
4. Hospital;
5. Essential governmental and public utility uses, facilities, services and buildings (excluding maintenance shops);
6. Public transportation stop;
7. Terminal building and transportation-related facilities;
8. Public surface and underground parking areas;
9. Fire station;
10. Public and private school;
11. Public park;
12. Arts, cultural and recreational activities, buildings and uses;
13. Accessory buildings and uses;
14. Public and private nonprofit uses providing a community service; and
15. Child care center.

C. Conditional uses. The following uses are permitted as conditional uses in the Public (PUB) Zone District, subject to the standards and procedures established in Chapter 26.425.

1. Maintenance shop.
2. Affordable housing.

D. Dimensional requirements. The dimensional requirements which shall apply to all permitted and conditional uses in the Public (PUB) Zone District shall be set by the adoption of a Final Planned Development approval granted pursuant to the provisions of Chapter 26.445, Planned Development.

(Ord. No. 42-2000, § 2; Ord. No. 36-2013, §20)

26.710.260 Open Space (OS).

A. Purpose. The purpose of the Open Space (OS) Zone district is to preserve, protect and enhance lesser developed or undeveloped areas within the City containing unique naturally occurring or manmade landscape features which provide visual relief and enjoyment while reflecting or presenting community artistic or architectural statements. Development in the Open Space (OS) Zone District should emphasize and be consistent with the natural dynamic state of the land and minimize disruption of existing natural conditions.

B. Permitted uses. The following uses are permitted as of right in the Open Space (OS) Zone District:

1. Paved and unpaved walkways.
2. Benches.
3. Sculpture.
4. Water features such as ponds, streams or fountains.
5. Architectural lighting and downcast low-illumination lighting for walkways and trails.
6. Sculptured or manicured landscape features.
7. Fencing.

C. Conditional uses. None.

26.710.270 Wildlife Preservation (WP).

A. Purpose. The purpose of the Wildlife Preservation (WP) Zone District is to secure and protect undeveloped or less developed areas within the City from traditional development activities so as to provide for the nurturing and preservation of naturally occurring vegetation, topography, wildlife and wildlife habitat while permitting controlled and limited human use and activities.

B. Permitted uses. The following uses are permitted as of right in the Wildlife Preservation (WP) Zone District:

1. Unpaved walkways and trails.
2. Benches.
3. Pedestrian bridges.

C. Conditional uses. The following uses are permitted as conditional uses in the Wildlife Preservation (WP) Zone District, subject to the standards and procedures established in Chapter 26.425:

1. Paved walkways and trails.
2. Fencing.
3. Downcast low-illumination lighting for walkways and trails.

26.710.280 Transportation Overlay (T) Zone District.

A. Purpose. The purpose of the Transportation Overlay (T) Zone District is to provide for the uses necessary to accommodate the public transportation needs of the City, including the bus system, public parking and similar uses.

B. Permitted uses. The following uses are permitted as of right in the Transportation Overlay (T) Zone District:

1. Public transportation facilities, including bus stops and other transit stops.
2. Terminal buildings.
3. Transportation information and other service related facilities.
4. Public underground parking structures.
5. The permitted uses of the underlying Zone District.

C. Conditional uses. There are no uses permitted as conditional uses in the Transportation Overlay (T) District, except the conditional uses of the underlying Zone District.

D. Dimensional requirements. The dimensional requirements for all uses in the Transportation Overlay (T) Zone District, shall be the dimensional requirements established for those uses in the underlying Zone District.

26.710.290 Drainage Overlay (D) Zone District.

A. Purpose. The purpose of the Drainage Overlay (D) Zone District is to provide for the uses necessary to accommodate the water draining from Aspen Mountain, as well as to retain the drainage discharging from the City's drainage system.

B. Permitted uses. The following uses are permitted as of right in the Drainage Overlay (D) Zone District:

1. All uses required by the City Runoff Management Plan, including conduits, swales, retention ponds and appurtenances.
2. The permitted uses of the underlying Zone District.

C. Conditional uses. There are no uses permitted as conditional uses in the Drainage Overlay (D) Zone District, except the conditional uses allowed in the underlying Zone District.

D. Dimensional requirements. The dimensional requirements for all uses in the Drainage Overlay (D) Zone District shall be the dimensional requirements established for those uses in the underlying Zone District.

26.710.300 Golf Course Support Overlay (GCS) Zone District.

A. Purpose. The purpose of the Golf Course Support Overlay (GCS) Zone district is to provide for the uses necessary to support the City Golf Course and to permit such other uses as may be required for the facility on a year round basis.

B. Permitted uses. The following uses are permitted as of right in the Golf Course Support Overlay (GCS) Zone District:

1. Lodge;
2. Conference facilities;
3. Restaurant and bar;
4. Sport shop;
5. Golf and maintenance facilities;
6. Active recreational facilities such as tennis courts and swimming pools;
7. Housing for lodge employees;
8. Parking lot; and
9. The permitted uses of the underlying Zone District.

C. Conditional uses. There are no uses permitted as conditional uses in the Golf Course Support Overlay (GCS) Zone District, except the conditional uses of the underlying Zone District.

D. Dimensional requirements. The dimensional requirements for all uses in the Golf Course Support Overlay (GCS) Zone District shall be the dimensional requirements established for those uses in the underlying Zone District.

26.710.310 Lodge Overlay (LO) Zone District.

A. Purpose. The purpose of the Lodge Overlay (LO) Zone District is to provide for lodge uses and short term vacation rentals in areas of the City suitable for lodge accommodations but which lie in predominantly residential neighborhoods or where there are limitations on development that necessitate the permitted density to be significantly less than that in the City's other lodge Zone Districts.

B. Permitted uses. The following uses are permitted as of right in the Lodge Overlay (LO) Zone District:

1. The uses permitted in the underlying zone district.
2. Hotel or lodge.
3. Timeshare lodge.
4. Exempt timesharing.
5. Bed and breakfast.
6. Offices and activities accessory to timeshare unit sales (see Chapter 26.590).
7. Conference facilities.
8. Uses associated with outdoor recreation facilities and events.
9. Accessory uses and structures. (Food service for on-site lodge guests is an accessory use.)
10. Storage accessory to a permitted use.
11. Affordable housing accessory to a lodging or timeshare operation and for employees of the operation.
12. Free-market multi-family housing.
13. Vacation rentals. Pursuant to Section 26.575.220.

C. Conditional uses. The following uses are permitted as conditional uses in the Lodge Overlay (LO) Zone District, subject to the standards and procedures established in Chapter 26.425:

1. The uses allowed as conditional uses in the underlying zone district.
2. Affordable housing intended for the general public.
3. Restaurant.
4. Lodge, Boutique.

D. Dimensional requirements. The dimensional requirements for all uses in the Lodge Overlay (LO) Zone District shall be the dimensional requirements established for those uses in the underlying zone district. Where no specific dimensions have been established for the

use, the permitted dimensions shall be limited to that of a single-family residence or multi-family residences where such uses are permitted in the underlying zone district. Upon consideration of the neighborhood compatibility and the dimensional requirements of surrounding zone districts, the dimensional requirements may be established pursuant to Chapter 26.445 - Planned Development.

As part of the PD review, an adjustment of the "density standard" may be approved, and the project shall remain qualified for the growth management incentives associated with this standard. The review shall consider the following criteria:

1. The density standard may be amended by a maximum of 20% to one lodge unit per 600 square feet of Gross Lot Area. An adjustment in excess of this increase may be approved through adoption of a PD plan, but the project shall no longer be qualified for the associated incentives.
2. The project includes a generous amount of non-unit space, amenities and services for guests of the lodging operation. This can include both internal and external amenities.
3. The project provides a range of unit sizes and configurations to be attractive to a broad segment of potential guests. Flexible units are encouraged.

The amount of associated free-market residential floor area to be included in a lodging project shall be as defined in the Lodge (L) Zone District, Subparagraph 26.710.190.D.11.a.5.

E. Compliance with City of Aspen Charter. Any property located east of the Castle Creek River that was in the Lodge Overlay (LO) zone district on January 1, 2015, is subject to the provisions of Article XIII Section 13.14, *Voter authorization of certain land use approvals*, of the City of Aspen Charter.

(Ord. No. 9-2005, §3; Ord. No. 10, 2007, §3; Ord. No.34-2011, §19; Ord. No.20-2015, §9; Ord. No. 23, 2017, §12)

26.710.320 Lodge Preservation Overlay (LP) Zone District.

A. Purpose. The purpose of the Lodge Preservation (LP) Overlay Zone District is to provide for and protect small lodge uses on properties historically used for lodge accommodations, to permit redevelopment of these properties to accommodate lodge and affordable housing uses, to provide uses accessory and normally associated with lodge and affordable housing development, to permit short term vacation rentals of residential units, to encourage development which is compatible with the neighborhood and respective of the manner in which the property has historically operated and to provide an incentive for upgrading existing lodges on site or onto adjacent properties.

B. Permitted uses. The following uses are permitted as of right in the Lodge Preservation (LP) Overlay Zone District:

1. The uses permitted in the underlying zone district.
2. Hotel or lodge.
3. Timeshare lodge.
4. Exempt timesharing.
5. Bed and breakfast.
6. Dormitory.
7. Offices and activities accessory to timeshare unit sales (see Chapter 26.590).
8. Conference facilities.
9. Uses associated with outdoor recreation facilities and events.
10. Accessory uses and structures. (Food service for on-site lodge guests is an accessory use.)
11. Storage accessory to a permitted use.
- ~~12.~~ Affordable housing accessory to a lodging or timeshare operation and for employees of the operation.
- 12.
13. Affordable multi-family housing (as a single use)
14. Free-market multi-family housing.
15. Vacation rentals. Pursuant to Section 26.575.220.

C. Conditional uses. The following uses are permitted in the Lodge Preservation (LP) Overlay Zone District, subject to the standards and procedures established in Chapter 26.425 of this Code:

1. The uses allowed as conditional uses in the underlying zone district.

~~2. Affordable housing intended for the general public.~~

~~3.2. Restaurant.~~

~~4.3. Lodge, Boutique.~~

D. Dimensional requirements. The dimensional requirements for all uses in the Lodge Preservation (LP) Overlay Zone District shall be the dimensional requirements established for those uses in the underlying zone district. Where no specific dimensions have been established for the use, the permitted dimensions shall be limited to that of a single-family residence or multi-family residences where such uses are permitted in the underlying zone district. Upon consideration of the neighborhood compatibility and the dimensional requirements of surrounding zone districts, the dimensional requirements may be established pursuant to Chapter 26.445 - Planned Development.

As part of the PD review, an adjustment of the "density standard" may be approved, and the project shall remain qualified for the growth management incentives associated with this standard. The review shall consider the following criteria:

1. The density standard may be amended by a maximum of 20% to one lodge unit per 600 square feet of Gross Lot Area. An adjustment in excess of this increase may be approved through adoption of a PD plan, but the project shall no longer be qualified for the associated incentives.
2. The project includes a generous amount of non-unit space, amenities and services for guests of the lodging operation. This can include both internal and external amenities.
3. The project provides a range of unit sizes and configurations to be attractive to a broad segment of potential guests. Flexible units are encouraged.

The amount of associated free-market residential floor area to be included in a lodging project shall be as defined in the Lodge (L) Zone District - Section 26.710.190.D.11.a.5.

E. Compliance with City of Aspen Charter. Any property located east of the Castle Creek River that was in the Lodge Preservation Overlay (LP) zone district on January 1, 2015, is subject to the provisions of Article XIII Section 13.14, *Voter authorization of certain land use approvals*, of the City of Aspen Charter.

(Ord No. 39-1999, §6; Ord. No. 41-1999, §§8, 9; Ord. No. 21-2002, §§3, 5, 6 [part]; Ord. No. 9-2005, §4; Ord. No. 10, 2007, §4; Ord. No.34-2011, §20; Ord. No.20-2015, §10; Ord. No. 23 2017, §13)

26.710.330 Ski Area Base (SKI).

A. Purpose. The purpose of the Ski Area Base (SKI) Zone District is to provide for areas which allow for a mixture of uses related to ski area uses and operations including, skiing and appurtenant uses and structures, ski area administrative offices, recreation, lodge/hotel, retail, restaurant and bar uses, tourist-oriented service uses, residential uses, and short term vacation rentals. It is intended that this Zone District will apply to areas located at the base of ski areas and all development within this district will be master planned through a planned development (PD) process.

B. Permitted uses. The following uses are permitted as of right in the Ski Area Base (SKI) Zone District:

1. Alpine and Nordic ski areas, related uses and support facilities typically associated with the uses and operations of ski areas.
2. Lodge units.
3. Hotel.
4. Multi-family dwellings – Free Market and Affordable.
5. Detached residential or duplex dwellings.
6. Dining rooms, customary accessory commercial uses, laundry and recreational facilities located on the same site of and for guests of lodge units, hotels and dwelling units.
7. Accessory residential dwellings restricted to Affordable Housing Guidelines and Section 26.520.040.
8. Ski area administrative offices.
9. Restaurants and bars.
10. Special events associated with ski areas including such events as ski races, bicycle races and concerts; with special event committee review.
11. Parks, outdoor recreational uses and trails.
12. Recreational facility.
13. Retail establishments.
14. Public transportation stop.
15. Terminal building and transportation related facilities.
16. Medical clinic accessory to the ski area.
17. Fire, police and emergency services facilities.
18. Accessory buildings and uses.

19. Outdoor vendor carts or areas for food and beverages sales and preparation.
20. Timeshare lodge.
21. Exempt timesharing.
22. Vacation rentals. Pursuant to Section 26.575.220

C. Conditional uses. The following uses are permitted as conditional uses in the Ski Area Base (SKI) Zone District, subject to the standards and procedures established in Chapter 26.425:

1. Daycare center.
2. Offices, business.
3. Public and private surface and underground parking areas.
4. Essential governmental and public utility uses, facilities, services and buildings (excluding maintenance shops).
5. Post office substation.

D. Dimensional requirements. The dimensional requirements which shall apply to all permitted and conditional uses in the Ski Area Base (SKI) Zone District shall be set by the adoption of a final development plan, pursuant to Chapter 26.445, of planned development.

E. Signs. Signs within the Ski Area Base (SKI) Zone District shall be subject to the provisions of Chapter 26.510, Signs. A sign master plan may be approved in conjunction with a PD review process allowing for the establishment of dimensional and quantity sign standards for the PD.

(Ord. No. 35-2000, §1; Ord. No. 21-2002 §§5, 6 [part]; Ord. No.34-2011, §21)

26.710.340 Essential Business Overlay (EBO) Zone District.

A. Purpose. The purpose of the Essential Business Overlay (EBO) Zone District is to encourage businesses that accommodate the basic consumer needs of Aspen residents and visitors. The EBO provides alternative use standards from the underlying zoning to allow redevelopment to create spaces useful to locally serving, non-traditional or other uses not anticipated in the zoning code. The EBO also provides opportunities for public-private partnerships, where agencies and developers partner to create useful, non-traditional spaces, including live-work, business incubators and other mixed-use development models. This zone is a voluntary overlay that may be applied to properties in the S/C/I and NC zones to enable quality redevelopment and achieve desired use and design outcomes. The EBO is applied through the rezoning process. Approval is contingent upon meeting the criteria in Section 26.310.

B. Permitted and conditional uses.

1. Permitted Uses: Those allowed in the underlying zone district. In addition, General Retail uses, Service/Commercial/Industrial uses, Service uses, and farmer’s markets are permitted uses.
2. Conditional Uses: Those allowed as conditional uses in the underlying zone district, as well as restaurant, bar, and entertainment uses for the SCI zone district.
3. Residential uses are not permitted in the EBO Zone, unless the uses are accessory to a commercial use on the property or part of a live-work arrangement where the predominant uses on the site are commercial, and the uses are approved as a condition of rezoning (see subsection C.2 below). The EBO zone may not be applied to an existing residential use, unless the applicant for rezoning enters into a binding commitment to demolish or redevelop the residential uses for a use permitted in the EBO Zone, or the residential use is approved as part of the rezoning.

C. Dimensional requirements. The dimensional requirements for all uses in the Essential Business Overlay (EBO) Zone District shall be the dimensional requirements established for those uses in the underlying zone district, except as provided below.

1. The following dimensional standards apply:

<u>Minimum Gross Lot Area (square feet):</u>	<u>No requirement.</u>
<u>Minimum Net Lot Area per dwelling unit (square feet):</u>	<u>No requirement.</u>
<u>Minimum lot width (feet):</u>	<u>No requirement.</u>
<u>Minimum front yard setback (feet):</u>	<u>No requirement.</u>
<u>Minimum side yard setback (feet):</u>	<u>No requirement.</u>
<u>Minimum rear yard setback (feet):</u>	<u>No requirement.</u>
<u>Minimum Utility/Trash/Recycle area:</u>	<u>Pursuant to Chapter 12.06.</u>
<u>Maximum height:</u>	<u>Limited to underlying zoning.</u>

Minimum distance between buildings on the lot (feet):	No requirement.
Pedestrian Amenity Space:	Pursuant to Section 26.412.
Floor Area Ratio (FAR)	Limited to underlying zoning.
Minimum Commercial FAR	1:1

2. The applicant may apply for alternative dimensional requirements as a condition of rezoning, taking into consideration neighborhood compatibility and the dimensional requirements of surrounding zone districts. Under no circumstances shall the overall FAR allowed in the underlying zone district be exceeded. In addition, no reductions in required mitigation may be requested through the EBO rezoning.

D. Transportation and Parking Management. See Chapter 26.515, except that the maximum spaces allowed (Section 26.515.040.E, Table 26.515-1) do not apply to the EBO district.

(Ord. No. 29, 2016, §6)

Title 26
LAND USE REGULATIONS
PART 100 — GENERAL PROVISIONS

Chapter 26.104 GENERAL PROVISIONS

Sec. 26.104.010	Authority and title
Sec. 26.104.020	Purpose
Sec. 26.104.030	Master Plans, Comprehensive Community Plan and other plans, guidelines or documents
Sec. 26.104.040	Applicability and penalty
Sec. 26.104.050	Void permits
Sec. 26.104.060	Emergencies
Sec. 26.104.070	Land use application fees
Sec. 26.104.071	Historic preservation application fees
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Sec. 26.104.080	Rules of construction
Sec. 26.104.090	Reserved
Sec. 26.104.100	Definitions

26.104.100. Definitions.

As used in this Code, unless the context otherwise requires, the following terms shall be defined as follows:

100% Deed-Restricted Affordable Housing. HousingResidential projects where all the dwelling units are subject to a recorded deed-restriction with thedeed-restricted-affordable-by-the Aspen Pitkin County Housing Authority. The units may be Category units, Resident Occupied (RO) units, or some combination thereof.

Accessory dwelling unit (ADU). A deed restricted dwelling unit attached to or detached from a principal residence situated on the same lot or parcel and which meets the occupancy, dimensional and other requirements set forth in Section 26.520 of this Title and requirements set forth in the Aspen/Pitkin County Housing Guidelines.

Accessory structure or building. A building or other structure that is supportive, secondary and subordinate in use and/or size to the principal building or structure on the same parcel or lot. (See Supplementary Regulations — Section 26.575.140, Accessory uses and accessory structures).

Accessory use. A use that is supportive, secondary and subordinate to the principal use of a lot, parcel, building or structure. (See Supplementary Regulations — Section 26.575.140, Accessory uses and accessory structures).

Accessway. An area intended to provide ingress or egress to vehicular or pedestrian traffic from a public or private right-of-way or easement to an off-street parking, loading or similar area.

Adjacent parcel. Sharing all or part of one (1) common lot line with another lot or parcel of land, or would share all or part of one (1) common lot line if not for the separation caused by a street, alley, sidewalk, railroad right-of-way, utility line, trail or irrigation ditch.

~~**Affordable housing.** A dwelling unit or units subject to the size, type, rental, sale and occupancy restrictions and guidelines for affordable housing adopted by the City as part of the Affordable Housing Guidelines and Chapter 26.470, Growth Management Quota System.~~

Affordable housing guidelines. Guidelines recommended by the Aspen/Pitkin County Housing Authority and adopted by the City Council to govern the development of, admission to and occupancy of deed restricted affordable housing units in the City and Pitkin County.

Alley. A public or private way for vehicular traffic having less width than a street and used as a secondary access to abutting property, normally at the rear.

Floor Area—Animal boarding facility: An establishment which houses animals overnight or over an extended period of time.

Animal grooming establishment: An establishment principally engaged in grooming animals in which overnight boarding is prohibited.

Antenna. Any structure, including but not limited to a monopole, tower, parabolic and/or disk shaped device in single or multiple combinations or either solid or mesh construction, intended for the purpose of receiving or transmitting communication to or from another antenna, device or orbiting satellite, as well as supporting equipment necessary to install or mount the antenna.

Applicant. A person or entity submitting a development application under this Title.

Approval Documents. A set of maps, drawings, depictions, or descriptions of a project prepared pursuant to Chapter 26.490 – Approval Documents.

Architectural projection. A nonfunctional or ornamental feature on a building or other structure that does not extend to or from, the ground.

Areaway. An outdoor uncovered space developed below the grade of the surrounding ground which may provide exterior access from a basement or lower level of a building and which may incorporate or be independent of required egress.

Artist's Studio. Primarily a fine arts workshop of a light industrial nature such as a sculptor, potter, weaver, carver, jeweler, or other similar art that requires artistic skill, and not related to personal hygiene or adornment, and secondarily receiving the public and engaging in retail sales on a limited basis.

Aspen Area Community Plan. A comprehensive community plan adopted and amended by the City Council and Board of County Commissioners which establishes the City's and Aspen Metropolitan Area's land use and development planning philosophy, goals and policies.

Aspen community growth boundary. Same as Aspen metropolitan (metro) boundary and the Urban Growth Boundary.

Aspen infill area. That geographical area of Aspen east of Castle Creek and south of the Roaring Fork River.

Aspen metropolitan (metro) boundary. That geographic area described and illustrated in the Aspen Area Community Plan, as amended from time to time, encompassing both the City and its environs. (Also known as the Urban Growth Boundary and Aspen community growth boundary).

Automobile Showroom. A building or fully enclosed space within a building that is used to display automobiles and motorcycles for retail purposes, and that is not used to service or maintain the vehicles.

Awning. A roof-like cover that projects not less than three (3) feet and not more than five (5) feet from the wall of a building for the purpose of shielding a doorway or window from the elements.

Bakery. Same as commercial kitchen.

Balcony. Same as a *deck*.

Bandit unit. A dwelling unit or other structure developed or used in violation of the land use or building regulations in effect at the time of its construction.

Base flood. A flood having a one percent (1%) chance of being equaled or exceeded in any given year, also known as the one hundred (100) year flood.

Basement floor. See *subgrade area*.

Bathroom. That portion of a structure which may include a bathtub, toilet, shower or other personal bathing or washing area.

Berm. A human-made raised strip of land or ridge made of earthen materials.

Bed and breakfast. A single-family dwelling used as a commercial lodging establishment for temporary guests, other than a hotel or lodge, and which contains no more than twelve (12) guest rooms and is operated by an on-site resident manager or owner. This shall include all uses formerly known as *boardinghouses*. The dimensions for a bed and breakfast shall meet those for a single-family home in the zone district.

Bedroom. A portion of a dwelling unit intended to be used for sleeping purposes, which may contain closets, and may have access to a bathroom.

Breezeway. A covered walkway connecting two or more buildings or structures or which connects portions of the same building or structure.

Brewery or Distillery. A facility, licensed by the State of Colorado and which is subject to all applicable state and local liquor laws, for the production and packaging of alcoholic beverages for distribution, and secondarily receiving the public and engaging in retail sales on a limited basis, which shall not prohibit on-site beverage consumption.

Building. A permanent structure having a roof supported by walls and intended to act as an enclosure or shelter for persons, animals or property of any kind.

Building envelope. A designated area on a lot or parcel in which all structures shall be located, unless specifically excepted or exempted. (See Supplementary Regulations — Section 26.575.110, Building envelopes).

Building permit. A permit authorizing an applicant under this Code to undertake construction or other development activity.

Canopy. A roof-like cover that projects more than five (5) feet from the wall of a building.

Carport. A roofed structure providing space for the parking of automobiles and enclosed on not more than three (3) sides.

Carriage house. A deed restricted dwelling unit attached to or detached from a principal residence situated on the same lot or parcel and which meets the occupancy, dimensional and other requirements set forth in Section 26.520 of this Title and requirements set forth in the Aspen/Pitkin County Housing Guidelines.

Category housing. Deed restricted affordable housing categorized to reflect different income levels as set forth in the Affordable Housing Guidelines. *Category housing* also refers to low, moderate and middle income categories. This term does not include Resident Occupied (RO) housing.

Child care center. A facility that is maintained for the whole or part of a day for the care of five or more children who are eighteen (18) years of age or younger and who are not related to the owner, operator or manager thereof, whether such facility is operated with or without compensation for such care and with or without stated educational purposes. The term includes, but is not limited to, facilities commonly known as day care centers, school-age child care centers, before and after school programs, nursery schools, kindergartens, preschools, day camps and centers for developmentally disabled children and those facilities that give twenty-four-hour care for children and includes those facilities for children under the age of six (6) years with stated educational purposes operated in conjunction with a public, private or parochial college or a private or parochial school; except that the term shall not apply to any kindergarten maintained in connection with a public, private or parochial elementary school system of at least six grades. The term shall not include any facility licensed as a family child care home or foster care home. (See Supplementary Regulations — Section 26.575.080, Child care center).

Church. See “Religious Land Use.”

Coffee Roasting Facility. A facility for the processing and packaging of coffee beans for distribution and secondarily receiving the public and engaging in retail sales on a limited basis, which shall not prohibit onsite beverage consumption.

Commercial kitchen. A commercial establishment producing or wholesaling prepared food items with no on-site consumption but which may have retail dispensing with no seating or wait service.

Commercial parking facility. The use of a parcel or structure for the short-term parking of automobiles as an independent commercial venture. Lease periods of less than one (1) month shall constitute short-term parking and shall be considered *commercial parking facilities*. Leasing of off-street parking spaces to tenants, guests, patrons or the general public for periods of one (1) month or more shall not constitute a *commercial parking facility*. When the use of off-street parking spaces by tenants, guests, patrons or the general public, is accessory to an on-site business or operation and is not an independent commercial venture, the parking shall not be considered a *commercial parking facility*. *Commercial parking facilities* may require conditional use approval or special review approval in some Zone Districts. Public parking facilities owned by a public agency shall be considered "public uses."

Commercial use. Land, structure, or portion of a structure intended to support offices, retail, warehousing, manufacturing, commercial recreation, restaurant/bar or service oriented businesses, not including lodge units or hotel units.

Commission. The City of Aspen Planning and Zoning Commission.

Consignment retail establishment. A retail establishment in which the operator sells second-hand goods as a third party agent between the buyer and seller.

Contiguous. The sharing of a common border at more than a single point. Lots, parcels or boundaries may be considered contiguous where separated by private rights-of-way, water courses or water bodies situated between them.

Cul-de-sac. A short local street terminating in a vehicular turnaround.

Day care center. See "Child Care Center." (See Supplementary Regulations — Section 26.575.080, Child care center or home.)

Deck. An outdoor, unheated area appended to a living space but not intended for living.

[Deconstruction. The systematic dismantling of a structure in order to maximize the salvage of materials and parts for reuse and recycling. Deconstruction is undertaken as part of the Demolition of Destruction of a building or structure.](#)

Demolition. To raze, disassemble, tear down or destroy forty percent (40%) or more of an existing structure (prior to commencing development) as ~~measured by the defined and described in Section 26.580 surface of all exterior wall and roof area above finished grade and associated assembly and components necessary for the structural integrity of such wall and roof area.~~ For the method of determining demolition, see Section 26.580.XX, [Measurement of demolition.](#) Demolition shall also include the removal of a dwelling unit in a multi-family or mixed-use building, its conversion to nonresidential use, or any action which penetrates demising walls or floors between Multi-Family Housing Units if such action is undertaken to combine the units. (See Section 26.470.070.5, [Demolition or Redevelopment of Multi-Family Housing](#))

Density. The number of dwelling units or lodge units per unit of land.

Design studio. A workshop primarily devoted to the design or representation of built form, landscapes, consumer products or graphic arts.

[Destruction. To remove, disassemble, tear down or destroy portions of a building or structure where the proposed scope does not exceed 40% Demolition as defined by Section 26.580 - Demolition.](#)

Developer. A person or entity undertaking any development as authorized by this Title.

Development. The use or alteration of land or land uses and improvements inclusive of, but not limited to: 1) the creation, division, alteration or elimination of lots; or 2) mining, drilling (excepting to obtain soil samples or to conduct tests) or the construction, erection, alteration, [Redevelopment, destruction,](#) or [Demolition](#) of buildings or structures; or 3) the grading, excavation, clearing of land or the deposit or fill in preparation or anticipation of future development, but excluding landscaping.

Development Agreement. A recorded written agreement between the City and a project owner/developer, prepared pursuant to Chapter 26.490 – Approval Documents, describing an approved development application and describing, depicting, or referencing plans and drawings outlining the nature of the project, regulatory approvals, policies related to land uses, financial assurances for physical improvements, deed restrictions, timing of improvements, acceptance procedures for improvements, noncompliance provisions and any other requirements of the Development Order for the project.

Development application. A written request submitted in accordance with this Title to undertake development.

Development order. A written authorization issued pursuant to the terms of this Title to undertake development according to an approved site-specific development plan. (See Common Development Review Procedures — Section 26.304.070, Development orders.)

Diversion. Any activity, including recycling, source reduction, reuse, deconstruction, or salvaging of materials, which causes materials to be diverted from disposal in landfills and instead puts the material to use as the same or different usable product.

Dormer. A small gable or shed roof projecting above the slope of the primary roof of a building. A dormer usually covers a vertical window.

Dormitory. A building or portion thereof, providing group sleeping accommodations in one (1) room, with shared bath and toilet facilities. (See Supplementary Regulations — Section 26.575.160, Dormitory.)

Dwelling, attached residential. A residential Dwelling Unit which is physically connected to one or more other dwellings in either an over-and-under or side-by-side configuration with common unpierced demising walls or floors/ceilings as applicable.

Dwelling, Affordable housing. A dwelling unit or units subject to the size, type, rental, sale and occupancy restrictions and guidelines for affordable housing adopted by the City as part of the Affordable Housing Guidelines and Chapter 26.470, Growth Management Quota System.

Dwelling, detached residential. A residential structure consisting of a single Dwelling Unit with open yards on all sides, excluding mobile homes. Also known as a Single-Family Home or a Single-Family Residence.

Dwelling, duplex. A residential building on a single lot or parcel comprised of two (2) attached Dwelling Units in either an over-and-under or side-by-side configuration having a common unpierced above-grade wall of at least one (1) story in height and ten (10) feet in length, or a common unpierced wall or floor/ceiling as applicable. Each unit in the duplex shall contain no less than twenty-five percent (25%) of the total floor area of the duplex structure.

Dwelling, Free market. A dwelling unit not subject to the construction, occupancy or other regulations adopted by the City or its housing designee under the City's affordable housing program.

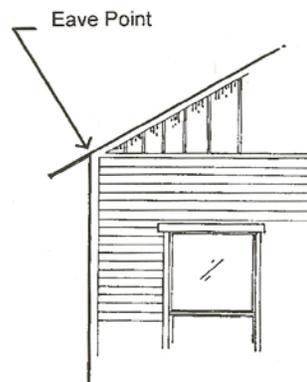
Dwelling, multi-family. A residential structure containing three (3) or more attached or detached Dwelling Units ~~in either an over and under or side by side configuration with common unpierced demising walls or floors/ceilings as applicable~~, not including hotels and lodges, but including

townhomes, that may include accessory use facilities limited to an office, laundry, recreation facilities and off-street parking used by the occupants. One (1) or more Dwelling Units located within a Mixed-Use building shall also be considered a multi-family dwelling. The term "multi-family dwelling" also includes properties listed on the Aspen Inventory of Historic Landmark Sites and Structures consisting of three (3) or more ~~Detached~~ Residential Dwellings.

Dwelling unit. A structure or portion thereof, providing complete, independent living facilities for one or more persons, including, but not limited to, permanent provisions for living, sleeping, eating, cooking, and sanitation, and which shall not have an internal connection to any other residential or non-residential unit or use. Also known as a Dwelling or a Residence.

Easement. A legal interest or right that entitles its holder to a specific limited use or enjoyment of the land of another.

Eave point. The point in the roof plane of a structure or building which intersects with the exterior wall surface. (See drawing, below).



Employee housing. The same as *affordable housing*.

Essential public facility. A facility which serves an essential public purpose is available for use by or benefit of, the general public and serves the needs of the community.

Exterior passageway. An unenclosed deck on the second floor or above that is open on at least two (2) sides that links two or more enclosed portions of a structure and serves as a principal access to outside-loaded lodge rooms or multi-family dwelling units.

Family. Two (2) or more persons related by blood, marriage or adoption or between whom there is a legally recognized relationship or not more than five (5) unrelated persons occupying the same dwelling unit.

Farm buildings. Structures used to shelter or enclose livestock, poultry, feed, flowers, field equipment, horticultural activities and similar land uses.

Farm uses. Uses of land devoted to the raising of crops, poultry or livestock.

Farmers' market. A market established by an organization of farmers/producers to provide the opportunity for direct sale (by farmers or their representatives) of primarily Colorado-grown produce, with the potential for accessory sales of other agriculturally-related products, to wholesale or retail

buyers at stalls or other similar structures of a temporary nature. (See Supplementary Regulations — Section 26.575.190, Farmers' markets).

Fence. A constructed barrier intended to prevent escape or intrusion or to mark a boundary or shield or screen view or to perform any similar function. (See, Supplementary Regulations — Section 26.575.050, Fences)

Flood hazard area. Any land area susceptible to being inundated by water from any source as identified by the Federal Emergency Management Agency (FEMA).

Flooding. A general and temporary condition of partial or complete inundation of normally dry land areas from: (a) the overflow of inland waters; (b) the unusual and rapid accumulation or runoff of surface waters from any source; or (c) mudslides which are proximately caused by flooding as defined in Subsection (b) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

Floodway. The channel of a river or other watercourse and the adjacent land area necessary or reserved to discharge a base year flood without increasing the water surface elevation.

Floor. The base walking surface within a room or other enclosure.

Floor area. [A general term used to describe the sum total of the gross horizontal areas of each story of the building measured from the exterior walls of the building. Floor Area is distinct from the specific definitions below, but may include Gross Floor Area, Mitigation Floor Area, Allowable Floor Area \(see specific definitions of each type below for additional clarity. Also see, Supplementary Regulations — Section 26.575.020, Calculations and measurements\).](#)

[Floor Area, Allowable. – The total amount of floor area allowed on a property based on the limitations and allowances in the applicable zone district in Title 700 and calculated pursuant to Section 26.575.020.D, Calculations and Measurements.](#)

[Floor Area, Gross. Gross floor area is gross horizontal area of all floors in a building, and of all floors in any accessory structure on the same lot, measured from the exterior face framing of the exterior walls \(See Section 26.575.020.D\), or the centerline of a common wall separating two buildings, but excluding unenclosed balconies. This floor area measurement is the total floor area in which Mitigation Floor area and Allowable floor area exclusions are deducted from as established in Section 26.575.020.D.2.](#)

[Floor Area, Mitigation – The Gross Floor Area of a structure minus exclusions included in Section 26.575.020.D. This floor area measurement is used to assess required affordable housing mitigation for a given project.](#)

[Floor Area, Non-unit space. The area, considering all inclusions and exclusions as calculated herein, within a lodge, hotel or mixed use building that is commonly shared. \(Also see Section 26.575.020.D.14 – Calculations and Measurements.\)](#)

Floor area ratio (FAR). The total floor area of all structures on a lot divided by the lot area.

Floor area ratio, external. The total floor area of all structures compared to the total area of the building site.

Floor area ratio, internal. The floor area within a building devoted to a particular use, compared to the total floor area of the building.

Food market. A store which principally sells packaged, bulk and/or fresh foods but which may have indoor customer seating of up to ten (10) seats for food service, but no wait service.

Footprint. The horizontal extent to which a structure covers the ground plane as represented in plan view including cantilevered building elements but excluding eaves and similar architectural projections of the roof plane.

~~Free market unit. A dwelling unit not subject to the construction, occupancy or other regulations adopted by the City or its housing designee under the City's affordable housing program.~~

Four-plex. A multifamily housing project consisting of four, attached or detached units.

Garage. A roofed structure providing space for the parking of automobiles and enclosed on all sides.

Gazebo. An uninsulated, unheated area under a roof, not connected to any other building and open on all sides to the outdoors, with or without screens.

Geographic information system (GIS). A managed interactive system of computer hardware and software and geographic data, designed to capture, store, update, manipulate, analyze, retrieve and display geographically recorded information.

Grade, finished. The elevation of the ground surface measured where it meets the exterior wall of a structure upon completion of construction. A surface must be flat (with exception for drainage requirements) for at least 5 feet measured horizontally from an exterior wall or flat (with exception for drainage requirements) between the exterior wall of a building and the property line to be considered finished grade.

Grade, natural. The undisturbed elevation of the ground surface prior to construction or other development activity.

Graphic design. An artistic portrayal or decorative pattern painted or otherwise placed directly on an exterior wall, fence, awning, window or other exterior surface which may be viewed from outside the premises upon which it has been placed and which is not used or displayed as an identification, advertisement or promotion for the premises, a person, business, service organization or product.

~~Gross floor area. For the purposes of calculating non-unit space, gross floor area is the total floor area considering all inclusions and exclusions as calculated herein plus gross area of all subgrade levels measured from interior wall to interior wall.~~

Gross Lot Area. The total horizontal area contained within the lot lines of a lot or other parcel of land.

Ground floor. The floor of a structure approximately the same elevation as the natural grade of the surrounding area.

Group home. A residential building licensed by the State as an owner-occupied or nonprofit facility for the housing of up to eight (8) aged, mentally ill or developmentally disabled persons, as those classifications of persons are defined under the Colorado Revised Statutes. (See Supplementary Regulations — Section 26.575.200, Group homes)

HPC. The Historic Preservation Commission of the City.

Hedgerow. A row of closely spaced bushes, trees, or shrubs that create, or have the potential through growth maturity to create a largely opaque visual barrier.

Height, building. The height of a building shall be the maximum distance possible measured vertically from natural grade at any point within the interior of the building; and from natural or finished grade (whichever is lower) at any point around the perimeter of the building to the highest point or structure within a vertical plane. (See Supplementary Regulations — Section 26.575.020, Measurements and calculations).

High water line. The boundary dividing a river bed from a river bank and defined as the line on the bank up to which the presence and action of water are so usual and long-conditioned as to impress on the bed a character distinct from that of the bank with respect to the nature of the ground surface, soil and vegetation.

Historic landmark. A structure or site designated and regulated for its historic architectural or other importance under Chapter 26.415 of this Title.

Historic Overlay District, "H." An area or site designated and regulated for its historic architectural importance under Chapter 26.415 of this Title.

Historic significance. A building, structure, park, cemetery, archeological site, landscape or object which has importance to the history, architecture, neighborhood or community character of Aspen or the area surrounding Aspen. As a general rule in preservation, any structure or portion of a structure that is at least fifty (50) years old may be considered historically significant.

Home occupation. A business, occupation or trade conducted principally within a dwelling or a structure accessory to the dwelling and allowed only as an accessory use. (See Supplementary Regulations — Section 26.575.090, Home occupations).

Housing designee. A person, agency or entity appointed by the City Council to provide expertise, management and administrative services concerning affordable housing.

Junk yard. A site or parcel of land used for the collection, storage, salvaging, dismantling, disassembly or sale of waste paper, rags, scrap metal, discarded appliances, vehicles, machinery or other discarded materials. (See Supplementary Regulations — Subsection 26.575.045(H), Junk yards).

Kitchen. A room or other portion of a structure used for the preparation and cooking of food.

Light well. An outdoor uncovered space developed below the grade of the surrounding ground which provides egress from a basement or lower level of a building as required by adopted building or fire codes.

Linked pavilion. An enclosed walkway connecting a primary structure to an accessory structure.

Liquor Store. A commercial establishment engaged in the retail sale of alcoholic beverages, with no on-site consumption, and subject to local licensing allowances and restrictions.

Lodge Key (a.k.a. Lock-off Unit). An individual rentable division of a larger lodging unit, which shall be available overnight to the general public for a fee, and which includes sleeping, bathing and toilet facilities within the rentable division.

Loggia. A deck or porch attached to a living space and open on at least one (1) side developed under a roof as an integral part of the building's mass rather than as an appended element.

Logo. An artistic portrayal or decorative pattern printed or otherwise placed on an exterior wall, window sign or other exterior surface which may be viewed from outside the premises upon which it has been placed and which is used or displayed to identify, advertise or promote the premises, a person, business, service organization or product.

Long term. The occupancy of a dwelling unit for residential purposes for a consecutive time period greater than thirty (30) days.

Lot. A defined individual area or unit of land resulting from subdivision and reflected on a recorded plat approved by the City; or if created and recorded prior to the adoption by the City of subdivision regulations or prior to its annexation into the City, a unit or area of land designated by a separate and distinct number or letter which is illustrated on a plat recorded in the office of the Clerk and Recorder for Pitkin County.

Lot depth. The shortest horizontal distance between the front and rear lot lines.

Lot line. The property boundary dividing a lot from a street or street right-of-way, alley, or an adjacent parcel.

Lot width. The horizontal distance between the side lot lines as measured along the front yard setback line.

Manufactured home. A single-family dwelling unit which is partially or entirely manufactured in a factory or at some location other than the site of final construction and installation. A manufactured home is installed on an engineered, permanent foundation and has brick, wood or cosmetically

equivalent siding and a pitched roof. A manufactured home is certified to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 et seq., as amended.

Marijuana Cultivation Facility. A commercial establishment engaged in the growing and production of marijuana for wholesale distribution, with no on-site consumption, and subject to local licensing allowances and restrictions.

Marijuana, Medical Establishment. A commercial establishment engaged in the retail sale of medical marijuana, with no on-site consumption, and subject to local licensing allowances and restrictions. A Medical Marijuana Establishment may include a medical marijuana center, infused product manufacturing facility, or optional premises cultivation facility as such terms are defined in the Colorado Revised Statutes.

Marijuana Product Manufacturing Facility. A commercial establishment engaged in the preparation or adaptation of marijuana into marijuana products for wholesale distribution, with no on-site consumption, and subject to local licensing allowances and restrictions.

Marijuana, Retail Establishment. A commercial establishment which may include any combination of the following uses: Marijuana Retail Store, Marijuana Cultivation Facility, Marijuana Product Manufacturing Facility, and Marijuana Testing Facility.

Marijuana Retail Store. A commercial establishment engaged in the retail sale of marijuana, with no on-site consumption, and subject to local licensing allowances and restrictions.

Marijuana Testing Facility. A commercial establishment engaged in the technical evaluation of marijuana or marijuana-related products for safety, quality, potency, or other metrics or measurable effects, with no on-site consumption, and subject to local licensing allowances and restrictions.

Mixed-use. The use of land or a structure for more than one (1) of the following land uses:

Commercial, which shall include retail uses, restaurant and bar uses, office uses, service uses, service commercial industrial uses, food market and commercial parking facilities, but which shall exclude agricultural uses;

Residential, which shall include detached dwelling, attached dwelling, single-family dwelling, duplex dwelling, multi-family dwelling, manufactured home, free-market residence, affordable housing, employee housing, group home, dormitory, accessory dwelling unit and carriage house;

Lodging, which shall include hotel, timeshare lodge and exempt timesharing, but shall exclude bed and breakfast;

Civic, which shall include arts, cultural and civic uses; essential public facilities; recreational use and public uses; but shall exclude open space, open use recreation site; and

Accessory uses, temporary uses and the ownership of property by a nonprofit organization that is not used as set forth above shall not qualify a property or structure as *mixed-use*.

Mobile home. A detached, transportable, one-family dwelling unit intended for year round occupancy and containing sleeping accommodations, flush toilet, a tub or shower bath, kitchen facilities with plumbing and electrical connections intended for attachment to outside systems. All mobile homes must be certified to the National Manufactured Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 et seq., as amended. A mobile home shall be made to be readily moveable as a unit on its own running gear and designed to be used as a dwelling unit with or without permanent foundation, but to be installed in either a permanent or semi-permanent manner. A mobile home is not licensed as a recreational vehicle or park model. The phrase "without a permanent foundation" indicates that the support system/chassis is constructed with the intent that the mobile home placed thereon may be moved from time to time at the convenience of the owner.

Mobile home park. A parcel or area of land upon which two (2) or more mobile homes, occupied or intended to be occupied for a dwelling, are located for any period of time, regardless of whether or not a charge is made for such accommodations and whether or not the mobile homes and/or land are owned by the occupants.

Monopole. A wireless communication facility which consists of a monopolar structure, erected to support wireless telecommunication antennas and connecting appurtenances.

Multi-family housing. See “residential multi-family housing.”

Neighborhood. The area adjacent to or surrounding existing or proposed development characterized by common use or uses, density, style and age of structures and environmental characteristics.

Neighborhood café. A commercial eating and drinking establishment where food is prepared and served for consumption on or off premises, limited to no more than one thousand five-hundred (1,500) net leasable square feet and no limitation on outdoor seating and which may provide music or other performances and entertainment incidental to the primary use.

Net leasable area. Areas within a commercial or mixed use building which are permitted to be leased to a tenant and occupied for commercial or office purposes. This also includes commercial areas within a lodge that are open to the general public. This also includes second-tier commercial spaces. (Also see Section 26.410.080 – Second-Tier Commercial Space and Section 26.575.020 – Calculations and Measurements.)

Net livable area. The areas within a building designed to be used for habitation and human activity. (Also see Section 26.575.020 – Calculations and Measurements.)

Net Lot Area. The total horizontal area contained within the lot lines of a lot or other parcel of land less those areas of the property affected by certain physical or legal conditions. (Also see Section 26.575.020, Calculations and Measurements).

Nightclub and bar. A commercial establishment engaged in the sale or dispensing of liquor by the drink for on-site consumption in which the preparation and serving of food may be available and where music, dancing or other entertainment may be provided or conducted.

Nonconforming lot of record. A lot or other parcel of land on record with the office of Clerk and Recorder for Pitkin County which as the result of the adoption of dimensional regulations contained within this Title fails to meet the minimum lot area and lot width requirements for the Zone District in which it is located. ([See Section 26.312.050](#))

Nonconforming lot or parcel. A lot or other parcel of land which as the result of the adoption of dimensional regulations contained within this Title fails to meet the minimum dimensional requirements for the zone district in which it is located. ([See Section 26.312](#))

Nonconforming structure. A structure which was originally constructed in conformity with zoning and building codes or ordinances in effect at the time of its development, but which no longer conforms to the dimensional or other requirements imposed by this Title for the zone district in which it is located. ([See Section 26.312.030](#))

Nonconforming use. The use of land or a building or structure which was originally established in conformities with the zoning and building codes or ordinances in effect at the time of its development, but which is no longer allowed as a permitted or conditional use under the regulations imposed by this Title for the zone district in which it is located. ([See Section 26.312.020](#))

Nonprofit organization. An entity which has received a favorable determination letter from the United States Internal Revenue Service regarding their tax exempt status and is incorporated, subject to or in compliance with the applicable provisions of the Colorado Revised Statutes (CRS) Corporations and Associations articles 121 to 137.

~~**Non-unit space.** The floor area, considering all inclusions and exclusions as calculated herein, within a lodge, hotel or mixed use building that is commonly shared. (Also see Section 26.575.020—Calculations and Measurements.)~~

Normal maintenance. That non-extraordinary maintenance carried out in any twelve (12) month period on a regular schedule necessary to preserve the safety and structural integrity of a nonconforming use or structure, including the repair and/or replacement of nonbearing walls, fixtures, wiring or plumbing.

Office. A type of land use involving the establishment and delivery of business, professional or governmental activities and/or services.

Officer or official. An official or officer of the City.

Official Zone District Map. The official map authorized in Section 26.710.030 designating Zone District boundaries in the City.

Off-street parking. A designated space or area of land with a paved or all-weather surface not within a public street or right-of-way and used for the parking of vehicles.

Open space. A designated space or area of land suitable for public or private use, including space available for landscaping. Such space shall be open to the sky, free of automobile traffic, parking, display of merchandise, outdoor storage or undue hazard. (See, Miscellaneous Supplementary Regulations - Section 26.575.030, Open Space).

Open-use recreation site. Land devoted to public recreation uses or structures.

Owner. A person or entity in whom is vested the ownership or Title, either in whole or in part, of a building, structure or land or a part thereof.

P&Z. The Planning and Zoning Commission of the City.

Paint your own ceramics, arts and crafts studio. A workshop that includes the making, glazing, firing and/or painting of ceramics by hand or involving the use of hand tools or small scale equipment by the public, which may include accessory retail sales and office space for purposes directly related to the studio.

Panel antenna. A flat surface antenna used to achieve transmission or reception from a specific direction.

Parcel. An area of land which is capable of being described with such specificity that its location and boundaries may be established and which has been or may be developed as a single unit of land.

Park. A publicly or privately owned area of land dedicated to active or passive recreational uses or as a refuge for wildlife.

Park maintenance building. A building used in conjunction with the operation or maintenance of a park, including, but not limited to the storage and repair of park vehicles and equipment, greenhouses and offices for park personnel.

Patio. An outdoor uncovered, at-grade space which may be paved or unpaved. (A “covered patio” not connected to any other building is considered a Gazebo.)

Person. An individual, business, corporation, partnership, government or government agency, limited liability company, trust or any other legal entity.

Pharmacy. A commercial establishment engaged in the retail sale of prescription medicine, with no on-site consumption, and subject to State licensing allowances and restrictions.

Planned Development (PD). A zoning designation used after the adoption of Ordinance 36, Series 2013. Formerly known as Planned Unit Development (PUD).

Plat. A map or plan with written provisions that is prepared in compliance with this Code which, when approved by the City, is recorded in the Clerk and Recorder's Office of Pitkin County. (See Supplementary Regulations, Chapter 26.580, Engineering Department regulations).

Plate height. The point at which there is an inflection in an interior wall, where the wall meets the ceiling of the room, corridor or other space. Where stairs penetrate the ceiling of the room, corridor or other space, plate height for that space shall be the height of the immediately adjacent ceiling within that room, corridor or other space.

Porch. An uninsulated, unheated area under a roof, enclosed on at least one side by an exterior wall of a building and open on at least two sides to the outdoors, with or without screens.

Preapplication conference. A meeting between a potential land use applicant and/or their representative and member(s) of the Community Development Department held prior to submission of a land use application where aspects of development regulations, review criteria, review processes, application contents and application fees are discussed. (See, Common Development Review Procedures - Section 26.304.020, Preapplication conference.)

Primary Care Physician's Office: A physician's office, where the sole use is the delivery of primary care medical services that shall include one or more of the following areas of health care practice: pediatrics, family practice, internal medicine, and obstetrics-gynecology, where sale of supplies and/or medicines is incidental to the sale of services, and where walk-in and either Medicare or Medicaid patients are accepted.

Principal building. The primary structure on a lot.

Public buildings and uses. A building, facility or land use/activity owned, occupied or carried out by a government or government agency.

Public facilities. Major capital improvements, including but not limited to transportation, sanitary sewer, solid waste, drainage, potable water, education and parks and recreation facilities. Commercial

wireless telecommunication services facilities and/or equipment are not public facilities, but those used exclusively for police, fire and/or other emergency response communication systems shall be considered public facilities.

Public right-of way. A dedicated strip or other area of land on or over which the City and/or public may travel or use for passage and within which public utilities and/or streets, alleys, trails, sidewalks and other ways may be installed.

Reconstruction. To demolish and rebuild an existing structure or part of a structure in kind.

Recreation club. A building and associated land devoted to recreational use including, but not limited to, a golf, swimming pool or tennis clubhouse, an exercise room, a playground/activity center and which may include kitchen, bathing or toilet facilities, locker rooms or assembly halls.

Recreational vehicle. A wheeled vehicle intended to provide temporary living accommodations. A recreational vehicle is either self-propelled, hauled or towed by a noncommercial vehicle. Included in the term are units commonly referred to as travel-trailers, camper-trailers, trailer-coaches, motor homes and pickup campers. A recreational vehicle is not a mobile home as defined in this Chapter.

Recycling center. A building or facility used for the collection and preparation of recyclable material for efficient shipment.

Redevelopment. The replacement, rehabilitation, repurposing, remodel, or addition to pre-existing structures or uses on a parcel where the scope of work exceeds the 40% Demolition (as defined by this title). Redevelopment is distinct from Development in that Development may occur without triggering Demolition, where Redevelopment is only applicable when Demolition has been triggered.

Rehabilitation. To restore or return a substandard or dilapidated building or structure to a habitable condition consistent with existing building codes and regulations.

Religious Land Use. A place of religious worship and instruction. Accessory uses requiring independent approval include (1) an associated private school, and (2) child care in the main building or the same lot as the church or worship center that accepts customers not attending the church, recreational facilities, dormitories or other facilities for temporary or permanent residences. Child care facilities located in the main building that are used only during worship services, for persons attending the service, are considered accessory to the church and do not require independent approval. For purposes of this section, "religious worship" includes any "religious exercise" as defined by the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc-5.

Relocation. The moving of a building or structure to a location on or off of the lot or parcel on which it is situated.

Remodel. A construction project comprising revisions within or to elements of an existing structure, as distinct from additions to an existing structure.

Renovate. To upgrade an existing structure to a more contemporary and/or efficient use through repair and alteration, including making additions to the existing structure.

Residential multi-family housing. A dwelling unit which has in its history ever housed a working resident and which is located in a building in one of the following configurations:

- 1) A multi-family residential building, [including 3 or more attached or detached dwelling units](#);
- 2) A mixed-use building; or
- 3) A detached building on a property listed on the Aspen Inventory of Historic Landmark Sites and Structures containing three (3) or more detached residential units where permitted by the zone district.

Excluded from this definition shall be single-family and duplex dwellings and dwelling units used exclusively as tourist accommodations by or nonworking residents.

Resident-occupied (RO) unit. A dwelling unit which is limited by deed restriction or other guarantee running with the land to occupancy by qualified employees set forth in the housing guidelines of the Aspen/Pitkin County Housing Authority.

Reverse-corner lot. A corner lot bounded on three (3) sides by streets.

Right-of-way. A strip or other area of land specifically designated or reserved for travel, passage and/or the installation of utilities or other similar uses by persons other than or in addition to, the landowner.

Rooming house. Same as *boardinghouse*.

Satellite dish antenna or satellite radio frequency signal reception and/or transmission device. A dish-shaped or parabolic-shaped reception or transmission device used for the reception and/or transmission of satellite signals, including but not limited to television signals, AM radio signals, FM radio signals, telemetry signals or any other reception or transmission signals using free air space as a medium, whether for commercial or private use. This definition does not apply to wireless telecommunication services facilities and/or equipment including cellular telephone, paging, enhanced specialized mobile radio (ESMR), personal communication services (PCS), commercial mobile radio service (CMRS) and other wireless commercial telecommunication devices and all associated structures and equipment including transmitters, antennas, monopoles, towers, masts and microwave dishes, cabinets and equipment rooms.

[Salvage. The controlled removal of items and material from a building, construction, or demolition site for the purpose of on- or off-site reuse, or storage for later reuse. The salvaging of materials is one method of meeting waste diversion requirements.](#)

Scale. The perceived or relative size and proportions of a structure or architectural element.

Second Tier Commercial Space. Commercial net leasable area that is reserved for and used for principal commercial uses (not for storage, office or other uses accessory to another principal use) and that:

- Is located in a basement, or
- Is located above the ground floor (but not including rooftop pedestrian amenities), or
- Has its principal point of access along an alleyway or a mid-block pedestrian amenity, or
- Has its front façade and principal entryway on a subgrade courtyard or an enclosed interior courtyard or arcade.

When a building is split level, commercial space above the ground floor at street level shall be included in the second tier calculation, while the area below shall not. In these circumstances, a full basement below lower level would count as second tier space (see Figure 26.412.080-A and B below).

Figure 26.412.080-A Split Level – Cutaway View

Figure 26.412.080-B Split Level – Street View

Measurement of the space shall be pursuant to Section 26.575.020.I, Measurement of Net Leasable Area and Net Livable Area.

Service yard. A yard or area used for storage of material accessory to or used in conjunction with the principal commercial use of a lot or structure. (See Miscellaneous Supplementary Regulations — Section 26.575.045, Service yards.)

Setback. An area commencing and extending horizontally and vertically from a lot line, property line or other boundary which shall be unoccupied and unobstructed from the ground upward, excepting trees, vegetation and/or fences or other structures or projections as allowed. (See Supplementary Regulations — Section 26.575.040, Yards).

Short-term. The occupancy of a hotel, lodge unit, or vacation rental for a consecutive time period equal to or lesser than thirty (30) days in duration.

Sidewalk. That portion of a street or right-of-way which is paved and designed for use by pedestrians.

Sidewalk area. That portion of a street, right-of-way or area bordering a street or right-of-way, primarily intended for use by pedestrians, but inclusive of planting strips, park strips, border areas, parkways or similar area.

Sign. An object, device, symbol, light or structure that is intended to convey information or to advertise, that is freestanding or fixed to, painted on, placed on or incorporated into the surface of the structure or that is displayed from or within a structure. Window displays of merchandise and representations thereof, are not considered signage and shall not be subject to sign regulations (See Section 26.510.140, Signs-window displays).

Sign, "A" frame or sandwich. A portable sign which is ordinarily in the shape of an "A" or some variation thereof and which usually has no wheels.

Sign, free standing. Any sign which is permanently affixed to the ground, which is self-supported by a standard or legs or other self-supporting structure used solely for that sign and which is physically separated from any building or structure.

Sign, off-site. A sign which directs attention to a business, commodity, service, entertainment, attraction or product sold, offered or existing elsewhere than upon the same lot where such sign is located. The term shall include outdoor advertising signs (billboards), unless otherwise preempted by state or federal law.

Sign, portable or wheeled. A sign not permanently affixed to the ground, a building or other permanently affixed structure which may be moved from place to place and which may be mounted on wheels.

Sign, projecting. Any sign, other than a freestanding sign, affixed to or supported by a building or structure, which projects beyond the surface of that portion of the building or structure to which it is affixed or supported by more than six (6) inches.

Sign, roof. A sign created, placed or maintained in whole or in part upon, against or directly above the roof or parapet line of a building.

Sign, temporary. A nonpermanent sign erected, affixed or maintained for a short, usually fixed, period of time.

Sign, wall. Any sign painted or placed on, incorporated in or affixed to, a building wall, window or canopy or any sign consisting of cut-out letters or devices affixed to a building wall, window or canopy with no background defined on the building wall, window or canopy, with the exposed face of the sign located in a place substantially parallel to the wall, window or canopy surface on which it is placed.

Site. The specific location of an actual or planned structure or structures or an identifiable and defined area of ground/land occupied or that may be occupied, by a structure or structures.

Site coverage. The percentage of a site covered by buildings, measured at the exterior walls of a building at ground level. (See Supplementary Regulations - Section 26.575.020, Calculations and measurements.)

Site Specific Development Plan (SSDP). A development plan that has obtained final approval from the City after review and evaluation as provided for in this Title, including notice and public hearing and which describes with reasonable certainty the type and intensity of use for a specific lot(s), parcel(s), site(s) or other area(s) of land and which incorporates all of the terms and conditions of approval. An SSDP may include or take the form of a Planned Development, subdivision plat, development and/or subdivision improvement agreement, a use or activity permitted on review or such instrument or document as identified and agreed upon by the City and landowner or developer. A license, map, variance, easement or permit shall not constitute an SSDP.

[Source separated recyclable materials. The recyclable materials that are separated from other recyclable materials or solid waste and placed in separate containers according to type or category of materials and directly marketed as a single commodity.](#)

Specially Planned Area (SPA). A zoning designation used prior to the adoption of Ordinance 36, Series 2013, replaced by the provisions of Chapter 26.445 – Planned Development.

Split-level building. A structure or portion thereof, with floor levels separated from the adjacent sidewalk level by four (4) or more feet of both horizontal and vertical separation and which has a finished grade below the level of the sidewalk in the area between the building and the sidewalk.

Storage area. A detached accessory structure or a separately accessible portion of structure, intended to house items normally associated with the principal use of the property but not independently capable of residential, commercial or lodging use. Areas defined for storage purposes shall not contain plumbing fixtures or mechanical equipment that support the principal residential, commercial or lodging use of the property. Mechanical equipment may be located in conjunction with storage space, but the floor area on which mechanical equipment exists shall not be considered storage area.

Story. A space in a building between the surface of any floor and the surface of the floor or ceiling above, which is more than 50 percent above finished grade.

Street. A way or thoroughfare, other than an alley, containing a public access easement and used or intended for vehicular, bicycle or pedestrian traffic. The term *street* shall include the entire area within a right-of-way.

Street, arterial. A street which has the primary function of carrying traffic and which may provide access to abutting land while receiving and distributing traffic to and from collector streets and/or highways.

Street, collector. A street which carries through traffic and may provide access to abutting lands. The primary function of *collector streets* is receiving and distributing traffic to and from local streets and providing for the distribution of traffic within.

Street, local. A street which has the primary function of receiving and distributing traffic to and from residential streets and providing access to abutting lands, but which is not intended for and does not normally carry through traffic.

Street, private. A street designated to comply with City engineering standards which is retained in private ownership, maintained by the private owners, but dedicated for the use of the public.

Street, public. A street designed to comply with City engineering standards dedicated to the public as a public right-of-way.

Street, unopened. A public or private street that while depicted on a plat, map, right-of-way or other document has not been engineered, installed and/or approved for use by the City.

Structure. Anything constructed, installed or erected which requires location on the ground or is attached/supported by something on the ground, inclusive of buildings, signs, roads, walkways, berms, fences and/or walls greater than six feet (6') in height, tennis courts, swimming pools and the like, but excluding poles, lines, cables or similar devices used in the transmission or distribution of public utilities.

Structure, detached. A structure not physically connected in any manner to another structure, above or below ground, exclusive of utility connections.

Subdivider. Any person or entity that divides or seeks to divide land into two or more lots, parcels or other units of land.

Subdivision. A land use action as required by Chapter 26.480 – Subdivision.

Subdivision agreement. A recorded document between the City and a project owner/developer describing an approved subdivision, the associated regulatory approvals, financial assurances for physical improvements, timing of improvements, acceptance procedures for improvements and noncompliance provisions and any other requirements of the land use approval.

Subgrade area. An area below the natural or finished grade of the ground. (See, Supplemental Regulations, Subsection 26.575.020(A), Floor area).

Tattoo parlor. A business establishment principally engaged in the business of creating indelible marks or figures fixed upon the human body by insertion of pigment under the skin.

Temporary use or structure. A use or structure that may or may not be permitted in a given zone district, but which may be allowed on a nonpermanent and temporary basis upon review. (See Chapter 26.450, Temporary Uses.)

Timeshare lodge, development or unit. A lodge development, building, or unit, or dwelling unit the title to which has been, divided either into interval estates or time-span estates as defined at Section 38-33-110, C.R.S., as may be amended from time to time, and that has been approved pursuant to Chapter 26.590, *Timeshare Development*.

Timeshare use. A contractual or membership right of occupancy (which cannot be terminated at the will of the owner) for life or for a term of years, to the recurrent and exclusive use or occupancy of a

dwelling or lodge unit on some periodic basis for a set period of time that has been allotted from use or occupancy periods into which the dwelling or lodge unit has been divided.

Top of slope. A line generally running parallel to a stream or river from which development must be setback and which delineates the bank of the river or stream or other riparian area as determined by the City Engineer.

Townsite or original Aspen Townsite. Land depicted on the City Incorporation Plat of Record, dated 1880. Parcels of land lying partially within this area shall not be considered within the *original Townsite*.

Trail. A marked or dedicated path or way for pedestrian and/or non-motorized traffic.

Trash compactor. A mechanical device intended to minimize volume and store domestic refuse meeting the requirements of this Code, Chapter 12.04 — Solid Waste.

Trellis. An uninsulated, unheated stand-alone structure of open latticework for the purpose of supporting vines or other climbing plants. A roof that is no more than 50% solid material for shade is permitted. Walls of any material are prohibited.

Tri-plex. A multifamily housing project consisting of three, attached or detached units.

Upper floors. The floors of a structure located entirely above the ground floor of the same structure.

Urban Growth Boundary. Same as Aspen metropolitan (metro) boundary and the Aspen community growth boundary.

Use. The purpose or activity for which a lot, other area of land or a building is designated, arranged, intended, occupied or maintained.

Utility/trash service area. An area approved or designated for the placement of garbage or trash containers or mechanical equipment, accessory to a principal structure or use.

Vacation rental. The short term occupancy of a residential dwelling unit by the general public for a fee. A vacation rental shall not include the rental of individual rooms within a residential dwelling unit.

Vehicle Sales. The sale or rental of autocycles, automobiles, bicycles, camper coaches, camper trailers, electrical assisted bicycles, electric personal assistive mobility devices (EPAMDs), golf cars, motorcycles, motor-driven cycles, motorized bicycles, recreational vehicles, and other “vehicles” (including “motor vehicles”) as defined by Section 42-1-102, C.R.S. For purposes of this definition, a “vehicle” includes any off-highway vehicle, snowmobile, farm tractor, or implement of husbandry.

Vested property right. The right to undertake and complete the development and use of property under the terms and conditions of a site specific development plan.

Veterinary clinic. A facility maintained by or for the use of a licensed veterinarian in the care and treatment of animals wherein overnight care is prohibited except when necessary for medical purposes.

Watercourse. A river, stream or water irrigation ditch.

Whip antenna. A flexible rod antenna supported on a base insulator.

Wildlife resistant dumpster or trash enclosure. A device or structure intended to store domestic refuse and limit access by nondomestic mammals meeting the requirements of this Code, Chapter 12.08, Wildlife protection.

Wireless telecommunication services facilities and/or equipment. Cellular telephone, paging, enhanced specialized mobile radio (ESMR), personal communication services (PCS), commercial mobile radio service (CMRS) and other wireless commercial telecommunication devices and all associated structures and equipment including transmitters, antennas, monopoles, towers, masts and microwave dishes, cabinets and equipment rooms. This definition does not apply to noncommercial satellite dish antennae, radio and television transmitters and antennae incidental to residential use.

A. *Cellular* means an analog or digital wireless communication technology that is based on a system of interconnected neighboring cell sites, each of which contains antenna.

B. *Enhanced Specialized Mobile Radio (ESMR)* means a digital wireless communication technology that specializes in providing dispatching services.

C. *Personal Communication Services (PCS)* means a digital wireless communication technology that has the capacity for multiple communications services and will provide a system in which calls will be routed to individuals rather than places, regardless of location.

Working resident. A person as defined in the Affordable Housing Guidelines.

Yard. The grounds surrounding a building on the same lot or parcel which are unoccupied and unobstructed above and below ground, except for trees and vegetation or as otherwise permitted in this Title. (See Supplementary Regulations — Section 26.575.040, Yards. See also *Setbacks*.)

Yard, front. The yard extending the full width of a lot or parcel, the depth of which is measured by the narrowest horizontal distance between the front lot line and the nearest surface of the principal building at grade.

Yard, rear. A yard extending the full width of a lot or parcel, the depth of which is measured at the narrowest horizontal distance between the rear lot line and the nearest surface of the principal building at grade.

Yard, side. A yard extending from the front yard to the rear yard of a lot or parcel, the width of which is measured at the narrowest horizontal distance between the side lot line and the nearest surface of the principal building at grade.

(Ord. No. 2-1999, §2; Ord. No. 34-1999, §1; Ord. No. 39-1999 §7; Ord. No. 41-1999, §1; Ord. No. 5-2000, §§1, 2; Ord. No. 38-2000, §1; Ord. No. 56-2000, §9; Ord. No. 39-2001, §1 [part]; Ord. No. 46-2001, §3; Ord. No. 1-2002, §1; Ord. 9-2002, §2; Ord. No. 21-2002, §2; Ord. No. 40-2002, §1; Ord. No. 52-2003 §1; Ord. No. 53-2003, §1; Ord. No. 54-2003, §1; Ord. No. 55-2003, §1; Ord. No. 7-2004, §1; Ord. No. 28a-2004, §1; Ord. No. 9-2005, §5; Ord. No. 13-2005, §§1,2; Ord. No. 17-2005, §2; Ord. No. 12-2006, §20; Ord. No. 12, 2007 §§1—3; Ord. No. 4-2008, § 2; Ord. No. 22-2008, § 2; Ord. No. 27-2010, §5–6; Ord. No. 34-2011, §1; Ord. No. 7-2013, §1; Ord. No. 13-2013, §3; Ord. No. 39-2013, §1 & 2; Ord. No. 36-2013, §4; Ord. No.37-2013, §1; Ord. No.7-2014, §12; Ord. No.36-2015, §§ 1, 2, 3; Ord. No.46-2015, §1&2; Ord. No.30, 2016, §1-3; Ord. No. 23, 2017, §1-3)

26.104.110. Use Categories.

A. Generally. This section defines the terms and use categories that apply to this Code.

B. Use Categories.

1. Purpose. This Chapter classifies land uses and activities into use categories on the basis of common functional, product, or physical characteristics. This section includes definitions that describe categories of uses. Characteristics include the type and amount of activity, the type of customers or residents, how goods or services are sold or delivered, and certain site factors. The use categories provide a systematic basis to assign present and future uses to zone districts (see the zone district regulations in Part 700). The decision to allow or prohibit the use categories in the various zones is based on the goals and policies of the Aspen Area Community Plan and the definitions herein.

2. Use Categories. The affected definitions (see subsection C, below) include the following: academic uses; agricultural uses; arts, cultural and civic uses; assembly and community uses; commercial uses; essential services; hotels; offices; public uses; recreation; residential; retail; restaurant, bar, and entertainment; and service commercial.

3. Classification of Uses

a. Considerations.

(1) Uses are assigned to the category whose description most closely describes the nature of the primary use. The "Characteristics" subsection of each use category describes the characteristics of each use category. Developments may have more than one primary use. Developments may also have one or more accessory uses. Developments with more than one primary use are addressed in Subsection b below. Accessory uses are addressed in Subsection c. below.

(2) Uses are given the meaning assigned in subsection C or in the North American Industry Classification Manual (Executive Office of the President, Office of Management and Budget, 2012) ("NAICS") or, if not defined in the NAICS, the American Planning Association, Land-Based Classification Standards LBCS Tables (April 1, 2001) ("LBCS"), or their ordinary and customary meaning. The NAICS and LBCS are incorporated by reference and made a part of this Section.

(3) The following items are considered to determine what use category the use is in, and whether the activities constitute primary uses or accessory uses:

- The description of the activity(ies) in relationship to the characteristics of each use category;
- The relative amount of site or floor space and equipment devoted to the activity;
- Relative amounts of sales from each activity;
- The customer type for each activity;
- The relative number of employees in each activity;
- Hours of operation;
- Building and site arrangement;
- Vehicles used with the activity;
- The relative number of vehicle trips generated by the activity;
- Signs;
- How the use advertises itself;
- Whether use is within the same industry classification is a functionally similar structural type as another permitted use, taking into consideration the NAICS and LBCS;
- Whether the activity would be likely to be found independent of the other activities on the site; and
- Other characteristics and factors as determined by the Community Development Director.

b. Developments with multiple primary uses. When all the primary uses of a development fall within one use category, then the development is assigned to that use category. For example, a development that contains a commercial kitchen/bakery and a neighborhood cafe would be classified in the Retail category because all the primary uses are in that category. When the primary uses of a development fall within different use categories, each primary use is classified in the applicable category and is subject to the regulations for that category.

c. Accessory uses. Accessory uses are allowed by right in conjunction with the use unless stated otherwise in the regulations. Also, unless otherwise stated, they are subject to the same regulations as the primary use. Common accessory uses are listed as examples with the categories. (See also 26.575.140, Accessory uses and structures.)

- d. **Use of examples.** The "Examples" subsection of each use category provides a list of examples of uses that are included in the use category. The names of uses on the lists are generic. They are based on the common meaning of the terms and not on what a specific use may call itself. For example, a use whose business name is "Wholesale Bakery" but that sells mostly to consumers, would be included in the Retail category rather than the Service Commercial Industrial uses category. This is because the actual activity on the site matches the description of the Retail category.

C. **Definitions.** As used in this Code, unless the context otherwise requires, the following terms shall be defined as follows:

Academic uses.

Characteristics The use of land or buildings for public or private educational activities with related accessory uses.

Examples Public or private schools, colleges or universities; teaching hospitals; research institutions, facilities or testing laboratories; technical schools; personal instructional services (such as musical instruction); tutoring services; auditoriums and other facilities for performances and lectures; or similar uses.

Accessory Uses Accessory uses may include recreational facilities, office, parking, maintenance facility, retail, housing or food service.

Exceptions Religious land uses.

Child day care, preschools, and trade schools are classified as a Service use.

Agricultural uses.

Characteristics The use of land and buildings for the production of crops, agricultural products, animals, and animal products.

Examples Agricultural uses include nurseries, commercial greenhouses, bee keeping, community garden, or similar uses. Cultivation, Manufacturing, and Testing of Medical or Retail Marijuana.

Accessory Uses Accessory uses may include maintenance facilities for the uses on the site, parking, and garbage, trash or recycling areas consistent with City Code Chapter 12.04.

Essential Services.

Characteristics The development or maintenance of infrastructure by public utilities, state agencies, special districts, or the city.

Examples Examples include fuel (such as gas, electrical, and steam), or water, wastewater and storm water transmission or distribution systems (underground, surface or overhead). The development or maintenance of wireless telecommunication services facilities and/or equipment used exclusively for police, fire and/or other emergency response communication systems is considered *essential services*.

Accessory Uses Accessory uses may include control, monitoring, data or transmission equipment, maintenance facilities for the uses on the site, parking, and garbage, trash and recycling areas consistent with City Code Chapter 12.04.

Exceptions The development or maintenance of commercial wireless telecommunication services facilities and/or equipment is not an essential service. Gas stations are considered retail uses. Wireless telecommunications uses are subject to the provisions of Section 26.575.130.

Formula Use.

Characteristics Any “restaurant, bar and entertainment uses” and “retail uses”, as defined in this Chapter, that has eleven (11) or more other establishments in operation, or with local land use or permit entitlements already approved and effective, located anywhere in the United States. In addition to the eleven (11) establishments either in operation or with local land use or permit entitlements approved for operation, the business maintains two (2) or more of the following features: a standardized array of merchandise, standardized array of services, a standardized facade, a standardized decor and color scheme, uniform apparel, standardized sign, a trademark, or a service mark.

1. “Standardized array of merchandise” means 50% or more of in-stock merchandise from a single distributor bearing uniform markings.
2. “Standardized array of services” means as a common menu or set of services priced and performed in a consistent manner.
3. “Trademark” means a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of the goods from one party from those of others.
4. “Service mark” means a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs that identifies and distinguishes the source of a service from one party from those of others.
5. “Façade” means the face or front of a building, including awnings, looking onto a street or an open space.

6. “Décor” means the style of interior furnishings, which may include but is not limited to, style of furniture, wall coverings or permanent fixtures.
7. “Color Scheme” means a selection of colors used throughout the establishments, such as on the furnishings, permanent fixtures, and wall coverings, or as used on the facade.
8. “Uniform Apparel” means standardized items of clothing including but not limited to standardized aprons, pants, shirts, smocks or dresses, hats, and pins (other than name tags), and standardized colors of clothing.

Examples Those examples set forth in the definitions of “restaurants, bars and entertainment uses” and “retail uses” (general and specialty) that have the characteristics set forth in this definition.

Accessory Uses Accessory uses may include those accessory uses set forth in the definitions of “restaurants, bars and entertainment uses” and “retail uses” (general and specialty).

Exceptions Exceptions include those exceptions set forth in the definitions of “restaurants, bars and entertainment uses” and “retail uses” (general and specialty).

Lodge uses.

Characteristics A building or parcel containing at least fifteen (15) individual units used for overnight lodging by the general public on a short-term basis for a fee, with or without kitchens within individual units, with or without meals provided and which has common reservation and cleaning services, combined utilities and on-site management and reception services.

On-site, in-person management and reception services must be provided during normal business hours. Remote management and reception services may be provided all other times.

To qualify as a Lodge use, the property must have at least three (3) of the following amenities on-site:

- Commercial kitchen or other in-house food service,
- On or off-site fitness or gym facilities,
- Pool, hot tub, sauna, or spa facilities,
- Lounge,
- Entertainment facilities accessible to guests,
- Bar or restaurant,

- Retail or services (such as guide services, concierge, equipment rental or repair, spa or beauty facility),
- Meeting, conference, entertainment, or ballroom facilities,
- Other amenities as may be provided to address the specific lodge needs.

The extent of the amenities provided should be proportional to the size of the development. The types of amenities should be consistent with the planned method and style of operating the development.

For Lodges with flexible unit configurations, also known as “lock-off units,” each rentable division or “key” shall constitute a lodge unit for the purposes of this Title.

Occupancy periods of a Lodge or unit thereof by individuals or entities with any ownership interest in the Lodge or unit thereof and any non-paying guests of such owners shall not exceed thirty (30) consecutive days or exceed a cumulative total of ninety (90) days within any calendar year for all such owners and non-paying guests. For the purposes of this section, if two or more units or fractional interests are owned by separate corporations, limited liability companies or partnerships with common owners or a common owner of all or any portion of the separate corporate, company or partnership interests, the unit or fractional interest shall be deemed in one ownership for the purposes of determining the occupancy limitations set forth herein. Occupancy periods for persons or entities with no ownership interest in a property (e.g. vacationers) shall be limited to thirty (30) consecutive days and ninety (90) days per calendar year.

Examples Motels, hotels, timeshare (a.k.a. fractional) units and timeshare developments, and hostels. See chapter 26.590 for standards governing the establishment and management of timeshare (fractional) developments.

Accessory Uses Accessory uses may include offices related to the operation of the primary use, maintenance facilities for the uses on the site, parking, and garbage, trash and recycling areas consistent with City Code Chapter 12.04.

Restaurants and retail uses are allowed up to the FAR limits and in the locations prescribed by the applicable zone. Accessory uses must be located within the footprint or parcel of the associated lodge use.

Exceptions Boutique Lodges. Single-family, duplex and multi-family dwelling units the primary purpose of which is transient occupancy by an owner, but which are secondarily made available on a short-term basis as a vacation rental, are classified as residential uses. Single-family, duplex and multi-family dwelling units that are located on a parcel not adjacent to an associated lodge use are classified as residential uses.

Bed and breakfasts are classified as residential uses.

Lodge, Boutique uses.

Characteristics A whole building or parcel containing between ten (10) and fourteen (14) individual units used for overnight lodging by the general public on a short-term basis for a fee, with or without kitchens within individual units, with or without meals provided, and which has common reservation and cleaning services, combined utilities and on-site management and reception services.

On-site, in-person management and reception services must be provided during normal business hours. Remote management and reception services may be provided all other times.

For Boutique Lodges with flexible unit configurations, also known as “lock-off units,” each rentable division or “key” shall constitute a lodge unit for the purposes of this Title. Each unit shall be designed such that the finished floor level of fifty percent (50%) or more of the unit’s net livable area is at or above natural or finished grade, whichever is higher. This dimensional standard may be varied through Special Review, pursuant to Chapter 26.430.

Occupancy periods of a Boutique Lodge or unit thereof by individuals or entities with any ownership interest in the Boutique Lodge or unit thereof and any non-paying guests of such owners shall not exceed thirty (30) consecutive days or exceed a cumulative total of ninety (90) days within any calendar year for all such owners and non-paying guests. For the purposes of this section, if two or more units or fractional interests are owned by separate corporations, limited liability companies or partnerships with common owners or a common owner of all or any portion of the separate corporate, company or partnership interests, the unit or fractional interest shall be deemed in one ownership for the purposes of determining the occupancy limitations set forth herein. Occupancy periods for persons or entities with no ownership interest in a property (e.g. vacationers) shall be limited to thirty (30) consecutive days and ninety (90) days per calendar year.

Examples Motels, hotels, and timeshare (fractional) and condo hotels. See section 26.590 for standards governing the establishment and management of timeshare (fractional) developments.

Accessory Uses Accessory uses may include offices related to the operation of the primary use, maintenance facilities for the uses on the site, parking, and garbage, trash and recycling areas consistent with City Code Chapter 12.04.

Restaurants and retail uses are allowed up to the FAR limits and in the locations prescribed by the applicable zone. Accessory uses must be located within the footprint or parcel of the associated lodge use.

Exceptions Single-family, duplex and multi-family dwelling units the primary purpose of which is transient occupancy by an owner, but which are secondarily made available on a short-term basis as a vacation rental, are classified as residential

uses. Single-family, duplex and multi-family dwelling units that are located on a parcel not adjacent to an associated lodge use are classified as residential uses.

Bed and breakfasts are classified as residential uses.

Boutique Lodges established (applied for or received a development order or certificate of occupancy) prior to the adoption of Ordinance 23, 2017 are considered legally established and are exempt from the standards of section 26.425.035, Conditional Use, and 26.470.110.F, Reduction in Lodge Units, until such time as a redevelopment or change is requested for the property.

Offices uses.

Characteristics A type of land use, or any building or portion thereof, involving the establishment, transaction and delivery of business, medical, or professional activities or services to the general public.

Examples Examples include advertising or insurance agencies, medical and dental offices, clinics, and laboratories, architecture, land planning or other professional offices, publishing, and real property sales or management companies.

Accessory Uses Accessory uses may include common kitchen, health facilities, parking, or other amenities exclusively for the use of employees in the business or building, maintenance facilities for the uses on the site, parking, and garbage, trash and recycling areas consistent with City Code Chapter 12.04.

Exceptions Offices that are part of and are located with a business in another category are considered accessory to the firm's primary activity and must be subordinate to that use.

Contractors and others who perform services off-site are included in the Office category if equipment and materials are not stored on the site and fabrication, services, or similar work is not carried on at the site.

Public uses.

Characteristics The use of land or buildings by public or quasi-public organizations for public use and not otherwise defined in this section.

Examples Examples include uses such as government administration and service, transportation buildings and facilities, public parking, post office, public safety facilities, hospital, child care center and similar uses.

Accessory Uses Accessory uses may include maintenance facilities for the uses on the site, parking, and garbage, trash and recycling areas consistent with City Code Chapter 12.04. Police stations may include holding cells.

Exceptions Commercial parking facilities are not considered public uses.

Recreational uses.

Characteristics The use of land or buildings for recreational activities available to the general public.

Examples Parks, playgrounds, play fields, golf courses, skateboard parks, horseback riding facilities, or similar uses.

Accessory Uses Accessory uses may include concessions, parking, and maintenance facilities. Accessory uses may include maintenance facilities for the uses on the site, parking, and garbage, trash and recycling areas consistent with City Code Chapter 12.04.

Exceptions Uses which draw large numbers of people to periodic events, rather than on a continuous basis, are classified as seasonal uses and are subject to Chapter 26.450.

Residential use.

Characteristics A dwelling unit used or intended for use exclusively for dwelling purposes, not including hotels or lodges, which is occupied by a single resident, family or household.

Examples Residential uses and configurations include the following categories:

1. detached residential dwellings,
2. attached residential dwellings, duplex dwellings,
3. multi-family dwellings, residential multi-family housing, which refers to any of the following configurations: a multi-family dwelling unit(s) located in an exclusively residential building, a multi-family dwelling unit(s) located in a mixed-use building, or detached buildings ~~on a property listed on the Aspen Inventory of Historic Landmark Sites and Structures~~ containing three (3) or more detached residential dwellings where permitted by the zone district, and
4. Home occupation: principally residential buildings that includes a business, occupation or trade conducted principally within the dwelling or accessory structure, allowed only as an accessory use, and occupied on a full time basis by a person who is employed by the commercial use. (See also section 26.575.090, Home Occupations.)

In addition, residential uses are further divided into affordable housing and free market units for purposes of the Growth Management Quota System (Chapter 26.470) and the disposition of units by location or floor area in the applicable zone district.

Accessory Uses Accessory uses may include parking, and garbage, trash and recycling areas consistent with City Code Chapter 12.04.

Accessory uses commonly found include parking of the occupants' vehicles, home occupations, accessory dwelling units, and short-term rentals only where allowed by the applicable zone district, and may be subject to additional regulations.

Exceptions Uses classified as Hotel (Lodge) uses, bed and breakfast, dormitory, boardinghouse.

Restaurant, Bar and Entertainment

Characteristics The use of buildings or land for establishments where food or alcoholic beverages are served or entertainment is provided to the general public.

Examples Examples include restaurants, bars, and delicatessens. Establishments where food is served or entertainment is provided, or that have a dance floor or facilities for the display of movies, theatrical productions, or similar activities. Examples include restaurants, nightclubs and bars, neighborhood cafés, or movie theaters.

Accessory Uses Accessory uses may include maintenance facilities for the uses on the site, parking, and garbage, trash and recycling areas consistent with City Code Chapter 12.04.

Accessory uses may include offices and small format retail uses ancillary to the primary use of the property.

Exceptions Commercial kitchens, bakeries and grocery stores, which are considered General Retail uses.

Retail Uses

Characteristics Commercial establishments engaged in the selling or renting of consumer goods and merchandise to the general public. The two subgroups of retail uses include General Retail and Special Retail, described as follows:

1. *General Retail* involves the sale of consumer goods for normal personal or household use or consumption. These include items where demand tends to increase on a less than proportionate basis or that decreases relative to increases in income, and that are considered household necessities.
2. *Specialty Retail* involves the sale of luxury or premium goods, products that are generally purchased on a non-recurring basis, and that tend to occupy spaces in more expensive location. These include items where demand tends to increase as household income rises, or where demand increases in proportion to high prices.

Examples Examples include uses from the two subgroups listed below:

1. *General Retail*: Examples include auto parts and hardware, books, building material dealers, commercial kitchen or bakery, consumer goods rental, clothing, convenience stores, consumer electronics, florists, food and beverage stores, grocery stores, retail marijuana establishments and stores, office supplies, gas stations, pet stores, sporting goods, vehicle sales, and similar retail establishments not otherwise listed.
3. *Specialty Retail*: Examples include jewelry, art dealers, luggage, fur and leather goods.

Accessory Uses Accessory uses may include maintenance facilities for the uses on the site, parking, and garbage, trash and recycling areas consistent with City Code Chapter 12.04.

Offices, storage of goods, parking, and the production or repackaging of products sold on-premises and the rendering of services incidental to the sale or rental of those products.

Services such as bicycle and ski repair, which are incidental to the primary use as retail.

Exceptions Offices are not considered retail uses.

Uses which may be classified as Service, Commercial, Industrial.

Service Uses.

Characteristics The use of buildings or land for establishments engaged in providing personal or financial services to the general public.

Examples Examples include banks, personal or sporting equipment storage lockers, beauty shops, child care centers, laundry and dry cleaning, tailors and cobblers, light maintenance and repair, pharmacy, medical marijuana establishments, instructional or performing arts studio with no public performances, artist's studio, health and fitness facility/spa, repair and maintenance shops, and similar activities.

Accessory Uses Accessory uses may include maintenance facilities for the uses on the site, parking, and garbage, trash and recycling areas consistent with City Code Chapter 12.04.

Accessory uses may include offices and small format retail uses ancillary to the primary use of the property.

Exceptions Manufacturing, and heavy maintenance and repair, are considered Service/Commercial/Industrial uses. Food service uses, such as a grab-and-go or grocer are considered General Retail. Offices are not considered service uses unless incidental and subordinate to the primary service use.

Service, Commercial, Industrial uses.

Characteristics The use of buildings or land for the manufacture, repair and servicing of consumer goods, the provision of common domestic services and with limited retail, showroom or customer reception areas to the general public. (See Service/Commercial/Industrial Zone District, Section 26.710.160.)

Examples Examples include uses involved in production or manufacturing of goods or services, such as bike and ski shops (including items for rent or sale in combination with a guiding service), brewery and brewing supply, hardware, locksmiths, copy and packing and shipping centers.

Accessory Uses Accessory uses may include maintenance facilities for the uses on the site, parking, and garbage, trash and recycling areas consistent with City Code Chapter 12.04.

Accessory uses may include parking, storage, warehouses, storage yards, shipping and receiving docks, repair facilities.

Retail sales which may be incidental to the primary use, only as allowed in the zone district.

Exceptions Contractors and others who perform services off-site are included in the Office category, if equipment and materials are not stored at the site, and fabrication or similar work is not carried on at the site.

Manufacturing of goods where the primary use is the retail sale of those products to the general public.

(Ord. No. 30, 2016, §4; Ord. No. 6, 2017, §1; Ord. No. 23, 2017, §1-3)

TITLE 26
LAND USE REGULATIONS
PART 200 — ADMINISTRATION — DECISION-MAKING BODIES

Chapter 26.208	CITY COUNCIL
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Sec. 26.222.050	Decisions.
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Chapter 26.226	GROWTH MANAGEMENT COMMISSION (deleted by Ordinance 7 of 2004)

Chapter 26.210
COMMUNITY DEVELOPMENT DEPARTMENT

Sections:

- 26.210.010 Purpose.
- 26.210.020 Director of Community Development Department.
- 26.210.030 Chief Building Official.

26.210.010. Purpose.

The Community Development Department shall perform the planning functions for the City, shall provide technical support and guidance for action on development applications and shall review and perform such other functions as may be requested by the City Council or other decision-making bodies as set forth in this Title.

26.210.020. Director of Community Development Department.

A. Creation and appointment. The Community Development Director shall be the agency head of the Community Development Department and shall be appointed by and serve at the pleasure of the City Manager.

B. Jurisdiction, authority and duties. In addition to the jurisdiction, authority and duties which may be conferred upon the Community Development Department Director by other provisions of this Code, the Community Development Department Director shall have the following jurisdiction, authority and duties:

1. To serve as staff to the City Council, to provide such body with planning and technical assistance and to inform such body of all facts and information available with respect to development applications or any other matters brought before it;
2. To serve as staff to the Planning and Zoning Commission, to provide such body with planning and technical assistance and to inform such body of all facts and information available with respect to development applications or any other matters brought before it;
3. To serve as staff to the Historic Preservation Commission, to provide such body with planning and technical assistance, to inform such body of all facts and information available with respect to development applications or any other matters brought before it and to inform such body regarding historic preservation items being heard by other City boards in advance of those hearings;
4. To serve as staff to the Board of Adjustment and other decision-making bodies established by this Title and to inform such bodies of all facts and information available with respect to development applications or any other matters brought before it;
5. To serve as staff to the Administrative Hearing Officer, to provide such officer with planning and technical assistance and to inform such officer of all facts and information available with respect to appeals of decisions made by an administrative official or any other matters brought before it;

6. To render interpretations of this Title or the boundaries of the Official Zone District Map pursuant to Chapter 26.306;
7. To enforce any provision of this Title or any other provision of this Code;
8. To establish such rules of procedure necessary for the administration of the Community Development Department Director's responsibilities;
9. To exempt development within an H, Historic Overlay District in accordance with Chapter 26.415;
10. To approve minor modifications to a development order for development or demolition within an H, Historic Overlay District in accordance with Chapter 26.415;
11. To exempt development in an environmentally sensitive area (ESA) in accordance with Chapter 26.435;
12. To exempt development which is subject to special review in accordance with Chapter 26.430;
13. To make determinations of exemptions from the growth management quota system (GMQS), pursuant to Chapter 26.470;
14. To approve, approve with conditions or deny development subject to GMQS administrative approval in accordance with Chapter 26.470;
- ~~14. To score growth management applications in accordance with Chapter 26.470;~~
15. To approve development subject to subdivision administrative approval in accordance with Chapter 26.480;
16. To approve development subject to Planned Development administrative approval in accordance with Chapter 26.445;
17. To undertake all general comprehensive planning responsibilities;
18. To initiate amendments to the text of this Title or to the Official Zone District Map, pursuant to Chapter 26.310;
19. To administer the land use application fee policy, to bill applicants according to said policy, to take such actions deemed necessary in withholding development orders or issuing stop work orders upon nonpayment of review fees and to waive any fees or portions thereof, upon request according to said policy;
20. To approve, approve with conditions or deny development subject to Chapter 26.520, Accessory Dwelling Units and Carriage Houses;
21. To extinguish a transferable development right in accordance with Chapter 26.535;
22. To issue and extinguish Affordable Housing Certificates in accordance with Chapter 26.540; and

23. To assist and staff all aspects of the Master Planning process in accordance with Chapter 26.311.
24. To approve, approve with conditions, or disapprove an application for Administrative Public Project review, pursuant to Chapter 26.500, and to determine if a private development application is eligible for Public Project Review, pursuant to Section 26.500.040.D.
- (Ord. No. 55-2000, §1; Ord. No. 54-2003, §3; Ord. No. 12-2007, §5; Ord. No.31-2012, §3; Ord. No. 36-2013, §7; Ord. No. 46-2015, §4)

26.210.030. Chief Building Official.

A. Creation and appointment. The Chief Building Official shall be appointed by and serve at the pleasure of the Community Development Department Director.

B. Jurisdiction, authority and duties. In addition to the jurisdiction, authority and duties which may be conferred on the Chief Building Official by other provisions of this Code, the Chief Building Official shall have the following jurisdiction, authority and duties:

1. To issue and revoke building permits in accordance with the procedures of this Title;
2. To issue and revoke certificates of occupancy in accordance with the procedures of this Title;
3. To enforce the provisions of this Title;
3. To advise applicants that additional federal or state permits may be required and if specific federal or state permits are known to have been issued, to require that copies of such permits be obtained and provided and maintained on file with the application for building permit; and
5. To provide the City Council, the Planning and Zoning Commission, the Board of Adjustment and the Historic Preservation Commission and other decision-making bodies established by this Title with reports and recommendations with respect to matters before such bodies, as directed by the City Council, the Community Development Department Director or the City Manager.

Chapter 26.212
PLANNING AND ZONING COMMISSION

Sections:

- 26.212.010 Powers and duties.
- 26.212.020 Qualifications for membership.
- 26.212.030 Membership; appointment, removal, terms and vacancies.
- 26.212.040 Staff.
- 26.212.050 Quorum and necessary vote.
- 26.212.060 Meetings, hearings and procedure.

Editor's note—Ord. No. 41-2002 §1, 2002 repealed former Chapter 26.212, which pertained to similar provisions and enacted a new Chapter 26.212 as herein set out. Former Chapter 26.212 was derived from Ord. No. 5-1988 §2 as amended by Ord. No. 1-2002 §3, 2002.

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 make determinations of exemptions from the growth management quota system (GMQS), pursuant to Chapter 26.470;~~
- H.G.** To hear, review and recommend approval, approval with conditions or disapproval of a plat for subdivision, pursuant to Chapter 26.480;
- I.H.** To hear and approve, approve with conditions or disapprove conditional uses pursuant to Chapter 26.425;

J.I. To hear and approve, approve with conditions or disapprove development subject to special review, pursuant to Chapter 26.430;

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

L.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;

M.L. To adopt such rules of procedure necessary for the administration of its responsibilities not inconsistent with this Title;

N.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;

O.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;

P.O. To hear, review and approve variances to the residential design guidelines, pursuant to Chapter 26.410;

Q.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 Directors 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)

26.212.020. Qualifications for membership.

Members of the Commission shall be qualified electors in the City and have been residents of the City for at least one (1) year prior to appointment. No member of the City Council, the Mayor, a City employee or any appointed city official shall serve on the Commission.

(Ord. No. 41-2002, §1)

26.212.030. Membership; appointment, removal, terms and vacancies.

A. The Commission shall be composed of seven (7) members and shall be appointed by the City Council. The City Council shall also appoint one (1) alternate member to the Commission. The alternate member shall vote only in the absence of one (1) or more regular members. When a regular member resigns, the alternate member shall automatically be appointed as a regular member in replacement.

B. All members serve at the pleasure of the City Council and may be removed for cause prior to the expiration of their appointment by a majority vote of the City Council. Cause may include, but is not limited to, the following: the Commission member has four (4) or more absences from regular meetings during the calendar year, the member is no longer a qualified elector or the member while in office is convicted of a felony or an offense involving moral turpitude.

C. All members, including the alternate, shall serve a term of four (4) years. There shall be no restraint on the number of terms any member of the Commission may serve.

D. When a member or alternate member is appointed to fill out the term of a departing member or alternate member, that person's term shall end at the time the departing person's term would have ended.

E. At the first regular meeting in January, the members of the Commission shall elect one (1) of their members as chairperson and one (1) as vice-chairperson. In the absence of the chairperson, the vice-chairperson shall act as chairperson and shall have all powers of the chairperson. The chairperson shall be elected for one (1) year and shall be eligible for reelection.

F. The chairperson of any meeting of the Commission may administer oaths, shall be in charge of all proceedings before the Commission and shall take such action as shall be necessary to preserve order and the integrity of all proceedings before the Commission.

G. The secretary of the Commission shall be the City Clerk or the City Clerk's designee. The secretary shall keep the minutes, shall notify Commission members of regular and special meetings and shall maintain the files of all studies, plans, reports, recommendations and development decisions by the Commission.

H. Members of the Commission shall serve without compensation.

(Ord. No. 41-2002, §1)

26.212.040. Staff.

The Community Development Department shall be the professional staff of the Commission.

(Ord. No. 41-2002, §1)

26.212.050. Quorum and necessary vote.

No meeting of the Commission may be called to order without a quorum consisting of at least four (4) members of the Commission being present. No meeting at which less than a quorum shall be present shall conduct any business other than to continue the agenda items to a date certain. All actions shall

require the concurring vote of a simple majority, but in no event less than three (3) concurring votes, of the members of the Commission then present and voting.

A motion receiving less than a majority of votes in favor or less than three (3) concurring votes shall constitute a failed motion and shall not be considered action. A tie vote on a motion shall be considered a failed motion and shall not be considered action. For applications where action is required, the application shall remain pending until action is taken.

(Ord. No. 41-2002, §1; Ord. No. 12, 2007, §7)

26.212.060. Meetings, hearings and procedure.

A. Regular meetings of the Commission shall be held on the first and third Tuesday of each month. Special meetings may be called by the chairperson of the Commission, a majority of the members of the Commission, the Mayor, a majority of the City Council or staff.

B. All meetings and hearings of the Commission shall be open to the public.

C. Public hearings shall be set for a date and time certain.

(Ord. No. 41-2002, §1)

Chapter 26.220
HISTORIC PRESERVATION COMMISSION (HPC)*

Sections:

26.220.010	Powers and duties.
26.220.020	Qualifications for membership.
26.220.030	Membership; appointment, removal, terms and vacancies.
26.220.040	Staff.
26.220.050	Quorum and necessary vote.
26.220.060	Meetings, hearing and procedure.
26.220.070	Committees and project monitoring.

* **Editor's note**—Ord. No. 41-2002 §1, 2002 repealed former Chapter 26.220, which pertained to similar provisions and enacted a new Chapter 26.220 as herein set out. Former Chapter 26.220 was derived from Ord. No. 5-1988 §2 as amended by Ord. No. 1-2002 §4 (part), 2002.

26.220.010. Powers and duties.

The Historic Preservation Commission (hereinafter "HPC" or "Commission") shall have the following powers and duties:

- A.** Recommendation of approval or disapproval to the City Council of the designation of H, Historic Overlay Districts and the Aspen Inventory of Historic Landmark Sites and Structures, pursuant to Chapter 26.415;
- B.** Review and approval, approval with conditions, suspension or disapproval of development within the H, Historic Overlay District or development involving the Aspen Inventory of Historic Landmark Sites and Structures, pursuant to Chapter 26.415;
- C.** Review and approval, approval with conditions, suspension or disapproval of demolition or relocation involving properties listed on the Aspen Inventory of Historic Landmark Sites and Structures pursuant to Chapter 26.415 or properties under consideration for the Aspen Inventory of Historic Landmark Sites and Structures pursuant to Sections 26.415.080 and 26.415.090;
- D.** Recommendation of approval, approval with conditions or disapproval to the Board of Adjustment or Planning and Zoning Commission on a request for variance in the H, Historic Overlay District or involving properties listed on the Aspen Inventory of Historic Landmark Sites and Structures, pursuant to Section 26.415.130;
- E.** To adopt by resolution any operational guidelines or documents that will be used in a guiding capacity by the Commission. To recommend via resolution adoption of design guidelines by the City Council. To provide input on Master Plans, in accordance with Chapter 26.311;
- F.** Recommendation to the Planning and Zoning Commission to initiate amendments to this Chapter;

G. To hear and approve, approve with conditions or disapprove variations pursuant to Chapter 26.415; and

H. 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;

I. To hear, review and approve variances to the residential design guidelines, pursuant to Chapter 26.410;

J. 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;

K. To file a petition in accordance with Subsection 26.415.110.A with the Chief Building Official, requesting that the official act to require the correction of defects or repairs to designated properties subject to demolition by neglect.

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

(Ord. No. 41-2002, §1; Ord. No. 50a-2005, §4; Ord. No. 31-2012, §5; Ord. No. 46-2015, §§ 7&8)

26.220.020. Qualifications for membership.

Members of the Commission shall be qualified electors in Aspen and residents for one (1) year prior to appointment. No member of the City Council, the Mayor, a City employee or any appointed City official shall serve on the Commission.

(Ord. No. 41-2002, §1)

26.220.030. Membership; appointment, removal, terms and vacancies.

A. The Commission shall be composed of seven (7) members and shall be appointed by the City Council. The City Council shall also appoint one (1) alternate member to the Commission. The alternate member shall vote only in the absence of one (1) or more regular members. When a professional member as defined in "Subsection I" resigns, that member shall be replaced with another professional member. If a qualified professional member cannot be located after a good faith effort or when a regular lay member resigns, the alternate member shall automatically be appointed as a regular member in replacement.

B. All members serve at the pleasure of the City Council and may be removed for cause prior to the expiration of their appointment by a majority vote of the City Council. Cause may include, but is not limited to the following: the Commission member has four (4) or more absences from regular meetings during the calendar year, the member is no longer a qualified elector or the member while in office is convicted of a felony or an offense involving moral turpitude.

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A. All members, including the alternate, shall serve a term of four (4) years. There shall be no restraint on the number of terms any member of the Commission may serve.

B. When a member or alternate member is appointed to fill out the term of a departing member or alternate member, that person's term shall end at the time the departing person's term would have ended.

C. At the first regular meeting in January, the members of the Commission shall elect one (1) of their members as chairperson and one (1) as vice-chairperson. In the absence of the chairperson, the vice-chairperson shall act as chairperson and shall have all powers of the chairperson. The chairperson shall be elected for one (1) year and shall be eligible for re-election.

D. The chairperson of any meeting of the Commission may administer oaths, shall be in charge of all proceedings before the Commission and shall take such action as shall be necessary to preserve order and the integrity of all proceedings before the Commission.

E. The secretary of the Commission shall be the City Clerk or the City Clerk's designee. The secretary shall keep the minutes, shall notify Commission members of regular and special meetings and shall maintain the files of all studies, plans, reports, recommendations and development decisions of the Commission.

F. The Historic Preservation Commission shall be composed of both professional and lay members, all of whom have demonstrated interest, knowledge or training in fields closely related to historic preservation, such as history, architecture, landscape architecture, architectural history, archaeology, planning or other historic preservation related disciplines such as the building trades, cultural geography, cultural anthropology, real estate or law. Information on the credentials of the Commission members must be kept on file and available to the public.

G. At least three (3) members shall be professionals in preservation related disciplines such as architecture, architectural history, archaeology, history, planning or other historic preservation related disciplines such as urban planning, American studies, American civilization, cultural geography or cultural anthropology. If the professionals are not available in the community and if it can be demonstrated that a good faith effort was made to locate and appoint such professionals, this requirement can be waived, provided that the Historic Preservation Commission is capable of carrying out the responsibilities assigned to it.

J. When the discipline of architecture, history, architectural history or archaeology is not represented in the Historic Preservation Commission membership, the Historic Preservation Commission shall seek additional expertise in the appropriate areas when considering National Register nominations and any other delegated actions that will effect that discipline.

K. Members of the Commission shall serve without compensation. (Ord. No. 41-2002, §1)

26.220.040. Staff.

The Community Development Department shall be the professional staff of the Historic Preservation Commission. A representative of the Community Development Department shall be available at all meetings to provide advice to the Historic Preservation Commission.

(Ord. No. 41-2002, §1)

26.220.050. Quorum and necessary vote.

A. No meeting of the Commission shall be called to order without a quorum consisting of at least four (4) members being present. No meeting at which less than a quorum shall be present shall conduct any business other than to continue the agenda items to a date certain. All actions shall require the concurring vote of a simple majority, but in no event less than three (3) concurring votes, of the members of the Commission then present and voting.

B. A motion receiving less than a majority of votes in favor or less than three (3) concurring votes shall constitute a failed motion and shall not be considered action. A tie vote on a motion shall be considered a failed motion and shall not be considered action. For applications where action is required, the application shall remain pending until action is taken.

(Ord. No. 41-2002, §1; Ord. No. 12, 2007, §10)

26.220.060. Meetings, hearings and procedure.

A. Regular meeting of the Commission shall be held on the second and fourth Wednesdays of each month. Special meetings may be called by the chairperson of the Commission, a majority of the members of the Commission, the Mayor, a majority of the City Council or staff.

B. All meetings and hearings of the Commission shall be open to the public.

C. Public hearings shall be set for a date and time certain.

(Ord. No. 41-2002, §1)

26.220.080. Committees and project monitoring.

A. The Commission may establish such committees as it deems advisable and assign each committee specific duties and functions.

B. The chairman may designate the members of each committee and may name the chairman of each committee. The chairman may fill vacancies on committees as they are created.

C. Each development project shall have an historic Preservation Commission member assigned to it as a "project monitor." The duties of the monitor are to report at each meeting on the progress of the assigned project, keep current on the project's status through staff and the applicant and be available to confer with staff and the applicant on the project, if necessary.

D. Time during "communications" in each meeting will be dedicated to project monitoring reports.

(Ord. No. 41-2002 §1, 2002)

Chapter 26.312 NONCONFORMITIES

Sections:

26.312.010	Purpose
26.312.020	Nonconforming uses
26.312.030	Nonconforming structures
26.312.040	Nonconforming accessory uses and accessory structures
26.312.050	Nonconforming lots of record
26.312.060	Lot reduction

26.312.010. Purpose.

Within the Zone Districts established by this Title, there exist uses of land, buildings and structures that were lawfully established before this Title was adopted or amended which would be in violation of the terms and requirements of this Title. The purpose of this Chapter is to regulate and limit the continued existence of those uses, buildings and structures that do not conform to the provisions of this Title as amended.

It is the intent of this Chapter to permit nonconformities to continue, but not to allow nonconformities to be enlarged or expanded. The provisions of this Chapter are designed to curtail substantial investment in nonconformities in order to preserve the integrity of the zone districts and the other provisions of this Title but should not be construed as an abatement provision.

26.312.020. Nonconforming uses.

A. Authority to continue. Nonconforming uses of land or structures may continue in accordance with the provisions of this Chapter and this Section.

B. Normal maintenance. Normal maintenance may be performed upon nonconforming uses of land and structures, provided that the maintenance performed within any twelve (12) consecutive month period does not exceed ten percent (10%) of the current replacement cost of the structure.

C. Extensions/expansions. Nonconforming uses shall not be extended or expanded. This prohibition shall be construed so as to prevent:

1. Enlargement of nonconforming use by increasing the net leasable area, the net livable area of a dwelling unit, or the area within a structure in which such nonconforming use is located; or
2. Occupancy of additional lands; or,
1. Increasing the size, considering all dimensions, of a structure in which a nonconforming use is located.

D. Relocation. A structure housing a nonconforming use may not be moved to another location on or off the parcel of land on which it is located, unless the use thereafter shall conform to the limitations of the zone district into which it is moved.

E. Change in use. A nonconforming use shall not be changed to any other use unless the new use conforms to the provisions of the zone district in which it is located.

C. Abandonment or discontinuance. The intent of the owner notwithstanding, where a nonconforming use of land or nonconforming use of structure is discontinued or abandoned for twelve (12) consecutive months, then such use may not be reestablished or resumed, and any subsequent use must conform to the provisions of this Title. Any nonconforming use not associated with a structure may not be restored after a discontinuance period of more than thirty (30) days.

G. Demolition or destruction.

1. Ability to restore. Any nonconforming use located in a structure which is purposefully demolished, pursuant to the definition of *Demolition*, may not be continued or restored. Any nonconforming use located in a structure undergoing construction, which does not constitute a demolition, has an approved development order, and an approved building permit shall not be considered discontinued.
2. Nonwillful destruction. Any nonconforming use which is demolished or destroyed by an act of nature or through any manner not purposefully accomplished by the owner may be restored as of right, regardless of the extent of demolition or destruction, if a building permit for reconstruction is submitted within twenty-four (24) months of the date of demolition or destruction.

(Ord. No. 55-2000, §§2, 3; Ord. No. 12, 2007, §§15, 16; Ord. No.7, 2014, §13)

26.312.030. Non-conforming structures.

A. Authority to continue. A nonconforming structure devoted to a use permitted in the zone district in which it is located may be continued in accordance with the provisions of this Chapter.

B. Normal maintenance. Normal maintenance to nonconforming structures may be performed without affecting the authorization to continue as a nonconforming structure.

C. Extensions. A nonconforming structure shall not be extended by an enlargement or expansion that increases the nonconformity. A nonconforming structure may be extended or altered in a manner that does not change or that decreases the nonconformity.

1. Historic structures. The first exception to this requirement shall be for a structure listed on the Aspen Inventory of Historic Landmark Sites and Structures. Such structures may be extended into front yard, side yard and rear yard setbacks, may be extended into the minimum distance between buildings on a lot and may be enlarged, provided, however, such enlargement does not exceed the allowable floor area of the existing structure by more than five hundred (500) square feet, complies with all other requirements of this Title and receives development review approval as required by Chapter 26.415.

2. Mandatory occupancy Accessory Dwelling Units and Carriage Houses. The second exception to this requirement shall be for a property with a detached Accessory Dwelling Unit or Carriage House (“ADU”) having a mandatory occupancy requirement. Such a detached ADU may be

enlarged or expanded by up to five hundred (500) square feet of floor area, provided that this bonus floor area shall go entirely to the detached ADU and also provided that the ADU does not exceed the maximum size allowed for an ADU or carriage house. The enlargement or expansion must comply with all other requirements of this Title and shall receive development review approval as required herein.

- a) *Procedure.* The procedure for increasing the maximum floor area of a property for the purpose of increasing the size of an ADU requires the submission of a development application. The development application shall be processed under Chapter 26.430, Special Review.
- b) *Review Standards.* An application for increasing the floor area of a property for the purpose of increasing the size of an ADU shall meet the standards in Section 26.520.050, Design Standards, unless otherwise approved pursuant to Section 26.520.080 Special Review, as well as the following additional review standards:
 - (1) Newly established floor area may increase the ADU up to a cumulative maximum of 500 sq. ft. of floor area and is required to be mitigated by either of the following two options.
 - (a) Extinguishment of Historic Transferable Development Right Certificates (“certificate” or “certificates”). A property owner may increase the ADU by extinguishment of a maximum of two certificates with a transfer ratio of 250 sq. ft. of floor area per each certificate. Refer to Chapter 26.535 for the procedures for extinguishing certificates.
 - (b) Extinguishment of unused floor area from another property. A property owner may increase the maximum floor area of a property for the purpose of increasing the size of an ADU by extinguishment of a maximum of 500 square feet of available un-built floor area from one property to the ADU.
 - (2) The additional floor area is a conversion of existing square footage which was not previously counted in floor area. (Example: storage space made habitable or the additional floor area creates a more desirable, livable unit with minimal additional impacts to the bulk and mass of the ADU structure.
 - (3) The additional floor area creates a unit which is more suitable for caretaker families.
 - (4) The increased impacts from the larger size are outweighed by the benefits of having a larger, more desirable ADU.
 - (5) The area and bulk of the ADU structure, after the addition of the bonus floor area, must be compatible with surrounding uses and the surrounding neighborhood.
 - (6) For the transfer of allowable floor area through the use of Historic Transferable Development Right Certificates, the certificates shall be extinguished pursuant to Chapter 26.535, Transferable Development Rights.
 - (7) For the transfer of allowable floor area from a non-historically designated property to an ADU deed-restricted as a mandatory occupancy unit, the applicant shall record an instrument in a form acceptable to the City Attorney removing floor area from the sending property to the mandatory occupancy ADU.

D. Relocation. A nonconforming structure shall not be moved unless it thereafter conforms to the standards and requirements of the zone district in which it is located.

E. Unsafe structure. Any portion of a nonconforming structure which becomes physically unsafe or unlawful due to lack of repairs and maintenance and which is declared unsafe or unlawful by a duly authorized city official, but which an owner wishes to restore, repair or rebuild shall only be restored, repaired or rebuilt in conformity with the provisions of this Title.

F. Ability to restore.

1. Non-purposeful destruction. Any nonconforming structure, or portion thereof, which is demolished or destroyed by an act of nature or through any manner not purposefully accomplished by the owner, may be restored as of right if a building permit for reconstruction is submitted within twenty-four (24) months of the date of demolition or destruction.
2. Purposeful destruction. Any nonconforming structure, or portion thereof, which is purposefully demolished or destroyed may be replaced with a different structure only if the replacement structure is in conformance with the current provisions of this Title or unless replacement of the nonconformity is approved pursuant to the provisions of Chapter 26.430, Special Review. Any structure which is nonconforming in regards to the permitted density of the underlying zone district may maintain that specific nonconformity only if a building permit for the replacement structure is submitted within twelve (12) months of the date of demolition or destruction.*

a. **Density Replacement.** A duplex or two single-family residences on a substandard parcel in a zone district permitting such use is a nonconforming structure and subject to nonconforming structure replacement provisions. Density on a substandard parcel is permitted to be maintained but the structure must comply with the dimensional requirements of the Code including single-family floor area requirements.

(Ord. No. 1-2002, § 6 [part]; Ord. No. 9-2002, § 5; Ord. No. 35-2004, § 1; Ord. No. 7-2008, § 1; Ord. No. 6-2018)

26.312.040. Nonconforming accessory uses and accessory structures.

No nonconforming accessory use or accessory structure shall continue after the principal structure or use shall have terminated unless such structure or use thereafter shall conform to the provisions of the zone district in which it is located.

26.312.050. Nonconforming lots of record.

A. General. A detached single-family dwelling and customary accessory buildings may be developed on a lot of record if:

1. The lot of record is in separate ownership and not contiguous to lots in the same ownership; and
2. The proposed single-family dwelling can be located on the lot so that the yard, height, open space and floor area dimensional requirements of the zone district can be met or a variance is obtained from said dimensional requirements pursuant to Chapter 26.314.

B. Undivided lot. If two (2) or more lots or combinations of lots with continuous frontage in single ownership (including husband and wife as in all cases a single owner) are of record as of November 22, 1971, regardless of time of acquisition and if all or parts of the lots do not meet the requirements established for lot width and area, the lots shall be considered an undivided parcel and no portion shall be used or occupied which does meet the width and area requirements of this Title.

C. Historic property. A lot of record containing a property listed on the Aspen Inventory of Historic Landmark Sites and Structures need not meet the minimum lot area requirement of its zone district to allow the uses that are permitted and conditional uses in the district subject to the standards and procedures established in Chapter 26.415. (Ord. No. 1-2002 § 6 [part])

26.312.060. Lot reduction.

A. No lot or interest therein shall be transferred, conveyed, sold or subdivided so as to create a new nonconforming lot, to avoid, circumvent or subvert any provision of this Title or to leave remaining any lot in violation of the dimensional requirements of this Title.

B. No lot or portion of a lot required as a building site under this Title shall be used as a portion of a lot required as a site for another structure.

C. No building permit shall be issued for any lot or parcel of land which has been conveyed, sold or subdivided in violation of this Section.

26.312.070. Affordable Housing .

A. Any Non-Conforming use or structure in which 100% of the structure, or units, are currently or proposed to be deed restricted, in accordance with APCA Guidelines, shall be exempt from the provisions of this chapter.

A.B. The newly deed restricted units or structures shall be subject to the corresponding zone district allowances and limitations established in the Affordable Housing Overlay pursuant to Chapter 26.7XX. If the existing condition exceeds the allowances or limitations established in the AH Overlay, the existing condition shall be established as the allowable maximum for the site.

Chapter 26.316
APPEALS

Sections:

26.316.010	Appeals, purpose statement
26.316.020	Authority
26.316.030	Appeal procedures

26.316.010. Appeals, purpose statement.

The purpose of this Chapter is to establish the authority of the Board of Adjustment, the Planning and Zoning Commission and City Council to hear and decide certain appeals and to set forth the procedures for said appeals.

(Ord. No. 46-2015, §11)

26.316.020. Authority.

A. Board of Adjustment. The Board of Adjustment shall have the authority to hear and decide the following appeals:

1. The denial of a variance pursuant to Chapter 26.314 by the Planning and Zoning Commission or Historic Preservation Commission.

A. City Council. The City Council shall have the authority to hear and decide the following appeals:

1. An interpretation to the text of this Title or the boundaries of the zone district map by the Community Development Director in accordance with Chapter 26.306. An appeal of this nature shall be a public meeting.
2. Any action by the Historic Preservation Commission in approving, approving with conditions or disapproving a development application for development in an "H," Historic Overlay District pursuant to Chapter 26.415. An appeal of this nature shall be a public meeting.
3. The scoring determination of the Community Development Director pursuant to Chapter 26.470. An appeal of this nature shall be a public meeting.
4. The allocation of growth management allotments by the Planning and Zoning Commission pursuant to Chapter 26.470. An appeal of this nature shall be a public meeting.
5. Any other appeal for which specific authority is not granted to another board or commission as established by this Title. An appeal of this nature shall be a public meeting.

B. Planning and Zoning Commission. The Planning and Zoning Commission shall have the authority to hear and decide the following appeals:

1. ~~from a~~An adverse determination by the Community Development Director on an application for exemption pursuant to the Growth Management Quota System in accordance with Subsection 26.470.060.D. of this Title.

~~1.2.~~An adverse determination by the Community Development Director that a project triggers Demolition pursuant to Section 26.580.

D. Administrative Hearing Officer. The Administrative Hearing Officer shall have the authority to hear an appeal from any decision or determination made by an administrative official unless otherwise specifically stated in this Title.

(Ord. No. 17-2002, §2 [part]; Ord. No. 27-2002, §23; Ord. No. 12, 2007, §18)

26.316.030. Appeal procedures.

A. Initiation. Any person with a right to appeal an adverse decision or determination shall initiate an appeal by filing a notice of appeal on a form prescribed by the Community Development Director. The notice of appeal shall be filed with the Community Development Director and with the City office or department rendering the decision or determination within fourteen (14) days of the date of the decision or determination being appealed. Failure to file such notice of appeal within the prescribed time shall constitute a waiver of any rights under this Title to appeal any decision or determination.

B. Effect of filing an appeal. The filing of a notice of appeal shall stay any proceedings in furtherance of the action appealed from unless the Community Development Director certifies in writing to the chairperson of the decision-making body authorized to hear the appeal that a stay poses an imminent peril to life or property, in which case the appeal shall not stay further proceedings. The chairperson of the decision-making body with authority to hear the appeal may review such certification and grant or deny a stay of the proceedings.

C. Timing of appeal. The decision-making body authorized to hear the appeal shall consider the appeal within thirty (30) days of the date of filing the notice of appeal or as soon thereafter as is practical under the circumstances.

D. Notice requirements. Notice of the appeal shall be provided by mailing to the appellant and by publication to all other affected parties. (See Subsection 26.304.060[E]).

E. Standard of review. Unless otherwise specifically stated in this Title, the decision-making body authorized to hear the appeal shall decide the appeal based solely upon the record established by the body from which the appeal is taken. A decision or determination shall be not be reversed or modified unless there is a finding that there was a denial of due process or the administrative body has exceeded its jurisdiction or abused its discretion.

F. Action by the decision-making body hearing the appeal. The decision-making body hearing the appeal may reverse, affirm or modify the decision or determination appealed from and, if the decision is modified, shall be deemed to have all the powers of the officer, board or commission from whom the appeal is taken, including the power to impose reasonable conditions to be complied with by the appellant. The decision-making body may also elect to remand an appeal to the body that originally heard the matter for further proceedings consistent with that body's jurisdiction and City of Aspen Land Use Code

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directions given, if any, by the body hearing the appeal. The decision shall be approved by written resolution. All appeals shall be public meetings.

(Ord. No. 55-2000, §§4, 5; Ord. No. 27-2002, §24; Ord. No. 12, 2007, §19)

**TITLE 26
LAND USE REGULATIONS**

PART 400 — DEVELOPMENT REVIEW STANDARDS AND PROCEDURES

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Sec. 26.412.015	Adoption of commercial design guidelines
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Sec. 26.480.010	Purpose
Sec. 26.480.020	Applicability, prohibitions, and lot merger
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Sec. 26.490.010	Purpose
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Chapter 26.430
SPECIAL REVIEW

Sections:

Sec. 26.430.010.	Purpose.
Sec. 26.430.020.	Authority.
Sec. 26.430.030.	Applicability.
Sec. 26.430.040.	Review standards for special review.
Sec. 26.430.050.	Procedure for special review approval.
Sec. 26.430.060.	Application.
Sec. 26.430.070.	Conditions.
Sec. 26.430.080.	Modification of requirements.
Sec. 26.430.090.	Amendment of development order.

26.430.010. Purpose.

The purpose of special review is to ensure site-specific review of certain dimensional requirements, mitigation requirements, encroachments, lighting or subdivision standards, which are specifically authorized to be altered or amended by specific provisions of this Title in order to maintain the integrity of the City's Zone Districts and the compatibility of the proposed development with surrounding land uses.

26.430.020. Authority.

The Planning and Zoning Commission, in accordance with the procedures, standards and limitations of this Chapter, shall by resolution approve, approve with conditions or disapprove a development application for special review, after recommendation by the Community Development Department.

26.430.030. Applicability.

Special review shall apply to all development in the City designated for special review by the following chapters or sections of this Title:

- Dimensional requirements (Chapter 26.710 — Zone Districts)
- Replacement of nonconforming structures (Chapter 26.312)
- Reduction of open space requirements in CC Zone District (Subsection 26.575.030.B)
- Off-street parking requirements (Section 26.515.040)
- Reductions in the dimensions of utility and delivery service area provisions (Section 26.575.060.B)
- Subdivision standards (Section 26.480.050)
- Accessory Dwelling Unit Design Standards (Chapter 26.520)

- Wireless telecommunications facilities and/or equipment (Section 26.575.130)
- Affordable housing unit standards (Section 26.470.070.4)
- Variations to the Residential Demolition and Redevelopment Standards (Section 26.580.080)

(Ord. No. 44-1999, §3; Ord. No. 47-1999, §4; Ord. No. 5-2000, §3; Ord. No. 52-2003, §11; Ord. No.14-2011, §1; No.13-2013, §5)

26.430.040. Review standards for special review.

No development subject to special review shall be permitted unless the Planning and Zoning Commission makes a determination that the proposed development complies with all standards and requirements set forth below.

A. Dimensional requirements. Whenever the dimensional requirements of a proposed development are subject to special review, the development application shall only be approved if the following conditions are met.

1. The mass, height, density, configuration, amount of open space, landscaping and setbacks of the proposed development are designed in a manner which is compatible with or enhances the character of surrounding land uses and is consistent with the purposes of the underlying zone district.
2. The applicant demonstrates that the proposed development will not have adverse impacts on surrounding uses or will mitigate those impacts, including but not limited to the effects of shading, excess traffic, availability of parking in the neighborhood or blocking of a designated view plane.

B. Replacement of nonconforming structures. Whenever a structure or portion thereof, which does not conform to the dimensional requirements of the zone district in which the property is located is proposed to be replaced after Demolition or destruction, the following criteria shall be met:

1. The proposed development shall comply with the conditions of Subsection 26.430.040.A above;
2. There exist special characteristics unique to the property which differentiate the property from other properties located in the same zone district;
3. No dimensional variations are increased, and the replacement structure represents the minimum variance that will make possible the reasonable use of the property; and
4. Literal enforcement of the dimensional provisions of the zone district would cause unnecessary hardship upon the owner by prohibiting reasonable use of the property.

C. Reduction of public amenity. Whenever a special review is conducted to determine whether a reduction of the public amenity requirement is to be granted, it shall be reviewed in accordance with the standards set forth at Section 26.575.030.

D. Off-street parking requirements. Whenever a special review is conducted to determine a change in the off-street parking requirements, it shall be considered in accordance with the standards set forth at Chapter 26.515.

E. Utility and delivery service area provisions. Whenever a special review is conducted to determine a change in any utility and delivery service area requirements, the following criteria shall be met:

1. There is a demonstration that, given the nature of the potential uses of the building and its total square footage, the utility service area and delivery area proposed will be adequate.
2. Access to the utility and delivery service area is adequate to accommodate all necessary users.
3. The area for public utility placement and maintenance is adequate and safe for the placement of utilities.

F. Subdivision design standards. Whenever a special review is for development which does not meet the subdivision design standards of Section 26.480.050, the development shall be approved only when the conditions set forth at Section 26.480.050 have been met.

G. Accessory dwelling unit design standards. Whenever a special review is conducted to determine a change in the design standards required for accessory dwelling units, it shall be considered in accordance with the standards set forth at Subsection 26.520.080.D.

H. Wireless telecommunications facilities and/or equipment. Whenever a special review is conducted to appeal the decision of the Community Development Director regarding a proposed wireless telecommunications service facility or equipment or to determine a proposed increase in the allowed height of a wireless telecommunications facility and/or equipment, it shall be considered in accordance with the standards set forth in Paragraph 26.575.130.C.6, Wireless telecommunication services facilities and equipment.

I. ~~I.~~ Affordable housing unit standards. Whenever a Special Review is conducted to reduce the required percentage that the finished floor level of the unit's net livable area is at or above natural or finished grade, whichever is higher, a recommendation from the Housing Board shall be obtained and all of the following criteria shall be met. The criteria below address only the affordable housing units that require a variation from the standard.

1. The proposed affordable housing units are designed in a manner that is compatible with the character of the neighborhood.
2. The proposed amount that the affordable housing units are below natural or finished grade, whichever is more restrictive, is an appropriate response to unique site constraints, such as topography.
3. The proposed affordable housing units are designed in such a manner which exceeds the expectations of the Aspen Pitkin County Housing Authority Guidelines, and promotes the unit's general livability by demonstrating compliance with as many of the following conditions as possible:

- a) Significant storage, such as additional storage outside a unit.
- b) Above average natural light, such as adding more window area than the Building Code requires.
- c) Net livable unit sizes exceed minimum requirement.
- d) Unit amenities, such as access to outdoor space or private patios.

A. Whenever a Special Review is conducted to reduce the required percentage of finished floor level of a lodge unit’s net livable area that is at or above natural or finished grade, whichever is higher, a recommendation from the Community Development Director shall be obtained and of the following criteria shall be met. The criteria below address only the lodge units that require a variation from the standard.

- 1. The proposed lodge units are designed in a manner that is compatible with the character of the neighborhood.
- 2. The proposed amount that the lodge units are below natural or finished grade, whichever is more restrictive, is an appropriate response to unique site constraints, such as topography.

~~3.3~~ The lodge units are designed to be compatible with and support the successful operation of the property as a lodge and the use of the individual units therein as viable lodge units.

J. Demolition – Residential Demolition and Redevelopment Standards

A project may request variations from the requirements of the Residential Demolition and Redevelopment Standards if the Planning and Zoning Commission makes a determination the project meets the intent of the requirements through an alternative design. The Planning and Zoning Commission shall consider the following review criteria, and a recommendation from the Community Development Department and any referral agencies in determining if a project is eligible for a variation:

- 1. The project is designed in a manner that meets the intent of the Residential Demolition and Redevelopment Standards.
- 2. Although specifics design elements are not provided that meet the specific items included in the Residential Demolition and Redevelopment Standards, a design alternative is provided that meets or exceeds the minimum thresholds established in the Residential Demolition and Redevelopment Standards.

(Ord. No. 44-1999, §4; Ord. No. 5-2000, §4; Ord. No. 1-2002, §9; Ord. No. 52-2003, §12; Ord. No. 12, 2007, §§20, 21; Ord. No. 14 – 2011, §2; Ord. No. 13 – 2013, §6; Ord. No. 23, 2017, §20)

26.430.050. Procedure for special review approval.

A. General. An application for review of a special review shall be processed in accordance with the common development review procedures set forth at Chapter 26.304.

B. Steps required: One — Public hearing before Planning and Zoning Commission.

C. Notice requirements: Publication, mailing and posting. (See Section 26.304.060[E][3] Paragraphs [a], [b] and [c]). (Ord. No. 27-2002, §10)

26.430.060. Application.

The development application for special review shall include the following:

A. The general application information required under Section 26.304.030.

B. A sketch plan showing the configuration of the development on the lot and those features of the site which are relevant to the special review application.

C. An analysis of the characteristics of similarly situated properties in the same Zone District and of neighboring parcels with respect to whether these properties comply with the dimensional, off-street parking or utility and delivery service area requirement which is subject to special review.

(Ord. No. 13 – 2013, §7)

26.430.070. Conditions.

The Community Development Department Director may recommend and the Planning and Zoning Commission may impose, such conditions that are necessary to ensure a proposed development subject to special review complies with the purposes of the Aspen Area Community Plan, this Title, including conditions to ensure the integrity of the City's Zone Districts are maintained and the proposed use is compatible with surrounding land uses. This includes but is not limited to imposing conditions on size, bulk, location, open space, landscaping, lighting, signage, off-street parking and other design features.

26.430.080. Modification of requirements.

If the dimensional requirements, off-street parking, signage or reduction in access to utility/trash service areas for a proposed development are expressly modified by a valid conditional use or other valid development permit or approval, the proposed development must comply with such modified requirements.

(Ord. No. 13 – 2013, §7)

26.430.090. Amendment of development order.

A. Insubstantial amendment. An insubstantial amendment to an approved development order for special review may be authorized by the Community Development Department Director. An insubstantial amendment shall be limited to technical or engineering considerations first discovered during actual development which could not reasonably be anticipated during the approval process. An

insubstantial amendment shall include a change to the design of approved off-street parking or to the configuration of a utility or delivery service area. An insubstantial amendment shall not include:

1. Any increase in a dimensional requirement established by special review.
2. Any decrease in the number of off-street parking spaces established by special review.
3. Any decrease in the size of a utility or delivery service area established by special review.

B. Other amendment. Any other amendment shall be approved pursuant to the terms and procedures of this Chapter.

(Ord. No. 13 – 2013, §9)

Chapter 26.540
CERTIFICATES OF AFFORDABLE HOUSING CREDIT

Sections:

26.540.010	Purpose
26.540.020	Terminology
26.540.030	Applicability and prohibitions
26.540.040	Authority
26.540.050	Application and fees
26.540.060	Procedures for establishing a credit
26.540.070	Review criteria for establishing an affordable housing credit
26.540.080	Procedures for issuing a certificate of affordable housing credit
26.540.090	Authority of the certificate
26.540.100	Transferability of the certificate
26.540.110	Exchanging category designation of an affordable housing certificate
26.540.120	Extinguishment and re-issuance of a certificate
26.540.130	Amendments
26.540.140	Appeals

26.540.010 Purpose

There are two main purposes of this chapter: to encourage the private sector to develop affordable housing; and to establish an option for housing mitigation that immediately offsets the impacts of development. A Certificate of Affordable Housing Credit is issued to the developer of affordable housing that is not required for mitigation. Another entity can purchase such a Certificate and use it to satisfy housing mitigation requirements. Establishing this transferable Certificate creates a new revenue stream that can make the development of affordable housing more economically viable. Establishing this transferable Certificate also establishes an option for mitigation that reflects built and occupied affordable housing, thereby offsetting the impacts of development before those impacts are felt. This Chapter describes the process for establishing, transferring and extinguishing a Certificate of Affordable Housing Credit.

(Ord. No. 6-2010, §5; Ord. No. 32-2012, §1; Ord. No. 34-2015, §1)

26.540.020 Terminology

Certificate of Affordable Housing Credit (Credit or Certificate). A transferable document issued by the City of Aspen acknowledging and documenting the voluntary provision of affordable housing which is not otherwise required by this Title or by a Development Order issued by the City of Aspen. The Certificate documents the Category Designations and number of employees housed by the affordable housing. The Credit is irrevocable and assignable. A Certificate of Affordable Housing Credit is a bearer instrument.

Establishing a Credit. The process of the City of Aspen acknowledging the voluntary provision of affordable housing through issuance of a transferable Credit.

Extinguishing a Credit. The process of the City accepting a Credit to satisfy affordable housing requirements of a development.

Category Designation. A classification system used to reflect different sales price and rental rate restrictions of affordable housing as set forth in the Aspen/Pitkin County Housing Authority Guidelines.

(Ord. No. 6-2010, §5; Ord. No. 32-2012, §1)

26.540.030 Applicability and prohibitions

A. This Chapter applies to all Certificates of Affordable Housing Credit. Housing credits may only be established from affordable housing created on a voluntary basis and designated at any Category with established cash-in-lieu rates in the Housing Guidelines, including the deed-restriction of unrestricted units (buy-down units).

1. City of Aspen Housing Credits may be used within the city limits of the City of Aspen as provided in this Title and may be used in other jurisdictions as may be authorized by that jurisdiction. City of Aspen Housing Credits may only be established from development within the City of Aspen boundaries.
2. Affordable Housing projects may establish City of Aspen Housing Credits in conjunction with other state and federal affordable housing incentive programs, such as, but not limited to the Low-Income Housing Tax Credit (LIHTC).
3. A Certificate of Affordable Housing Credit may be sold, assigned, transferred, or conveyed. Transfer shall be evidenced by an assignment of ownership on the actual certificate document. Upon transfer, the new owner may request the Community Development Director re-issue the Credit Certificate acknowledging the new owner.
4. The market for Certificates of Affordable Housing Credit is unrestricted and the City shall not prescribe or guarantee the monetary value of a Credit.
5. The Community Development Director shall establish policies and procedures for the printing of certificates, their safe-keeping, issuance, re-issuance, record-keeping, and extinguishments.
6. Projects seeking approval to develop affordable housing in exchange for Certificates of Affordable Housing Credit may be subject to additional reviews pursuant to this Title.
7. Fractional units are eligible for the establishment of Housing Credits if deed restricted as for-sale or are subject to an agreement with the City requiring the unit to be permanently deed restricted. For example, if a development project is required to mitigate 2.4 FTEs and is proposing on-site units that house 3 FTEs, the additional 0.6 FTEs proposed that are not required for mitigation are eligible for establishment as a Certificate of Affordable Housing Credit.
8. Any affordable housing units created for the establishment of Housing Credits, including fractions thereof, which are part of a mixed-use building shall be deed restrict as for-sale. Units that are part of a 100% affordable housing project may be for-rent.

B. This Chapter does not apply to the following:

1. Affordable housing created to address an obligation of a Development Order or which is otherwise required by this Title to mitigate the impacts of development.
2. Affordable housing units created prior to the adoption of Ordinance No. 6, Series of 2010.
3. Affordable housing units developed by, or in association with: the City of Aspen, Pitkin County, the Aspen/Pitkin County Housing Authority, or similar government or non-governmental organization (NGO) that receives public funds for the purpose of building affordable housing.

4. Dormitory units.
5. The creation of voluntary affordable housing units deed restricted at a Category which a cash-in-lieu rate has not been established in the Housing Guidelines.

(Ord. No. 6-2010, §5; Ord. No. 32-2012, §1; Ord. No. 34-2015, §2; Ord. No. 11-2021, §1)

26.540.040 Authority

The Community Development Director, in accordance with the procedures, standards, and limitations of this Chapter and of Chapter 26.304, Common Development Procedures, shall approve, approve with conditions, or deny an application for the establishment of a Certificate of Affordable Housing Credit for projects that have been previously approved, or are being reviewed concurrently with 26.470.090.C. The Planning and Zoning Commission (or Historic Preservation Commission) shall approve, approve with conditions, or deny an application being reviewed concurrently with 26.470.100.C.

~~The Planning and Zoning Commission, in accordance with the procedures, standards and limitations of this Chapter and of Chapter 26.304, Common Development Review Procedures, shall approve, approve with conditions, or deny an application for the establishment of a Certificate of Affordable Housing Credit.~~

~~The Community Development Director, in accordance with the procedures, standards and limitations of this Chapter and of Section 26.304, Common Development Review Procedures, is authorized to issue, re-issue, exchange Category designations, and extinguish a Certificate of Affordable Housing Credit.~~

(Ord. No. 6-2010, §5; Ord. No. 32-2012, §)

26.540.050 Application

All applications shall include the information required under Chapter 26.304, Common Development Review Procedures. In addition, all applications must also include the following information.

1. The net livable square footage of each unit and proposed number of bedrooms.
2. If applicable, the conditions under which reductions from net minimum livable square footage requirements are requested according to Aspen Pitkin County Housing Authority Guidelines and a copy of the recommendation from APCHA related to the units.
3. Proposed Category designation for each unit.
4. Proposed Category Designation of sale or rental restriction for each unit. This should include and conditions that APCHA will require related to either the sale and/or rental of the units.
5. Proposed employees housed by the affordable housing units in increments of no less than one-one-hundredth (.01) according to Section 26.470.050.D (Table 4, FTEs Housed).
6. For projects approved ~~by the Historic Preservation Commission that~~ that include affordable housing units within a designated structure, provide a calculation for the Credits generated within the designated structure that includes a multiplier of 1.2 x the employees housed per paragraph 5, immediately above. This multiplier recognizes the additional costs related to preservation efforts of designated structures. The multiplier does not apply to units/Credits established in non-historic structures in the same project.

7. For projects that are converting (without demolition) existing free-market (single family, duplex, or multi-family) units into Category, deed-restricted units for the purpose of establishing affordable housing credits, the application shall additionally contain the following:

a. Recommendation from APCHA that identifies the development standards for a project or unit being accepted into a deed restriction by APCHA. The application should specifically reference APCHA's evaluation of the property and any necessary improvements to the property necessary to meet APCHA requirements. Eventual issuance of credits will be conditioned on fulfilling the identified development requirements.

b. A precise evaluation, conducted by an architect or other qualified party that identifies the existing net livable area of the unit is required. If a unit is below APCHA's minimum net livable area based on the number of bedrooms (as established by APHCA's Guidelines), a 400 square feet per FTE calculation will be utilized instead of the bedroom count, in determining the number of Credits that will be generated by the project.

(Ord. No. 6-2010, §5; Ord. No. 32-2012, §1; Ord. No. 11-2021, §2)

26.540.060 Procedures for establishing an affordable housing credit

A development application to establish a certificate of Affordable Housing Credit shall be reviewed pursuant to the Common Development Review Procedures set forth at Chapter 26.304, and the following procedures and standards. ~~The City of Aspen Planning and Zoning Commission shall review a recommendation from the Community Development Director and shall approve, approve with conditions, or deny an application to establish Certificates of Affordable Housing Credit. This requires a one-step process as follows:~~

SA. Administrative Review by the Community Development Director for projects that have received previous GMQS approval for the establishment of affordable housing, or in a combined review with projects that are being reviewed administratively under 26.470.090.C.

1. Purpose: To determine if the application meets the standards for authorizing establishment of a Certificate of Affordable Housing Credit
2. Process: The Community Development Director shall approve, approve with conditions, or deny the application after considering the recommendation of the Community Development Director.
3. Standards of review: 26.540.070
4. Form of decision: The Community Development Director decision shall be documented in a recorded Notice of Approval. The Notice of Approval may include a description or diagram of the affordable housing and any necessary conditions of approval.
5. Notice requirements: The requirements of 26.304.080 shall apply.

B. Planning and Zoning Commission (or Historic Preservation Commission) review for projects that are being reviewed under 26.470.100.C

1. Purpose: To determine if the application meets the standards for authorizing establishment of a Certificate of Affordable Housing Credit.
2. Process: The Planning and Zoning Commission shall approve, approve with conditions, or deny the application after considering the recommendation of the Community Development Director.

3. Standards of review: 26.540.070

4. Form of decision: Planning and Zoning Commission decision shall be by resolution. The resolution may include a description or diagram of the affordable housing.

5. Notice requirements: The requirements of 26.304.080 shall apply. No public hearing notice is required.

~~**A. Step One—Review before the Planning and Zoning Commission.**~~

~~1. Purpose: To determine if the application meets the standards for authorizing establishment of a Certificate of Affordable Housing Credit~~

~~2. Process: The Planning and Zoning Commission shall approve, approve with conditions, or deny the application after considering the recommendation of the Community Development Director.~~

~~3. Standards of review: 26.540.070~~

~~4. Form of decision: Planning and Zoning Commission decision shall be by resolution. The resolution may include a description or diagram of the affordable housing.~~

~~5. Notice requirements: The requirements of 26.212.060 shall apply. No public hearing notice is required.~~

(Ord. No. 6-2010, §5; Ord. No. 32-2012, §1)

26.540.070 Review criteria for establishing an affordable housing credit

An Affordable Housing Credit may be established by the Community Development Director or Planning and Zoning Commission if all of the following criteria are met. The proposed units do not need to be constructed prior to this review.

A. The proposed affordable housing unit(s) comply with the review standards of Section 26.470.080.D.7.a-g.

B. The affordable housing unit(s) are not an obligation of a Development Order and are not otherwise required by this Title to mitigate the impacts of development.

(Ord. No. 6-2010, §5; Ord. No. 32-2012, §1; Ord. No. 11-2021, §3)

26.540.080 Procedure for issuing a certificate of affordable housing credit

A. The Community Development Director Notice of Approval or The Planning and Zoning Commission Resolution in approving the establishment of Affordable Housing Credits for a project shall identify one of two possible paths for the eventual issuance of established credits:

1. Upon completion of the project and the presentation of a Certificate of Occupancy and APCHA deed restriction for the completed affordable units, 100% of the approved Certificates shall be issued in a form prescribed by the Community Development Director; or,

2. Upon presentation of a performance bond, letter of credit, or other financial instrument acceptable to the City Attorney in guaranteeing the eventual completion of the project, a project developer will receive phased issuance of Affordable Housing Credits per the following schedule:

- 30% of approved Credits at completion of foundation inspection

- 30% of approved Credits at completion of framing / roofing inspection
- 40% of approved Credits at presentation of Certificate of Occupancy and the APCHA deed restriction

3. The bond, letter of credit, or other financial instrument shall be presented and reviewed with the submission of the building permit and will be for an amount of 100 % of the total project valuation.

4. Approval of phased issuance of Affordable Housing Credits must be included in the Notice of Approval or Planning and Zoning Commission-Resolution. No phased issuance shall occur until the City Attorney has reviewed and approved the provided financial instrument.

5. If phased issuance is approved by Notice of Approval or Resolution ~~the Planning and Zoning Commission-Resolution~~ and the project developer determines ultimately not to pursue the phased issuance, Credits will be issued per Paragraph 1 at the time of the completed project.

B. Upon successful completion of the requirements of Paragraph 1 or 2 above, the issued Certificate of Affordable Housing Credit shall include the following information:

1. A number of the Certificate in chronological order of their issuance.
2. Parcel identification number, legal address and the street address of the affordable housing.

The Category Designation and number of employees housed by the affordable housing units, according to Section 26.470.050.D – Employees Housed; in increments of no less than one-one-hundredths (.01).

(Ord. No. 6-2010, §5; Ord. No. 32-2012, §1; Ord. No. 34-2015, §3; Ord. No. 11-2021, §4)

26.540.090 Authority of the Certificate

The Certificate may be utilized in whole or in part, including fractions of an FTE no less than .01 FTE, to satisfy affordable housing mitigation requirements in accordance with other applicable sections of this Title.

(Ord. No. 6-2010, §5; Ord. No. 32-2012, §1)

26.540.100 Transferability of the certificate

A. A Certificate of Affordable Housing Credit may be sold, assigned, transferred, or conveyed in whole or in part, in increments no less than one-one-hundredth (.01). Transfer of Title shall be evidenced by an assignment of ownership on the actual certificate document. Upon transfer, the new owner may request the City re-issue the Certificate acknowledging the new owner. Re-issuance shall not require re-review by the Planning and Zoning Commission.

B. The sale, assignment, conveyance or other transfer or change in ownership of a Certificate of Affordable Housing Credit shall be recorded in the real estate records of the Pitkin County Clerk and Recorder and must be reported by the grantor to the City of Aspen Community Development Department within five (5) days of such transfer. The report of such transfer shall disclose the Certificate number, the grantor, the grantee and the total value of the consideration paid for the Certificate. Failure to timely or accurately report such transfer shall not render the Credit void.

C. The market for Certificates of Affordable Housing Credit is unrestricted and the City shall not prescribe or guarantee the monetary value of a Certificate of Affordable Housing Credit.

(Ord. No. 6-2010, §5; Ord. No. 32-2012, §1)

26.540.110 Converting category designation of an affordable housing certificate

Certificates of Affordable Housing Credit represent a number of employees housed at a specific Category designation. Projects seeking extinguishment of a Credit to satisfy affordable housing mitigation standards of this Title may have a different Category Designation requirement than an existing Certificate represents. This section sets forth a process to convert a Certificate of a certain Category Designation for a Certificate of a different Category Designation. This process amends the number of employees housed to create an equivalency. This Section relies on the Affordable Housing Dedication Fees (aka Fee-in-Lieu) stated in the Aspen Pitkin County Housing Authority Guidelines, as are amended from time to time.

To convert a Certificate of a certain Category Designation for a Certificate of a different Category Designation, the following steps are necessary:

Step 1. Multiply the employees housed stated on the existing Certificate by the per employee Fee-in-Lieu fee for the Category Designation as stated in the APCA Guidelines.

Step 2. Divide the resulting number from step 1 by the Fee-in-Lieu fee for the Category Designation of the proposed Certificate.

The resulting number from step 2 shall be the employees housed for the proposed Certificate. The Community Development Director shall re-issue a Certificate using this number of employees housed and specifying the proposed Category Designation.

Example: An owner of a Category 3 Certificate wishes to exchange the Certificate for a Category 2 Certificate. The existing Certificate states 2.25 employees housed.

Step 1. Employees housed multiplied by Category 3 per-FTE Fee-in-Lieu.

$$2.25 \times \$217,567 = \$489,525.75$$

Step 2. Number from step 1 divided by Category 2 per-FTE Fee-in-Lieu.

$$\$489,525.75 / \$230,583 = 2.12$$

In this example, the Community Development Director would re-issue a Certificate stating 2.12 employees housed and a Category 2 designation. Please note that the Aspen/Pitkin County Housing Authority Fee-in-Lieu rates change from time to time. The rates used for this calculation shall be those in effect upon request for conversion.

The conversion of a Certificate's Category Designation shall be approved by the Community Development Director and shall not require additional review by the Planning and Zoning Commission.

(Ord. No. 32-2012, §1)

26.540.120 Extinguishment and Re-Issuance of a Certificate

E. Unless otherwise stated in a Development Order, extinguishing all or part of a Certificate of Affordable Housing Credit shall occur prior to issuance of a Building Permit for the development for which the housing mitigation is required. Extinguishment shall be evidenced by an assignment of ownership on the actual certificate document to "the City of Aspen for extinguishment."

B. Certificates of Affordable Housing Credit may be extinguished to satisfy affordable housing requirements of this Title if the Community Development Director finds the following standards met:

1. All other necessary approvals for the proposed development, as required by this Title, have been obtained and the applicant has submitted the necessary information, pursuant to Section 26.304.075, Building Permit.
2. The applicant has submitted authentic Certificates of Affordable Housing Credit in the number and Category Designation required for the development.
3. The Certificate owner has assigned ownership of the Certificates to “the City of Aspen for extinguishment.”

C. When all of a Certificate is extinguished, the city shall void the Certificate. When part of a Certificate is extinguished, the city shall issue a Certificate citing the remaining FTEs in increments of no less than .01 of employees housed.

(Ord. No. 32-2012, §1)

26.540.130 Amendments

Amendments to an affordable housing project that occur during additional review(s) required by this Title or other amendments which do not change the essential nature of the project may be approved by the Community Development Director. Revisions to the number or Category Designation of the affordable housing units and Credit Certificates to be issued shall be reflected in a revised development order.

Revisions to the number or Category Designation of the affordable housing units and Credit Certificates to be issued, proposed after all approvals are granted, shall require re-review pursuant to the standards and procedures of this Chapter.

(Ord. No. 32-2012, §1)

26.540.140 Appeals

An applicant aggrieved by a determination made by the Community Development Director or Planning and Zoning Commission, pursuant to this Chapter, may appeal the decision to the City Council, pursuant to the procedures and standards of Chapter 26.316, Appeals.

(Ord. No. 32-2012, §1)

TITLE 26
LAND USE REGULATIONS
PART 500 — SUPPLEMENTARY REGULATIONS

Chapter 26.500

PUBLIC PROJECTS

- Sec. 26.500.010 Purpose
- Sec. 26.500.020 Authority
- Sec. 26.500.030 Applicability
- Sec. 26.500.040 Procedures for review
- Sec. 26.500.050 Advisory group
- Sec. 26.500.060 Timing requirements
- Sec. 26.500.070 General review standards
- Sec. 26.500.075 Review standards for private development projects
- Sec. 26.500.080 Application
- Sec. 26.500.090 Appeals

Chapter 26.505

WIRELESS COMMUNICATION FACILITIES AND EQUIPMENT

- Sec. 26.505.010 Purpose
- Sec. 26.505.020 Adoption of *Wireless Communications Facilities Design Guidelines*
- Sec. 26.505.030 Applicability
- Sec. 26.505.040 Wireless Definitions
- Sec. 26.505.050 Operational Standards
- Sec. 26.505.060 Procedures for Review
- Sec. 26.505.070 Application Contents
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Chapter 26.510

SIGNS

- Sec. 26.510.010 Purpose
- Sec. 26.510.020 Applicability and scope
- Sec. 26.510.030 Prohibited signs
- Sec. 26.510.040 Signs not requiring a permit
- Sec. 26.510.050 Procedure for sign permit approval
- Sec. 26.510.060 Sign measurement and location
- Sec. 26.510.070 Sign illumination
- Sec. 26.510.080 Sign lettering, logos and graphic designs
- Sec. 26.510.090 Definition, sign types and characteristics
- Sec. 26.510.100 Signage allotment
- Sec. 26.510.110 Sandwich board signs
- Sec. 26.510.120 Policies regarding signage on public property

Chapter 26.515

OFF-STREET PARKING

- Sec. 26.515.010 General provisions
- Sec. 26.515.020 Characteristics of off-street parking spaces
- Sec. 26.515.030 Required number of off-street parking spaces
- Sec. 26.515.040 Special review standards
- Sec. 26.515.050 Cash-in-lieu for mobility enhancements

Chapter 26.520

ACCESSORY DWELLING UNITS AND CARRIAGE HOUSES

- Sec. 26.520.010 Purpose

Sec. 26.520.020	General
Sec. 26.520.030	Authority
Sec. 26.520.040	Applicability
Sec. 26.520.050	Design standards
Sec. 26.520.060	Calculations and measurements
Sec. 26.520.070	Deed restrictions and enforcement
Sec. 26.520.080	Procedure
Sec. 26.520.090	Amendment of an ADU or carriage house development order

Chapter 26.530 RESERVED

Chapter 26.535 TRANSFERABLE DEVELOPMENT RIGHTS (TDR)

Sec. 26.535.010	Purpose
Sec. 26.535.020	Terminology
Sec. 26.535.030	Applicability and prohibitions
Sec. 26.535.040	Authority
Sec. 26.535.050	Procedure for establishing an historic transferable development right certificate
Sec. 26.535.060	Procedure for extinguishing an historic transferable development right certificate
Sec. 26.535.070	Review criteria for establishment of an historic transferable development right
Sec. 26.535.080	Review criteria for extinguishment of an historic transferable development right
Sec. 26.535.090	Application materials
Sec. 26.535.100	Appeals

Chapter 26.540 CERTIFICATES OF AFFORDABLE HOUSING CREDIT

Sec. 26.540.010	Purpose
Sec. 26.540.020	Terminology
Sec. 26.540.030	Applicability and prohibitions
Sec. 26.540.040	Authority
Sec. 26.540.050	Application and fees
Sec. 26.540.060	Procedures for establishing a credit
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Sec. 26.540.080	Procedures for issuing a certificate of affordable housing credit
Sec. 26.540.090	Authority of the certificate
Sec. 26.540.100	Transferability of the certificate
Sec. 26.540.110	Exchanging category designation of an affordable housing certificate
Sec. 26.540.120	Extinguishment and re-issuance of a certificate
Sec. 26.540.130	Amendments
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Chapter 26.575 MISCELLANEOUS SUPPLEMENTAL REGULATIONS

Sec. 26.575.010	General
Sec. 26.575.020	Calculations and measurements
Sec. 26.575.030	Public amenity
Sec. 26.575.040	Reserved
Sec. 26.575.045	Junkyards and service yards
Sec. 26.575.050	Fences

- Sec. 26.575.060 Reserved (formerly Utility/trash/recycle service areas)
- Sec. 26.575.070 Reserved
- Sec. 26.575.080 Child care center
- Sec. 26.575.090 Home occupations
- Sec. 26.575.100 Landscape maintenance
- Sec. 26.575.110 Building envelopes
- Sec. 26.575.120 Satellite dish antennas
- Sec. 26.575.130 Wireless telecommunication services facilities and equipment (now 26.505)
- Sec. 26.575.140 Accessory uses and accessory structures
- Sec. 26.575.150 Outdoor lighting
- Sec. 26.575.160 Dormitory
- Sec. 26.575.170 Fuel storage tanks
- Sec. 26.575.180 Reserved (formerly Required delivery area and vestibules for commercial buildings)
- Sec. 26.575.190 Farmers' market
- Sec. 26.575.200 Group homes
- Sec. 26.575.210 Lodge occupancy auditing
- Sec. 26.575.220 Vacation Rentals

Chapter 26.580 RESERVED/DEMOLITION

- Sec. 26.580.010 Purpose
- Sec. 26.580.020 Future Amendments
- Sec. 26.580.030 Applicability
- Sec. 26.580.040 Measurement of Demolition
- Sec. 26.580.050 Exemptions
- Sec. 26.580.060 Enforcement and Penalties
- Sec. 26.580.070 Appeals
- Sec. 26.580.080 Adoption of Residential Demolition and Redevelopment Standards

Chapter 26.590 TIMESHARE DEVELOPMENT

- Sec. 26.590.010 Purpose and intent
- Sec. 26.590.020 Applicability
- Sec. 26.590.030 Prohibitions
- Sec. 26.590.040 Procedure for review
- Sec. 26.590.050 Timeshare review standards
- Sec. 26.590.060 Application contents
- Sec. 26.590.070 Timeshare documents
- Sec. 26.590.080 Amendments
- Sec. 26.590.090 Appeals

Chapter 26.575
MISCELLANEOUS SUPPLEMENTAL REGULATIONS

Sections:

- 26.575.010 General
- 26.575.020 Calculations and measurements
- 26.575.030 Public amenity
- 26.575.040 Reserved
- 26.575.045 Junkyards and service yards
- 26.575.050 Fence Materials
- 26.575.060 Driveways
- 26.575.070 Reserved
- 26.575.080 Child care center
- 26.575.090 Home occupations
- 26.575.100 Landscape maintenance
- 26.575.110 Building envelopes
- 26.575.120 Satellite dish antennas
- 26.575.130 Wireless telecommunication services facilities and equipment
- 26.575.140 Accessory uses and accessory structures
- 26.575.150 Outdoor lighting
- 26.575.160 Dormitory
- 26.575.170 Fuel storage tanks
- 26.575.180 Required access
- 26.575.190 Farmers' market
- 26.575.200 Group homes
- 26.575.210 Lodge occupancy auditing
- 26.575.220 Vacation rentals

26.575.010 General

Regulations specified in other Sections of this Title shall be subject to the following supplemental regulations.

26.575.020 Calculations and Measurements

A. Purpose. This section sets forth methods for measuring floor area, height, setbacks, and other dimensional aspects of development and describes certain allowances, requirements and other prescriptions for a range of structural components, such as porches, balconies, garages, chimneys, mechanical equipment, projections into setbacks, etc. The definitions of the terms are set forth at Section 26.104.100 – Definitions.

B. Limitations. The prescribed allowances and limitations, such as height, setbacks etc., of distinct structural components shall not be aggregated or combined in a manner that supersedes the dimensional limitations of an individual structural component. For example, if a deck is permitted to be developed within five feet of a property boundary and a garage must be a minimum of ten feet from the same property boundary, a garage with a deck on top of it may not be developed any closer than ten feet from the property boundary or otherwise produce an aggregated structural component that extends beyond the setback limit of a garage.

Non-conforming aspects of a property or structure are limited to the specific physical nature of the non-conformity. For example, a one-story structure which extends into the setback may not be developed with a second-story addition unless the second story complies with the required setback.

Specific non-conforming aspects of a property cannot be converted or exchanged in a manner that creates or extends a different specific non-conforming aspect of a property. For example, a property that exceeds the allowable floor area and contains deck area that exceeds the amount which may be exempted from floor area cannot convert deck space into additional interior space.

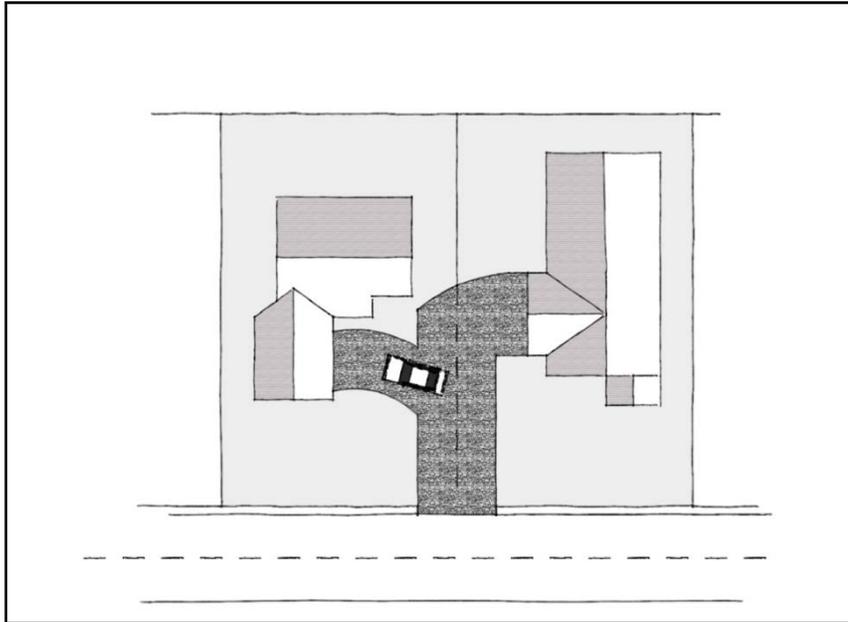
C. Measuring Net Lot Area. A property’s development rights are derived from Net Lot Area. This is a number that accounts for the presence of steep slopes, easements, areas under water, and similar features of a property. The method for calculating a parcel’s Net Lot Area is as follows:

Table 26.575.020-1	Percent of parcel to be included in Net Lot Area to determine allowable Floor Area	Percent of parcel to be included in Net Lot Area to determine allowable Density
Areas of a parcel with 0% to 20% slope. Notes 2, 3.	100%	100%
Areas of a parcel with more than 20% and up to 30% slope. Notes 2, 3.	For properties in the R-15B Zone: 100% For all other properties: 50%.	100%
Areas of a parcel with more than 30% slope. Notes 2, 3.	For properties in the R-15B Zone: 100% For all other properties: 0%.	100%
Areas below the high water line of a river or natural body of water. Note 1.	0%	0%
Areas dedicated to the City or County for open space or a public trail.	100%	100%
Areas within an existing, dedicated, reserved for dedication, proposed for dedication by the application, or vacated public vehicular right-of-way, public vehicular easement, or vehicular emergency access easement. Notes 4, 5, 6.	0%	0%
Areas within an existing, dedicated, reserved for dedication, or proposed for dedication by the application private vehicular right-of-way or vehicular easement. Notes 4, 5, 6.	0%	0%

Areas within a vacated private vehicular right-of-way or vehicular easement, when any affected parcel has no other established physical and legal means of accessing a public way. Notes 4, 5, 6.	0%	0%
Areas within a vacated private vehicular right-of-way or vehicular easement, when all affected parcels have established alternate physical and legal means of accessing a public way. Notes 4, 5, 6.	100%	100%
Areas of a property subject to above ground or below ground surface easements such as utilities or an irrigation ditch that do not coincide with vehicular easements.	100%	100%

Notes for Table 26.575.020 - 1:

1. Lot Area shall not be reduced due to the presence of man-made water courses or features such as ditches or ponds.
2. In instances where the natural grade of a property has been affected by prior development activity, the Community Development Director may accept an estimation of pre-development topography prepared by a registered land surveyor or civil engineer. The Director may require additional historical documentation, technical studies, reports, or other information to verify a pre-development topography.
3. The total reduction in Floor Area attributable to a property's slopes shall not exceed 25%.
4. Areas of a property within a shared driveway easement, when both properties sharing the easement abut a public right-of-way, shall not be deducted from Lot Area. This enables adjacent property owners to combine two driveways into one without reducing development rights.
5. When a property of 9,000 square feet or less contains a private vehicular access easement dedicated to no more than one back parcel, when such back parcel has no other means of access, the area of the access easement shall not be deducted from Lot Area for either Floor Area or density purposes. Otherwise, areas of a vehicular access easement serving another parcel shall be deducted from Lot Area as provided in the table above.
6. Within the Lodge zone district, the areas located within a vacated vehicular right-of-way, a vacated public vehicular easement, or vacated vehicular emergency access easement, if the area was vacated prior to the adoption of Ordinance No. 11, Series of 1975, shall not be deducted from Lot Area for either Floor Area or density purposes. Otherwise, areas within a vacated vehicular right-of-way, a vacated public vehicular easement, or vacated vehicular emergency access easement shall be deducted from Lot Area as provided in the table above.



Measurement Figure 1: Shared Driveway Easement

D. Measuring Floor Area. In measuring Floor Areas (Inclusive of Gross, Allowable, Mitigation, and Floor Area Ratio (FAR) for floor area ratio and allowable floor area, the following applies:

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

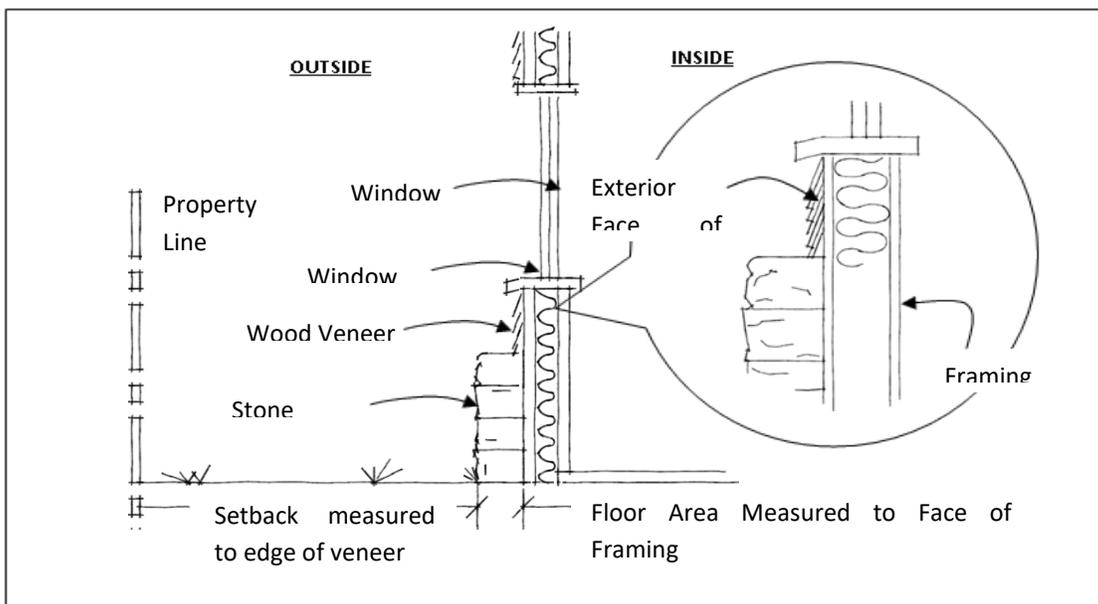


Figure 2: Measuring to Face of Framing

Note: In measuring Floor Area for the purposes of calculating employee generation and affordable housing mitigation for single-family, duplex, and multi-family development, a distinct calculation is made for Mitigation Floor Area.. Please refer to 26.470.090 to determine which Floor Area exclusions shall be deducted from the Gross Floor area to determine the Mitigation Area total.

Measuring Allowable Floor Area shall include the following exclusions and exemptions included in Sections 26.575.020.D.3 - 26.575.020.D.13

2. Floor Area Definitions and Purpose.

a. **Floor area.** A general term used to describe the sum total of the gross horizontal areas of each story of the building measured from the exterior walls of the building. Floor Area is distinct from the specific definitions below, but may include Gross Floor Area, Mitigation Floor Area, Allowable Floor Area (see specific definitions of each type below for additional clarity. Also see, Supplementary Regulations — Section 26.575.020, Calculations and measurements.

i. **Floor Area, Gross.** Gross floor area is gross horizontal area of all floors in a building, and of all floors in any accessory structure on the same lot, measured from the exterior face framing of the exterior walls (See Section 26.575.020.D), or the centerline of a common wall separating two buildings, but excluding unenclosed balconies. This floor area measurement is the total floor area in which Mitigation Floor area and Allowable floor area exclusions are deducted from as established in Section 26.575.020.D.2. None of the Floor Area Exemptions in Section 26.575.020.D are considered in this calculation.

Gross Floor Area should be calculated and documented in any land use or building permit application.

ii. **Floor Area, Allowable.** – The total amount of floor area allowed on a property based on the limitations and allowances in the applicable zone district in Title 700 and calculated pursuant to Section 26.575.020.D, Calculations and Measurements.

<u>Sections Applicable to the Calculation of Allowable Floor Area</u>	
<u>Vertical Circulation</u>	<u>YES</u>
<u>Attic and Crawl Spaces</u>	<u>YES</u>
<u>Decks, Balconies, Loggias, Gazebos, Trellis, Exterior Stairways, and non-Street-facing porches</u>	<u>YES</u>
<u>Front Porches.</u>	<u>YES</u>
<u>Patios</u>	<u>YES</u>

<u>Garages and carports</u>	<u>YES</u>
<u>Subgrade areas</u>	<u>YES</u>
<u>Accessory Dwelling Units and Carriage Houses</u>	<u>YES</u>
<u>Permanently Affordable Accessory Dwelling Units and Carriage Houses</u>	<u>YES</u>
<u>Sheds, Storage Areas, and similar Accessory Structures</u>	<u>YES</u>
<u>Historic Sheds and Outbuildings</u>	<u>YES</u>
<u>Wildlife-Resistant Trash and Recycling Enclosures</u>	<u>YES</u>
<u>Allocation of Non-Unit Space in a mixed-use building.</u>	<u>YES</u>
<u>Airlocks</u>	<u>YES</u>

iii. **Floor Area, Mitigation** – The Gross Floor Area of a structure minus exclusions included in Section 26.575.020.D. This floor area measurement is used to assess required affordable housing mitigation for a given project.

<u>Sections Applicable to the Calculation of Mitigation Floor Area</u>	
<u>Vertical Circulation</u>	<u>NO*</u>
<u>Attic and Crawl Spaces</u>	<u>YES</u>
<u>Decks, Balconies, Loggias, Gazebos, Trellis, Exterior Stairways, and non-Street-facing porches</u>	<u>YES</u>
<u>Front Porches.</u>	<u>YES</u>
<u>Patios</u>	<u>YES</u>
<u>Garages and carports</u>	<u>NO*</u>
<u>Subgrade areas</u>	<u>NO*</u>
<u>Accessory Dwelling Units and Carriage Houses</u>	<u>YES</u>

<u>Permanently Affordable Accessory Dwelling Units and Carriage Houses</u>	<u>YES</u>
<u>Sheds, Storage Areas, and similar Accessory Structures</u>	<u>YES</u>
<u>Historic Sheds and Outbuildings</u>	<u>YES</u>
<u>Wildlife-Resistant Trash and Recycling Enclosures</u>	<u>YES</u>
<u>Allocation of Non-Unit Space in a Mixed Use Building</u>	<u>N/A</u>
<u>Airlocks</u>	<u>N/A</u>

* Floor Area to be included in Mitigation Floor Area Calculation.

iv. Floor Area, Non-unit space. The area, considering all inclusions and exclusions as calculated herein, within a lodge, hotel or mixed use building that is commonly shared. (Also see Section 26.575.020.D.14 – Calculations and Measurements.)

b. Floor area ratio (FAR). The total floor area of all structures on a lot divided by the lot area.

e-b.

2-3. Vertical circulation. When calculating vertical circulation, the circulation element shall be counted as follows:

- a) For stairs and elevators, the area of the feature shall be projected down and counted on the lower of the two levels connected by the element and not counted as Floor Area on the top-most interior floor served by the element.
- b) When a stairway or elevator connects multiple levels, the area of the feature shall be counted on all levels as if it were a solid floor except that the area of the feature shall not be counted as Floor Area on the top-most interior level served by the element.
- c) Mechanical and overrun areas above the top-most stop of an elevator shall not be counted as Floor Area. Areas below the lowest stop of an elevator shall not be counted as Floor Area.

3-4. Attic Space and Crawl Space. Unfinished and uninhabitable space between the ceiling joists and roof rafters of a structure or between the ground and floor framing which is accessible only as a matter of necessity is exempt from the calculation of Floor Area as described below. Drop ceilings are not included in the height measurement for crawl spaces.

Crawl spaces that meet the following are exempt from Floor Area calculations:

- 1. 65 feet-6 inches or less in height measured between the hard floor structure and floor framing; and

2. Accessible only through an interior floor hatch, exterior access panel, or similar feature; and
3. Are the minimum height and size reasonably necessary for the mechanical equipment.

Stacked crawl spaces do not qualify for the Floor Area exemption. Crawl spaces greater than ~~65 feet 6 inches~~ in height count toward Floor Area in accordance with Section 26.575.020.D.8 *Subgrade areas.*

Attic space that is conveniently accessible and is either habitable or can be made habitable shall be counted in the calculation of Floor Area.

Areas of an attic level with thirty (30) vertical inches or less between the finished floor level and the finished ceiling shall be exempt, regardless of how that space is accessed or used.

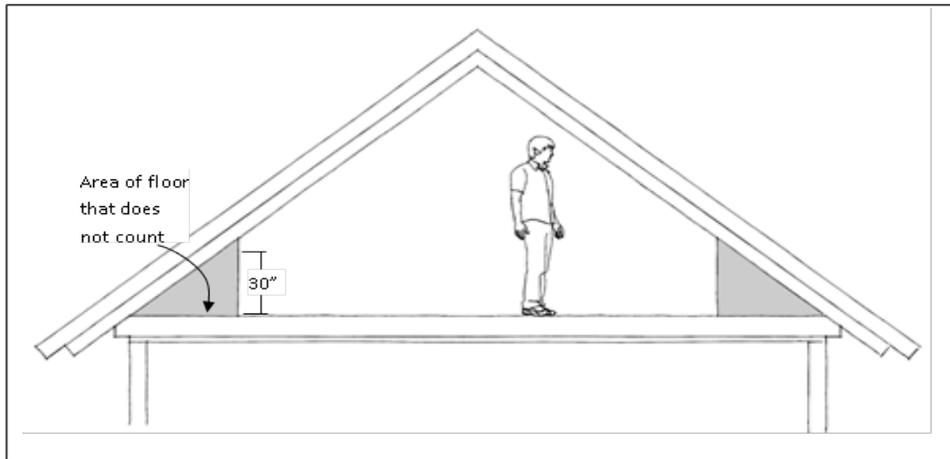


Figure 3: Thirty inch height exemption

If any portion of the attic or crawl space of a structure is to be counted, then the entire room shall be included in the calculation of Floor Area.

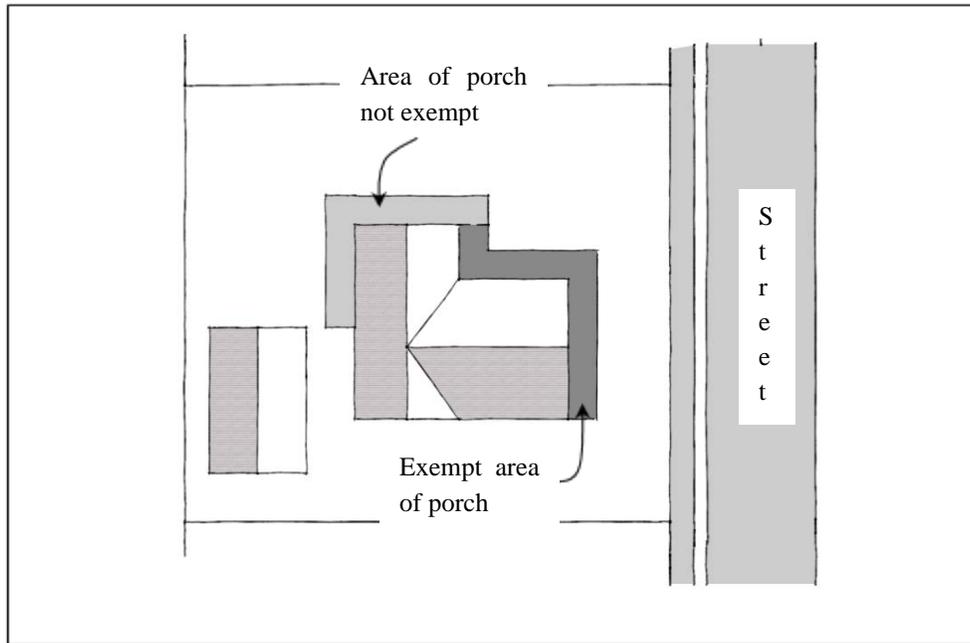
Examples of attic and crawl spaces that do and do not count toward Floor Area:

- a) An attic area created above a “hung” or “false” ceiling is exempt.
 - ~~A crawl space that is 6 feet in height that is accessible only through an interior hatch counts.~~
 - b) An attic area accessible only through an interior pull-down access ladder is exempt.
 - c) An unfinished attic space or an unfinished crawl space over 4 feet in height which has convenient access is counted.
 - d) A crawl space that is ~~65 feet 6 inches~~ in height, is accessible only through an interior hatch and is a reasonable size to accommodate the mechanical equipment is exempt.
5. Decks, Balconies, Loggias, Gazebos, Trellis, Exterior Stairways, and non-Street-facing porches.
- a) The calculation of the Floor Area of a building or a portion thereof shall not include decks, balconies, trellis, exterior stairways, non-Street facing porches, gazebos and similar features, unless the area of these features is greater than fifteen percent (15%) of the

allowable floor area for the property and the use and density proposed, or as otherwise exempted by this Section.

- b) If the area of these features exceeds fifteen percent (15%) of the property's allowable Floor Area (for that use and density proposed) only the areas in excess of the fifteen percent (15%) shall be attributed towards the allowable Floor Area for the property. The allowable Floor Area for the purpose of this calculation refers to the Floor Area calculation based on the Net Lot Area, as defined in this chapter or as prescribed by a site specific approval, with the following exceptions: Floor Area bonus, or established or extinguished Transferrable Development Right certificates are not included.
- c) Decks, balconies, exterior stairways, trellis, and similar features of a mixed use, commercial, or lodge building located within the Commercial Core (CC) Zone District, Mixed Use (MU) Zone District, the Commercial (C-1) Zone District, the Neighborhood Commercial (NC) Zone District, the Lodge (L) Zone District, or the Commercial Lodge (CL) Zone District shall be exempt from Floor Area calculations.
- d) For free-market residential units located within the Mixed Use Zone District, Commercial Core (CC) Zone District, and Commercial (C-1) Zone District, at-grade patios, decks (other than roof-top decks), balconies, exterior stairways, trellis, and other similar features may only be expanded up to 15% of the total free-market residential floor area. Such free-market units shall not be able to utilize any other exemptions to floor area outlined in Section 26.575.020(D).
- e) The area of the following features count toward deck calculation: railing, permanently fixed seating, permanently fixed grills, and similar permanently fixed features. Permanent planter boxes and green roofs that are a minimum of 30" in height above or below the deck surface, measured from the deck surface to the bottom of the planter box or green roof surface, and that are permanently built into the structure of the roof or deck are not included in the deck calculation. Permanent planter boxes and green roofs that do not meet the minimum requirement count toward deck calculation.
- f) Unenclosed areas beneath decks, balconies, and exterior stairways shall be exempt from Floor Area calculations unless that area is used as a carport. (See provisions for garages and carports, Subsection 7.) Enclosed and unconditioned areas beneath porches, gazebos, and decks or balconies when those elements have a finished floor level within thirty (30) inches of the surrounding finished grade shall be exempt from Floor Area calculations regardless of how that area is used.

5. Front Porches. Porches on Street-facing façade(s) of a structure developed within thirty (30) inches of the finished ground level shall not be counted towards allowable Floor Area. Otherwise, these elements shall be attributed to Floor Area as a Deck.



6. Patios. Patios developed at or within six inches of finished grade shall not be counted towards Floor Area. These features may be covered by roof overhangs or similar architectural projections of up to four feet, as measured from the face of the building, and remain exempt from Floor Area calculations. When roof overhangs or similar architectural projections exceed four feet, the entire feature counts toward Floor Area. Railing, permanently fixed seating, permanently fixed grills, and similar permanently fixed features located on patios shall count toward deck calculation.
7. Garages and carports. For all multi-family buildings, parcels containing more than two residential units, and residential units located within a mixed-use building, 250 square feet of the garage or carport area shall be excluded from the calculation of floor area per residence on the parcel. All garage and carport area in excess of 250 square feet per residence shall be attributed towards Floor Area and Floor Area Ratio with no exclusion. Garage and carport areas for properties containing no residential units shall be attributed towards Floor Area and Floor Area Ratio with no exclusion.

In the R-15B Zone District, garage and carport areas shall be excluded from the calculation of Floor Area up to a maximum exemption of five-hundred-square-foot total for the parcel.

In zone districts other than the R-15B Zone District, properties containing solely a Single-Family, two single-family residences, or a Duplex, the garage and carport area shall be excluded from the calculation of Floor Area as follows:

Table 26.575.020-2

Size of Garage or Carport	Area excluded per primary dwelling unit (not including Accessory Dwelling Units or Carriage Houses)
First 0 to 250 square feet	100% of the area
Next 251 to 500 square feet	50% of the area
Areas above 500 square feet	No area excluded.

For any property abutting an alley or private road entering at the rear or side of the property, the garage or carport area shall only be excluded from floor area calculations as described above if the garage or carport is accessed from said alley or road. If an alley or private road does exist and is not utilized for garage or carport access, the garage or carport area shall be attributed towards Floor Area calculations with no exclusion. If an alley or private road does not abut the property, the garage or carport area shall be excluded from floor area calculations as described above.

- 8. Subgrade areas. Subgrade or partially subgrade levels of a structure are included in the calculation of Floor Area based on the portion of the level exposed above grade.

The percentage of the gross area of a partially subgrade level to be counted as Floor Area shall be the surface area of the exterior walls exposed above natural or finished grade, whichever is lower, divided by the total exterior wall area of that level. Subgrade stories with no exposed exterior surface wall area shall be excluded from floor area calculations.

Example: If the walls of a 2,000 square foot level are forty percent (40%) exposed above the lower of natural or finished grade then forty percent (40%) of that level, 800 square feet is counted as Floor Area.

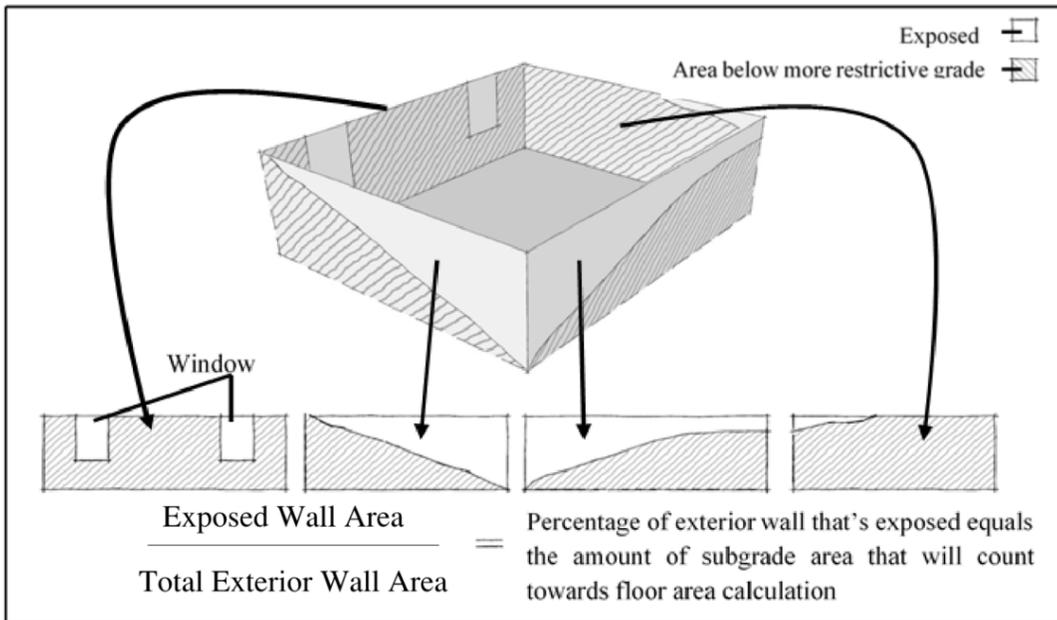


Figure 4: Determining the amount of a subgrade floor to be counted as Floor Area

For the purposes of this section, the exterior wall area to be measured shall be the interior wall area projected outward and shall not include exterior wall areas adjacent to foundation or floors of the structure. Floor structure does not include drop ceilings.

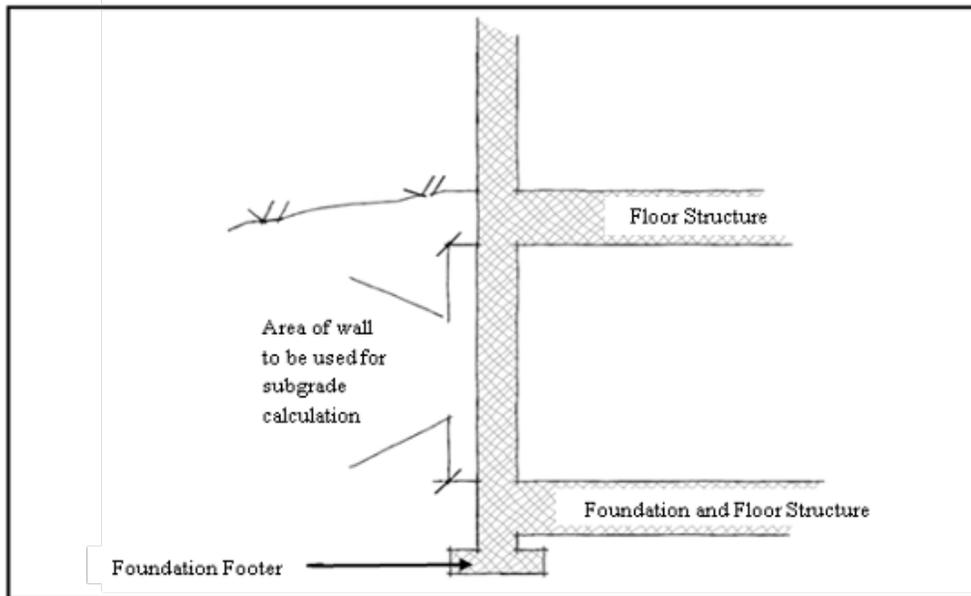


Figure 5: Measuring the Area of a Subgrade Wall

When considering multi-level subgrade spaces, adjacent interior spaces shall be considered on the same story if the vertical separation between the ceilings of the spaces is less than 50% of the distance between the floor and ceiling of either space.

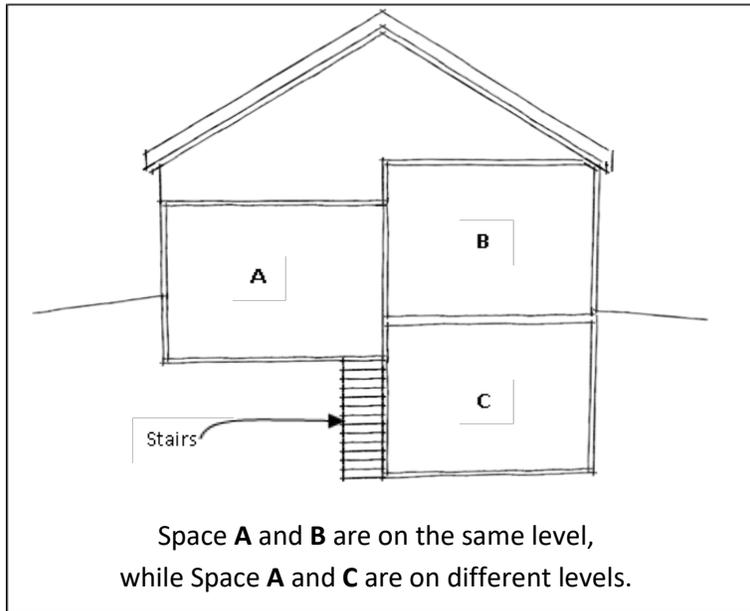


Figure 6: Determining different building levels

When a partially subgrade space also contains a vaulted ceiling within a pitched roof, the wall area shall include the area within the gable of the roof.

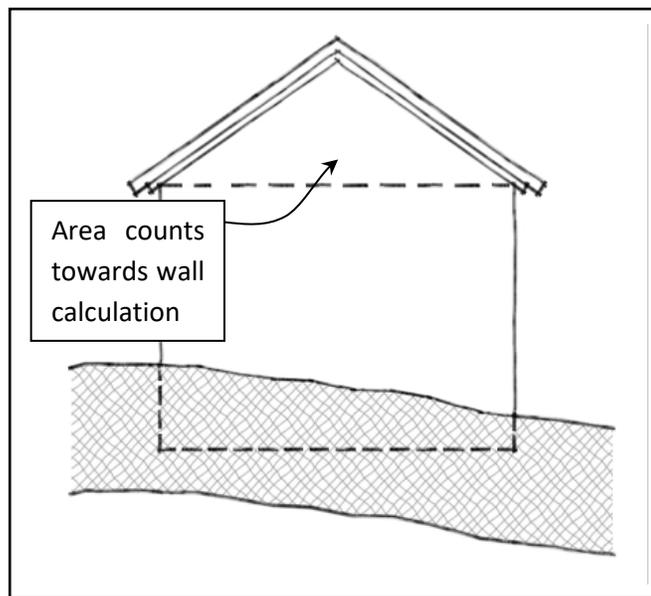


Figure 7: Pitched roof with subgrade calculation

For garages that are part of a subgrade area, the garage exemption is taken from the total gross below-grade area prior to calculating the subgrade exemption. For example, a 2,000 square foot story containing a 350 square foot garage which is 40% above grade, the calculation shall be as follows:

Garage exemption – the first 250 square feet is exempt and the next 100 square feet counts 50% or 50 square feet = 300 square feet of the garage which is exempt.

Subgrade exemption – 2,000 gross square feet minus 300 square feet of exempt garage space = 1,700 gross square feet multiplied by 40% = 680 square feet of that level which counts towards allowable Floor Area.

For subgrade spaces with adjoining crawl spaces exempt pursuant to Section 26.575.020.D.3, a line is drawn to separate the basement space from the crawl space for the purposes of calculating the perimeter and gross area measurements. Exempt crawl space is not included in the perimeter, wall area, and floor area measurements.

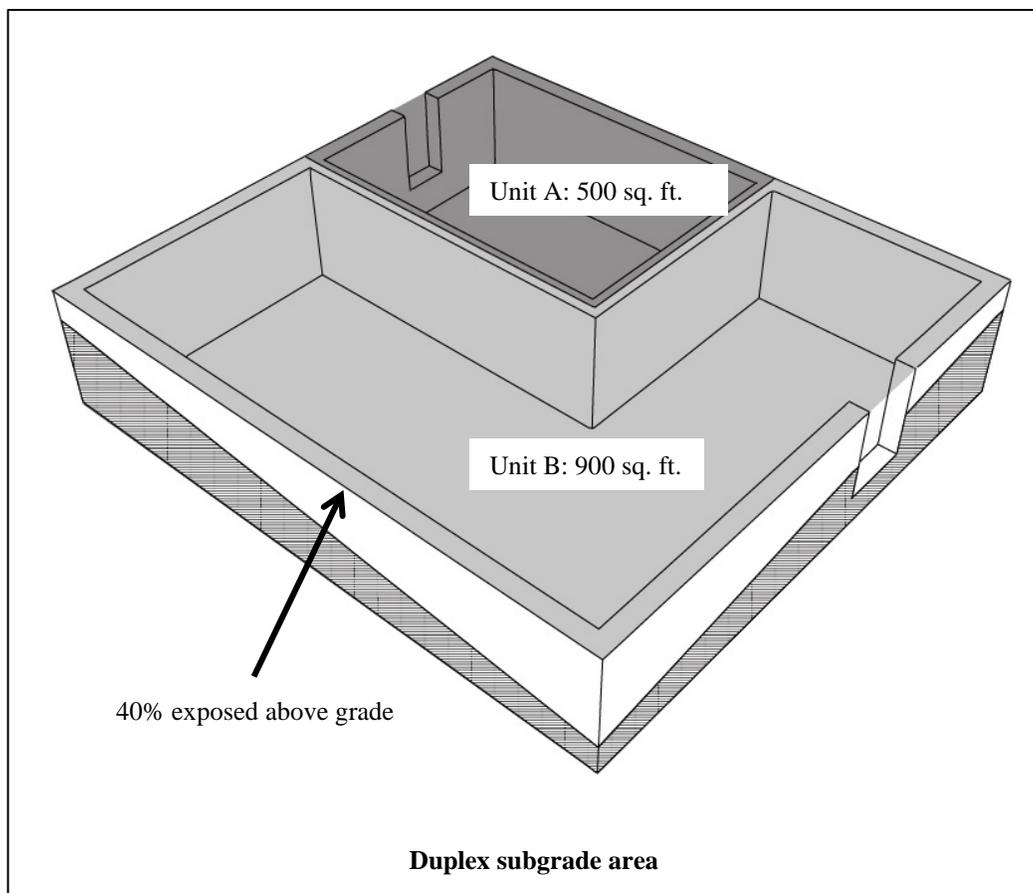
Single-family and duplex structures shall contain no more than one floor level below finished grade. A basement with a stepped floor is allowed. The finished floor level shall be no more than 15 feet below finished grade. A crawl space below the basement, compliant with the limitations of Section 26.575.020.D.3, shall be exempt from this depth limitation.

When it is necessary to determine the floor area of an individual unit within a duplex or multi-family building, it shall be calculated from the exterior walls to the centerline of any party walls it shares with other units.

In order to determine the subgrade area of an individual unit in a duplex or multi-family building that applies toward Floor Area calculations, the subgrade gross square footage of an individual unit shall be multiplied by the percentage of exterior walls exposed above grade for the entire structure.

Example:

- a. The subgrade exemption for the structure is 40% (exposed wall divided by total wall).
- b. Unit A has 500 square feet below grade, measured from exterior wall to the centerline of the party walls it shares with Unit B. Unit B has 900 square feet.
- c. 0.40 (entire duplex exposed percentage) \times 500 (Unit A subgrade gross square footage) = 200 square feet subgrade floor area that applies toward the total Floor Area for Unit A. 0.40 (entire duplex exposed percentage) \times 900 (Unit B subgrade gross square footage) = 360 square feet subgrade floor area that applies toward the Floor Area for Unit B.



9. Accessory Dwelling Units and Carriage Houses. An accessory dwelling unit or carriage house shall be calculated and attributed to the allowable floor area for a parcel with the same inclusions and exclusions for calculating floor area as defined in this Section.
10. Permanently Affordable Accessory Dwelling Units and Carriage Houses. One hundred percent (100%) of the area of an Accessory Dwelling Unit or Carriage House which is detached from the primary residence and deed-restricted as a "for sale" affordable housing unit and transferred to a qualified purchaser in accordance with the Aspen/Pitkin County Housing Authority Guidelines, as amended, shall be excluded from the calculation of floor area, up to a maximum exemption of one thousand two hundred (1,200) square feet per parcel.

In addition, the allowable floor area of a parcel containing such a permanently affordable Accessory Dwelling Unit or Carriage House shall be increased in an amount equal to fifty percent (50%) of the floor area of the Accessory Dwelling Unit or Carriage House, up to a maximum bonus of six hundred (600) square feet per parcel.

11. Sheds, Storage Areas, and similar Accessory Structures. Sheds, storage areas, greenhouses, and similar uninhabitable accessory structures, not within a garage, are exempt from floor area limitations up to a maximum exemption of thirty-two (32) square feet per residence. Storage areas within a garage shall be treated as garage space eligible for the garage exemption only. Accessory structures thirty-six inches or less in height, as measured from

finished grade, shall be exempt from Floor Area calculations (also see setback limitations). Accessory structures that are both larger than thirty-two square feet per primary residence and more than thirty-six inches in height shall be included in their entirety in the calculation of Floor Area. Properties which do not contain residential units are not eligible for this Floor Area exemption.

12. Historic Sheds and Outbuildings. The Community Development Director may provide a parcel containing an uninhabitable and limited function historic shed, outbuilding, or similar historic artifact with a Floor Area exemption to accommodate the preservation of the historic resource. The shed or outbuilding must be considered a contributing historic resource of the property. Functional outbuildings, such as garages, art studios, home offices, and the like shall not be eligible for an exemption. The Director may consult the Historic Preservation Commission prior to making a determination. The Director may require the property's potential to receive Floor Area bonuses be reduced to account for the structure. The exemption shall be by issuance of a recordable administrative determination and shall be revocable if the artifact is removed from the property.
13. Wildlife-Resistant Trash and Recycling Enclosures. Wildlife-resistant trash and recycling enclosures located in residential zone districts are exempt from floor area requirements of the zone district regulations if the enclosure is the minimum reasonably necessary to enclose the trash receptacles in both height and footprint, is an unconditioned space not located inside other structures on the property, and serves no other purpose such as storage, garage space, or other purposes unrelated to protecting wildlife. Wildlife-resistant dumpster enclosures located in commercial, mixed-use, or lodging zone districts are not exempt from floor area requirements and shall comply with zone district requirements for Utility/Trash/Recycle areas.

Enclosures shall be located adjacent to the alley if an alley borders the property and shall not be located in a public right-of-way. Unless otherwise approved by the Historic Preservation Commission, enclosures shall not abut or be attached to an historic structure. Enclosures may abut other non-historic structures.

14. Allocation of Non-Unit Space in a mixed-use building. In order to determine the total floor area of individual uses in a mixed-use building, the floor area for non-unit space, which is common to all uses on the property, shall be allocated on a proportionate basis to the use categories outlined in the subject zone district's FAR schedule. To determine the non-unit space allocation in a building, a calculation of the building's ~~Gross Floor Area, which refers to the floor area of a building as calculated according to the Land Use Code plus subgrade levels,~~ is required. The building's ~~Gross Floor Area~~, minus all non-unit space, shall be divided proportionately amongst the individual use categories in a building. These numbers shall then be calculated as a percent of the ~~Gross Floor Area~~ number.

Garages, including subgrade garages, and carports in mixed use buildings that contain residential units are considered non-unit space.

When a feature is used exclusively by one use, the space shall be attributed to the floor area for that use.

Gross floor area calculation:

For instance, if a building was comprised of the following square footages:

	2,000 sq. ft. commercial floor area (including 500 sq. ft. basement)
+	4,000 sq. ft. free-market residential floor area
+	2,000 sq. ft. affordable housing floor area
+	<u>1,000 sq. ft. non unit floor area (1,250 sq. ft.- 250 sq. ft. for exempt garage)</u>
=	9,000 sq. ft. gross -floor area

Percentage of use category per building floor area:

Then the total unit floor area in the building, not including non-unit space, would be eight thousand (8,000) square feet floor area (9,000 – 1,000). Using the allocation of non-unit space standard, the uses account for the following percentages of the total unit floor area:

Commercial floor area = 25% [(2,000/8,000) * 100]
Free-market residential floor area = 50% [(4,000/8,000) * 100]
Affordable housing floor area = 25% [(2,000/8,000) * 100]

Application of use percentages to non-unit floor area:

A proportionate share of the non-unit floor area shall then be allocated towards each use category. Floor area exemptions that apply to non-unit space, for example a garage or top level of a shared stairway tower, are deducted from the total non-unit floor area before allocating to each use category. Subgrade levels that do not count toward floor area shall not be included in the use category total when calculating floor area. This provision shall apply to all zone districts permitting mixed-use buildings.

Therefore, the one thousand (1,000) square feet of non-unit space is allocated to the different uses as follows:

Commercial floor area = 25% x 1,000 sq. ft. = 250 sq. ft.
Free-market residential floor area = 50% x 1,000 sq. ft. = 500 sq. ft.
Affordable housing floor area = 25% x 1,000 sq. ft. = 250 sq. ft.

The floor area for each use is as follows:

Commercial floor area: 1,500 sq. ft. (2,000 sq. ft. total minus 500 sq. ft. exempt basement) + 250 sq. ft. = 1,750 sq. ft.
Free market residential floor area: 4,000 sq. ft. + 500 sq. ft. = 4,500 sq. ft.
Affordable housing floor area: 2,000 sq. ft. + 250 sq. ft. = 2,250 sq. ft.

Examples:

1. Circulation features, for example hallways, that are shared (used by multiple uses) are considered non-unit space.
2. A shared elevator that serves all levels of a mixed use building (even if the top level terminates within a residential unit) is considered non-unit space.

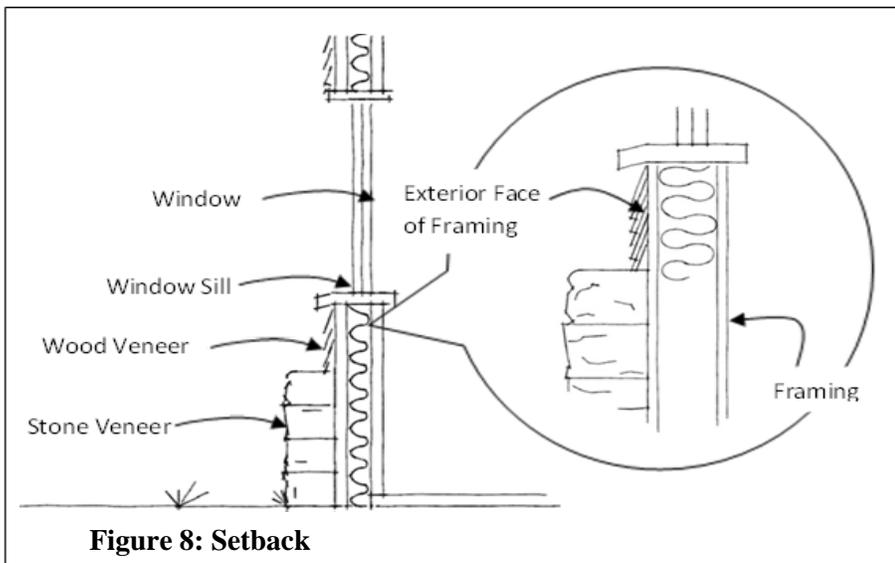
3. Circulation that is specific to a use, for example a private elevator that only serves the residential component (i.e. it does NOT provide access to commercial levels), is allocated to the floor area of the specific use and is not considered non-unit space.
 4. A stairway that is interior to a single unit, which for example connects a two level commercial space, counts toward commercial floor area.
15. Airlocks. Permanently installed interior airlock spaces are exempt from the calculation of Floor Area Ratio and allowable Floor Area up to a maximum exemption of 100 square feet per building. This exemption only applies to buildings containing non-residential uses and does not apply to single-family, duplex, or multi-family buildings.

E. Measuring Setbacks.

1. General. Required setbacks shall be unoccupied and unobstructed within an area extending horizontally from the parcel boundary to the setback line and vertically above and below grade, excepting allowed projections as described below.

For new construction, existing non-residential uses, and for redevelopment projects following a demolition of a structure for any use type, required setbacks shall be measured perpendicularly from all points of the parcel boundary to the outermost exterior of a structure, including all exterior veneer such as brick, stone, or other exterior treatments, but excluding allowed projections as further described in subsection E.5., below

For existing single-family, duplex, and multi-family residential structures, that propose energy efficiency of fire protection upgrades on the exterior of the structure., Required setbacks shall be measured perpendicular from all points of the parcel boundary to the ~~outermost~~ exterior face of framing of a structure, including to a maximum of 8” of all exterior veneer such as brick, stone or other exterior treatments, including fire proofing, exterior insulation, and any methods of attachment for insulation systems, but excluding allowed projections as further



described in subsection E.5, below.

For new construction and projects that trigger demolition, required setbacks shall be measured perpendicular from all points of the parcel boundary to the exterior face of framing of a structure, excluding up to 8" (?) of all exterior veneer such as brick, stone or other exterior treatments, including fire proofing, exterior insulation, and any methods of attachment for insulation systems, but excluding allowed projections as further described in subsection E.5. below.

For existing single-family, duplex and multi-family residential structures that encroach into the setback and propose energy efficiency of fire protection upgrades on the exterior of the structure, up to a maximum of 8" of all exterior veneer such as brick, stone or other exterior treatments, including fire proofing, exterior insulation, and any methods of attachment for insulation, may be added to the wall assembly without triggering compliance with Chapter 26.430 – Non-Conformities.

4.2. Determining Front, Rear, and Side Yards. The front yard setback shall be measured from the front lot line. The Front Lot Line shall be the parcel boundary closest to or dividing a lot from a Street or street right-of-way. All parcels have a front lot line. There shall not be more than one front lot line.

The rear yard setback shall be measured from the rear lot line. The Rear Lot Line shall be the parcel boundary opposite the front lot line. All parcels have a rear lot line. A parcel shall have only one rear lot line.

Side yard setbacks shall be measured from the side lot lines. Side lot lines shall be those parcel boundaries other than a front or rear lot line. All parcels will have at least one side lot line and may have multiple side lot lines.

For corner parcels, the front lot line shall be the parcel boundary along the Street with the longest block length and the remaining boundary shall be a side lot line.

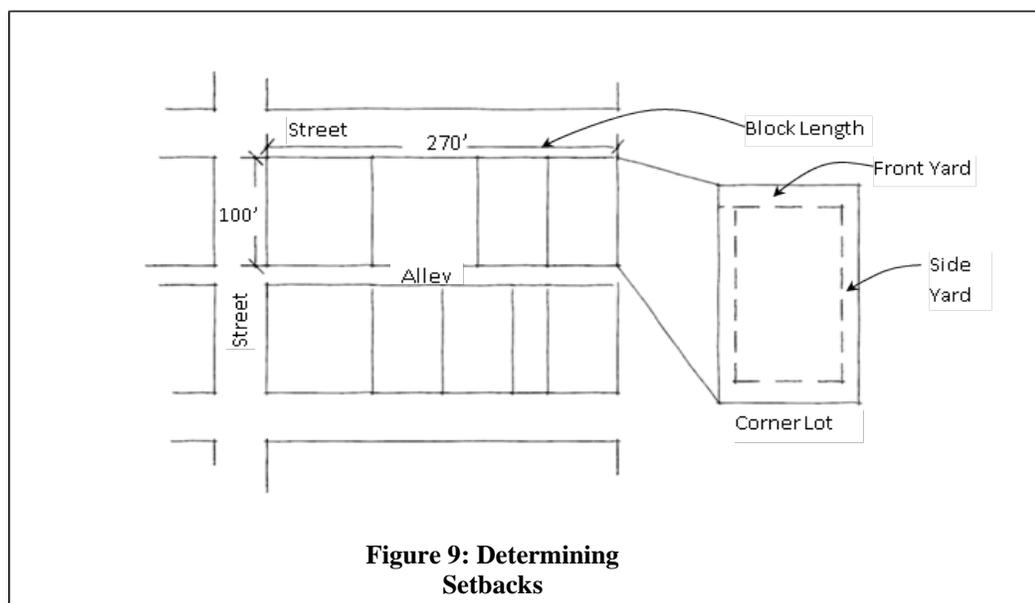


Figure 9: Determining Setbacks

For corner parcels where the parcel boundary follows a curving Street, the midpoint of the curve shall be used to differentiate the front lot line and the side lot line. In this case, the boundary segment with the shortest Street frontage shall be the front lot line.

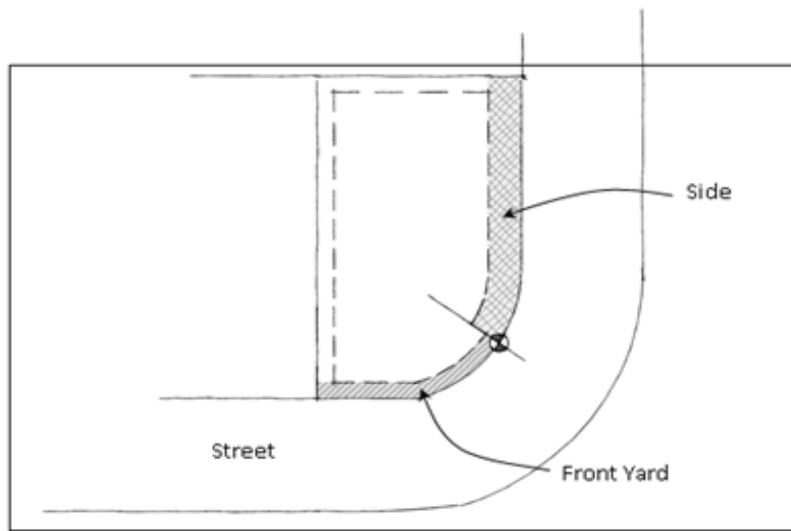


Figure 10: Corner lot with curved street

For reverse curve lots, the curved portion of the lot line shall be considered the front lot line and the two opposing parcel boundaries shall be considered side lot lines.

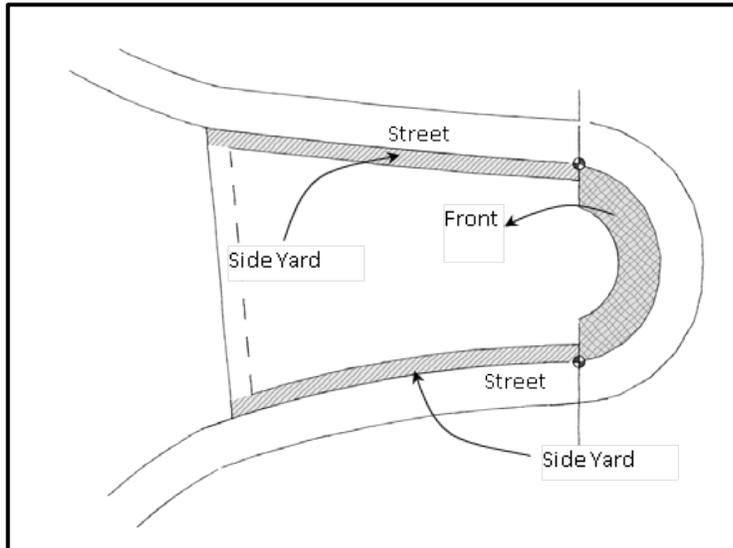


Figure 11: Reverse curve lot

For all double frontage lots with Streets on opposite sides of the parcel, except for those parcels abutting Main Street, the front lot line shall be the parcel boundary with the greatest length of Street frontage and the opposing lot boundary shall be the rear lot line.

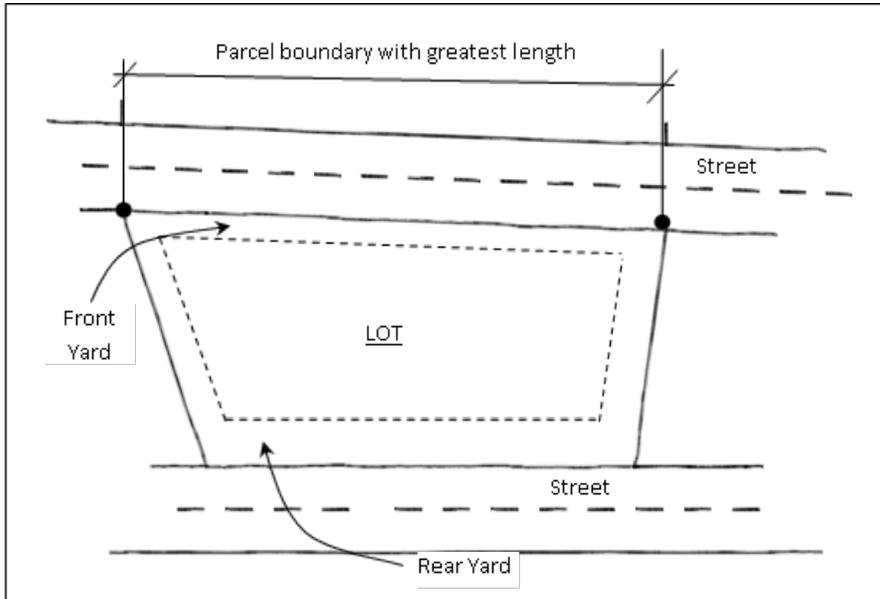


Figure 12: Double frontage lot

For double frontage lots with equal length street frontages, the front lot line shall mirror the front lot lines of the adjoining lots to the extent practical.

For double frontage lots abutting Main Street, the front lot line shall be the lot line adjoining Main Street.

The Community Development Director shall resolve any discrepancies or situations where the foregoing text does not provide definitive clarity by issuance of a recordable administrative determination.

3. Determining required setbacks adjacent to streets or rights-of-way. When a property does not extend into an adjacent public or private right-of-way or street easement, the required setback shall be measured from the lot line.

When a property extends into an adjacent public or private right-of-way or street easement, the required setback for that portion of the lot shall be measured from the edge of the right-of-way or street easement closest to the proposed structure.

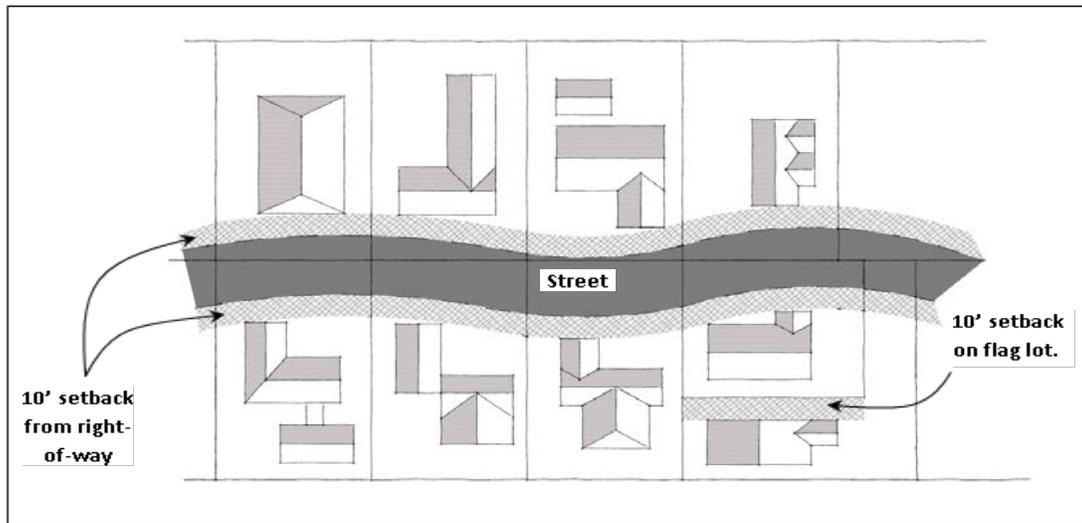


Figure 13: Required setback from a right-of-way or street easement

4. **Combined Setbacks.** Where zoning provisions require a combined yard setback (either front-rear or side-side), the narrowest point on each yard shall be the basis for measuring the combined setback. A combined yard requirement may not be met by staggering the required yard setbacks.

For example, if a lot requires a combined side-yard setback of 30', with a minimum of 10' on either side, Figure 14 shows compliance with the requirement – one side yard is 10', the other is 20', and each side yard setback is consistent from front to rear.

Given the same example, Figure 15 meets the individual 10' setback requirements, but the combined setback is staggered and is not consistent from front to rear. This example does not meet the combined setback requirement.

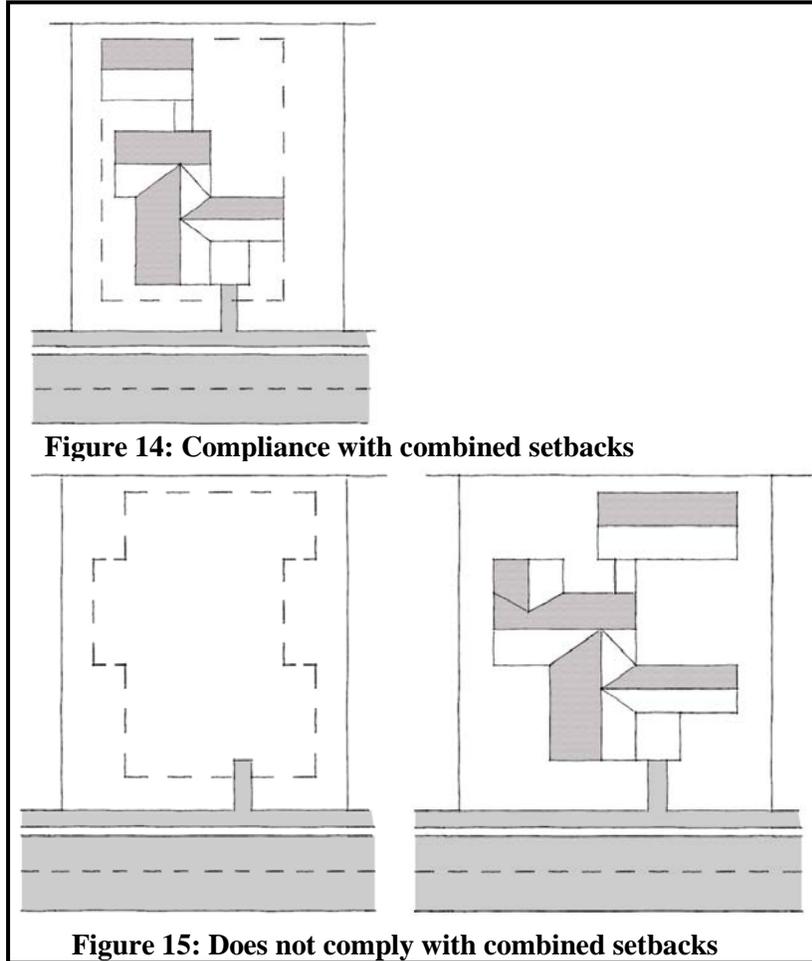


Figure 14: Compliance with combined setbacks

Figure 15: Does not comply with combined setbacks

5. Allowed Projections into Setbacks. Setback areas shall be unobstructed above and below ground except for the following allowed projections:
- a) Above or below ground utilities, including transformers and vaults, below-grade heating or cooling conduit or infrastructure such as a ground-source heat pump system, below-grade dry wells or other at-grade or below-grade drainage infrastructure.
 - b) Trees and vegetation.
 - c) Artwork, sculpture, seasonal displays.
 - d) Flagpoles, mailboxes, address markers.
 - e) Foundation footers, soil nails or below-grade tiebacks, and similar improvements necessary for the structural integrity of a building or other structures.
 - f) The minimum projection necessary to accommodate exterior mounted utility junctions, meters, cable boxes, vent flues, standpipes, and similar apparatus and including any protective structure as may be required by the utility provider.
 - g) Building eaves, bay windows, window sills, and similar architectural projections up to eighteen (18) inches as measured from the setback boundary.

- h) The minimum projection necessary to accommodate light wells and exterior basement stairwells as required by adopted Building or Fire Codes as long as these features are entirely recessed behind the vertical plane established by the portion of the building façade(s) closest to any Street(s).

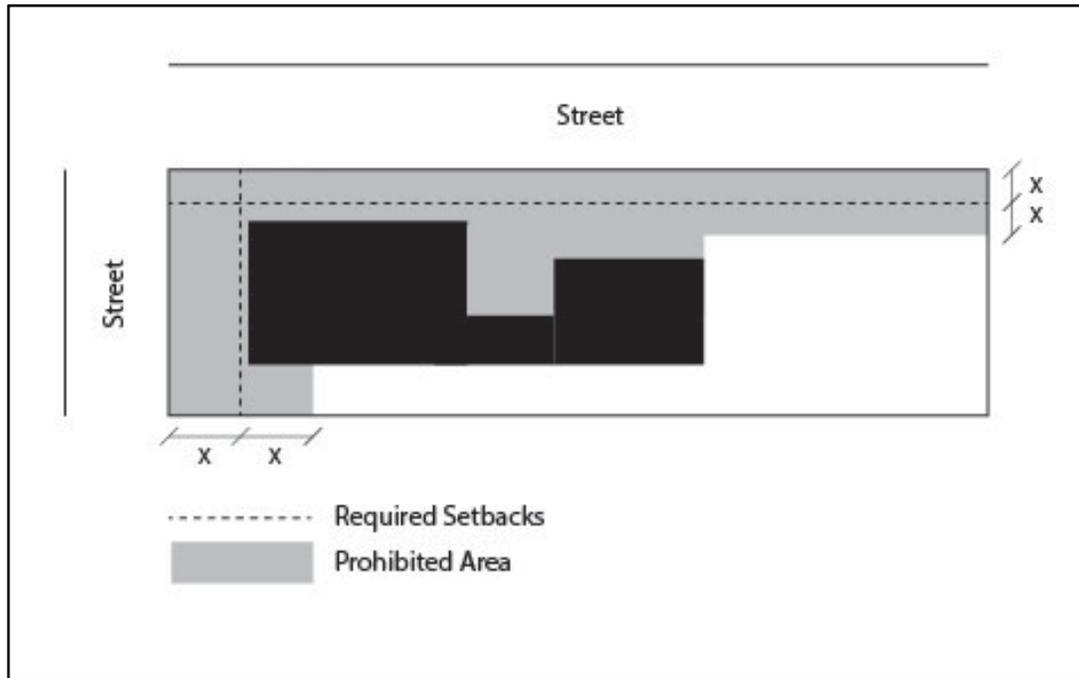
If any portion of the feature projects into the setback, the entire feature may be no larger than the minimum required.

Features required for adjacent subgrade interior spaces may be combined as long as the combined feature represents the minimum projection into the setback. There is no vertical depth limitation for these features.

This exemption does not apply to Areaways. This exemption does not apply to light wells and exterior basement stairwells which are not required by adopted Building or Fire Codes.

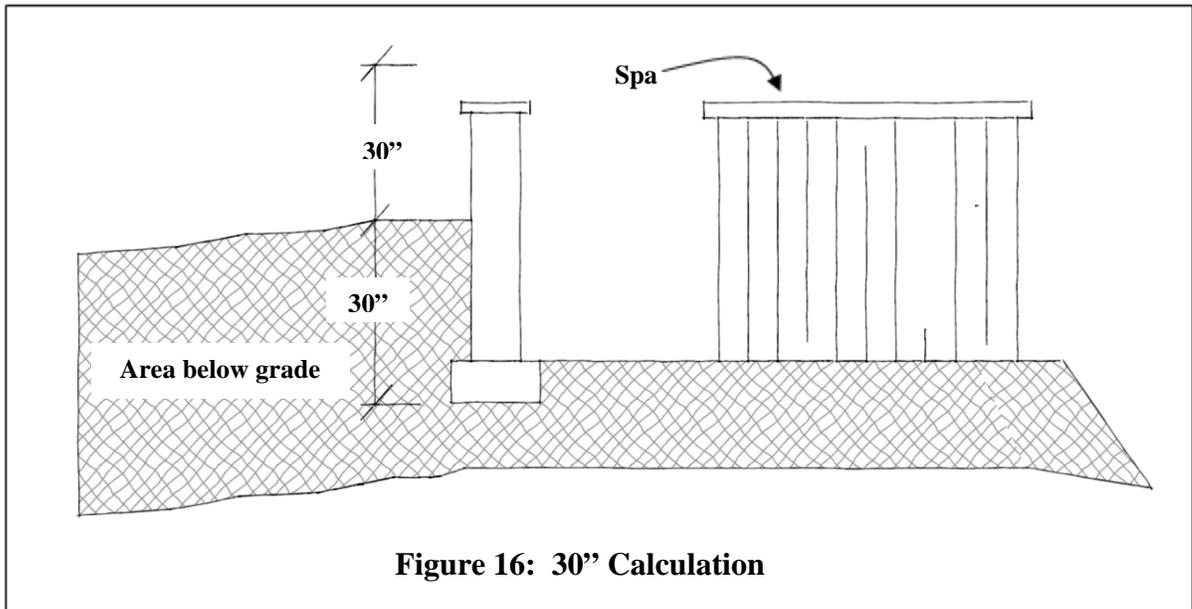
- i) The minimum projection necessary to accommodate an exterior-mount fire escape to an existing building, as may be required by adopted Building or Fire Codes.
- j) Uncovered porches, landscape terraces, slabs, patios, walks and similar features, which do not exceed six (6) inches vertically above or below the surrounding finished grade for the entire feature.
- k) Landscape walls, berms, retaining walls, stairways and similar structures, which do not exceed thirty (30) inches vertically above or below the lower of natural or finished grade Improvements may be up to thirty (30) inches above and below grade simultaneously, for up to a sixty (60) inch total. Improvements may exceed thirty (30) inches below grade if determined to be necessary for the structural integrity of the improvement. (See Figure 16). Berms are prohibited in the front yard setback.
- l) Drainage swales, stormwater retention areas, bio retention areas, rain collection systems, and similar stormwater retention, filtration or infiltration devices or facilities are permitted in setbacks as long as the finished grade of the top of the improvement does not exceed thirty (30) inches vertically above or below the surrounding finished grade. Stormwater improvements or portions thereof may be buried and exceed thirty (30) inches below grade as long as the finished grade above the facility does not exceed thirty (30) inches vertically above or below the surrounding finished grade. These features may be up to thirty (30) inches above and below finished grade simultaneously.
- m) Hot tubs, spas, pools, water features, and permanently affixed outdoor grills, furniture, seating areas, and similar permanent structures shall have the following requirements:
 - a. Prohibited between any lot line adjacent to a street and any structure; and
 - b. Shall be located at least double the minimum setback for a primary structure from any lot line adjacent to a street; and
 - c. If visible from the street, these features shall be screened in accordance with Section 26.575.050, *Fences*; and
 - d. If located within a setback not adjacent to a street, these features shall not exceed thirty (30) inches above or below finished grade. These features may be up to thirty (30) inches above and below finished grade simultaneously.

Improvements may exceed thirty (30) inches below grade if necessary for the structural integrity of the improvement.



- n) Heating and air conditioning equipment and similar mechanical equipment, but excluding generators, shall have the following requirements:
- Prohibited between any lot line adjacent to a street and any structure; and
 - Shall be located at least double the minimum setback for a primary structure from any lot line adjacent to a street; and
 - If visible from the street, these features shall be screened in accordance with Section 26.575.050, *Fences*, with natural features, or by other means determined appropriate by the Community Development Director; and
 - If located within a setback not adjacent to a street, these features shall not exceed thirty (30) inches above and forty-eight (48) inches below finished grade. These features may be up to thirty (30) inches above and forty-eight (48) inches below finished grade simultaneously.

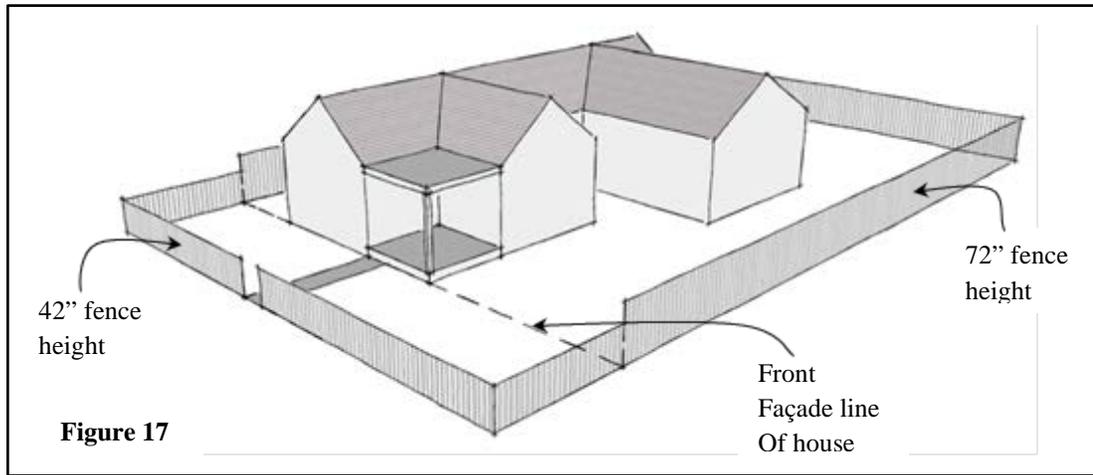
~~The Community Development Director may approve exceptions to the requirements of m) and n) above. The Community Development Director must first determine that the visual impact of the exemption is minimal and that no other reasonable option exists. Approval shall be in the form of a recordable administrative determination.~~



- o) The height and placement of energy efficiency or renewable energy production systems and equipment, which are located adjacent to or independent of a building shall be established by the Planning and Zoning Commission pursuant to the procedures and criteria of Chapter 26.430 – Special Review. These systems are discouraged between any lot line adjacent to a street and any structure. For energy production systems and equipment located on top of a structure, see sub-section F.4.

The Community Development Director may approve exceptions to the requirements of m), n), and o) above. The Community Development Director must first determine that the visual impact of the exemption is minimal, that no other reasonable option exists, or that there is a significant increase in efficiency gained as a result of flexibility. Approval may be granted during building permit review, or as part of a site-specific development approval.

- o)p) Fences and hedges less than forty-two (42) inches in height, as measured from finished grade, are permitted in all required yard setbacks. Fences and hedges up to six (6) feet in height, as measured from finished grade, are permitted only in areas entirely recessed behind the vertical plane established by the portion of the building facade which



is closest to the Street. This restriction applies on all Street-facing facades of a parcel. (Also see Section 26.575.050 – Supplementary Regulations for limitations on fence materials.)

- p)q) Driveways not exceeding twenty-four (24) inches above or below finished grade within any setback of a yard facing a Street. Within all other required setbacks, finished grade of a driveway shall not exceed thirty (30) inches above or below finished grade.
- q)r) Parking may occur in required setbacks if within an established driveway or parking area and the curb cut or vehicular access is from an alleyway, if an alleyway abuts the property, or has otherwise been approved by the City.
- r) Non-permanent features which are not affixed to the ground such as movable patio furniture, outdoor seating or a picnic table, barbeque grills, children’s play equipment, and similar non-permanent features which are not affixed to the ground. This exemption shall not allow storage sheds or containers.
- s)
- t) Wildlife-resistant Trash and Recycling enclosures located in residential zone districts shall be prohibited in all yards facing a Street. These facilities may be placed within non-street facing yards if the enclosure is the minimum reasonably necessary in both height and footprint, is an unconditioned space not integrated with other structures on the property, and serves no other purpose such as storage, garage space, or other purposes unrelated to protecting wildlife. Wildlife-resistant trash and recycling enclosures located in commercial, mixed-use, or lodging zone districts are not exempt from setback requirements and shall comply with zone district requirements for Utility/Trash/Recycle areas.

Temporary intermittent placement of trash and recycling containers in or along yards facing a Street is allowed. For example, on “trash day.”

Enclosures shall be located adjacent to the alley where an alley borders the property and shall not be located in a public right-of-way. Unless otherwise approved by the Historic Preservation Commission, enclosures shall not abut or be attached to a historic structure. Enclosures may abut other non-historic structures.

For projects that are proposed to be, or are currently 100% Deed Restricted Affordable Housing, Wildlife-resistant trash and recycling enclosures shall be located along the alley, when possible. If no alley exists, the enclosure may be located in a street facing yard if located and designed in a way to minimize visual impact of the enclosure, ensure efficient use of the enclosure, and the minimum size necessary in both height and footprint to meet the requirements of Title 12 of the Municipal Code.

—Generators are prohibited between and structure and the street and within any setback. Exceptions may be made by the Community Development Director in accordance with Section 26.575.020.E.5.J.

s)u) _____

F. Measuring Building Heights.

1. For properties in the Commercial Core (CC), Commercial (C1), Commercial Lodge (CL), Neighborhood Commercial (NC) and Service Commercial Industrial (SCI) Zone Districts, the height of the building shall be the maximum distance between the ground and the highest point of the roof top, roof ridge, parapet, or top-most portion of the structure. See subsection 3, below, for measurement method.
2. For properties in all other Zone Districts, the height of the building shall be measured according to the pitch of the roof as follows. See subsection 3, below, for measurement method.
 - a) *Flat roofs or roofs with a pitch of less than 3:12.* The height of a building with a roof pitch of less than 3:12 shall be measured from the ground to the top-most portion of the structure.

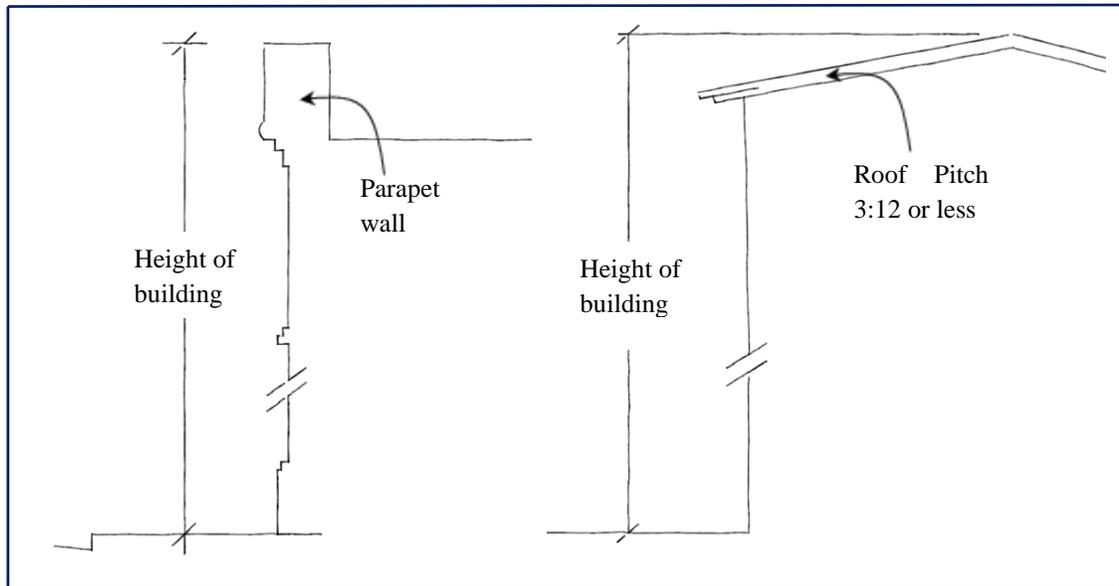


Figure 18: Measuring height for flat roofs or roofs with less than 3:12 pitch

- b) *Roofs with a pitch from 3:12 to 7:12.* The height of a building with a roof pitch from 3:12 to 7:12 shall be measured from the ground to the point of the roof vertically halfway between the eave point and the ridge. There shall be no limit on the height of the ridge.

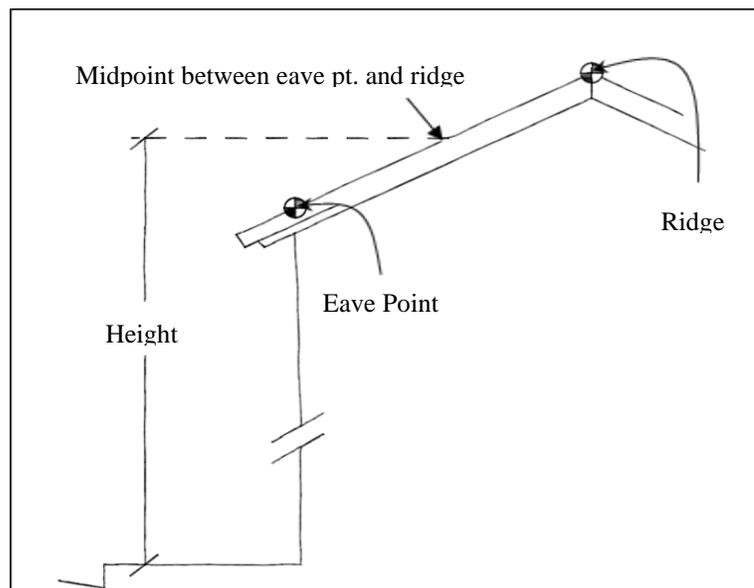


Figure 19: Measuring height for roofs with pitch from 3:12 to 7:12

- c) *Roofs with a pitch greater than 7:12.* The height of a building with a roof pitch greater than 7:12 shall be measured from the ground to the point of the roof vertically one-third ($\frac{1}{3}$) of the distance up from the eave point to the ridge. There shall be no limit on the height of the ridge.

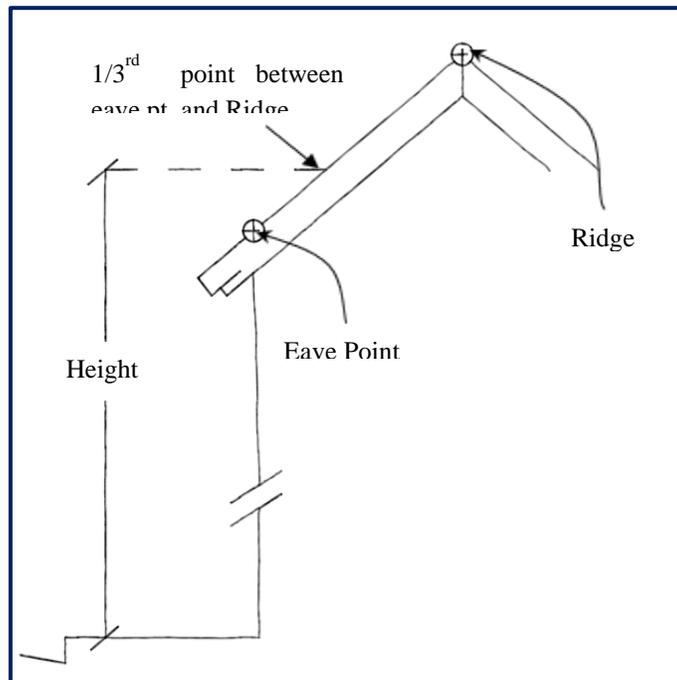


Figure 20: Eave Point and Exterior Sheathing of a Roof

For roofs with multiple pitches within one vertical plane, the height of the roof shall be measured by drawing a line within a vertical section between the ridge and the Eave Point(s) and then applying the methodology for the resulting pitch of said line(s) as described above.

- d) For barrel-vault roofs, height shall be measured by drawing a line within a vertical section between the top-most point of the roof and the Eave Point(s) and then applying the methodology for the resulting pitch of said line(s) as described above.
 - e) For “shed” roofs with a single-pitch, the methodology for measuring shall be the same as described above according to the slope of the roof and by using the highest point of the roof as the ridge.
 - f) For mansard roofs, height shall be measured to the flat roof as described above.
 - g) Dormers shall be excluded from the calculation of height if the footprint of the dormer is 50% or less of the roof plane on which the dormer is located and the ridge of the dormer is not higher than the ridge of the roof on which it is located. If there are multiple dormers on one roof plane, the aggregate footprint shall be used. Otherwise, dormers shall be included in the measurement of height according to the methods described above.
 - h) Butterfly roofs shall be measured in accordance with shed roof methodology.
3. Height Measurement Method. In measuring a building for the compliance with height restrictions, the measurement shall be the maximum distance measured vertically from the ground to the specified point of the building located above that point, as further described below:

- a) *Measuring height along the perimeter of the building.* At each location where the exterior perimeter of a building meets the ground, the measurement shall be taken from the lower of natural or finished grade. Building permit plans must depict both natural and finished grades.
- b) *Measuring height within the footprint of the building.* For the purposes of measuring height within the footprint of a building, areas of the building within 15 horizontal feet of the building's perimeter shall be measured using the perimeter measurement, as described above. In all other areas, the natural grade of the site shall be projected up to the allowable height and the height of the structure shall be measured using this projected topography.

In instances where the natural grade of a property has been affected by prior development activity, the Community Development Director may accept an estimation of pre-development topography prepared by a registered land surveyor or civil engineer. The Director may require additional historical documentation, technical studies, reports, or other information to verify a pre-development topography.

If necessary, the Community Development Director may require an applicant document natural grade, finished grade, grade being used within the footprint of the building, and other relevant height limitation information that may need to be documented prior to construction.

- *Measuring to the roof* – The high point of the measurement shall be taken from the surface of a structure's roof inclusive of the first layer of exterior sheathing or weatherproofing membrane but excluding exterior surface treatments such as shakes, shingles, fire proofing, exterior insulation, a second layer of exterior sheeting, or other veneer treatments or ornamentation.

When measuring roofs to a point between the ridge and the eave point, the eave point shall be the point where the plane of a roof intersects the plane of the exterior wall. The roof and wall planes shall be of the nominal structure, excluding all exterior treatments.

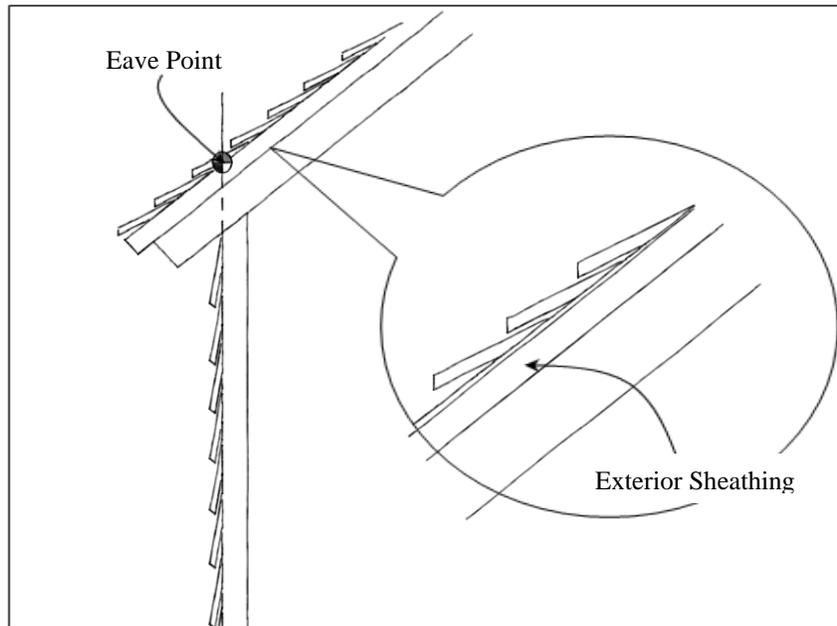


Figure 21: Eave Point and Exterior Sheathing of a Roof

4. Allowed Exceptions to Height Limitations.

- a) *Chimneys, flues, and similar venting apparatus.* Chimneys, flues, vents, and similar venting apparatus may extend no more than ten (10) feet above the height of the building at the point the device connects. For roofs with a pitch of 8:12 or greater, these elements may not extend above the highest ridge of the structure by more than required by adopted building codes or as otherwise approved by the Chief Building Official to accommodate safe venting. To qualify for this exception, the footprint of these features must be the minimum reasonably necessary for its function the features must be combined to the greatest extent practical. Appurtenances such as hoods, caps, shields, coverings, spark arrestors, and similar functional devices or ornamental do-dads shall be contained within the limitations of this height exception.

On structures other than a single-family or duplex residential building or an accessory building, all Chimneys, flues, vents, and similar venting apparatus should be set back from any Street facing façade of the building a minimum of twenty (20) feet and the footprint should be minimized and combined to the greatest extent practicable.

- b) *Communications Equipment.* Antennas, satellite dishes, and similar communications equipment and devices shall comply with the limitations of Section 26.575.130 – Wireless Telecommunication Services Facilities and Equipment.
- c) *Elevator and Stair Enclosures.* On structures other than a single-family or duplex residential building or an accessory building, elevator overrun enclosures and stair enclosures may extend up to five (5) feet above the specified maximum height limit.

Elevator and stair enclosures may extend up to ten (10) feet above the specified maximum height limit if set back from any Street facing façade of the building a minimum of twenty (20) feet and the footprint of the elevators or stair enclosures are minimized and combined to the greatest extent practicable.

For single-family and duplex residential buildings and for accessory buildings, elevator and stair enclosures are not allowed a height exception.

- d) *Rooftop Railings.* On any structure other than a single-family or duplex residential building, rooftop railings and similar safety devices permitting rooftop access may extend up to five (5) feet above the height of the building at the point the railing connects. To qualify for this exception, the railing must be the minimum reasonably necessary to provide adequate safety and building code compliance and the railing must be 50% or more transparent. All railings shall be set back from any Street facing facade of the building by an amount equal to the height of the railing.

For single-family and duplex residential buildings, rooftop railings shall not be allowed a height exception.

- e) *Mechanical Equipment.* Heating, ventilation, and air conditioning systems, and similar mechanical equipment or utility apparatus located on top of a building may extend up to six (6) feet above height of the building at the point the equipment is attached. This allowance is inclusive of any pad the equipment is placed on, as well as any screening. Mechanical equipment shall be screened, combined, and co-located to the greatest extent practicable. On structures other than a single-family or duplex residential building or an accessory building, all mechanical equipment shall be set back from any Street facing façade of the building a minimum of fifteen (15) feet.
- f) *Energy Efficiency or Renewable Energy Production Systems and Equipment.* Energy efficiency systems or renewable energy production systems and equipment including solar panels, wind turbines, or similar systems and the system's associated equipment which is located on top of a building may extend up to ~~five-six (65)~~ feet above the height of the building at the point the equipment is attached.

On any structure other than a single-family or duplex residential building or an accessory building, these systems may extend up to ten (10) feet above height of the building at the point the equipment is attached if set back from any Street facing façade of the building a minimum of twenty (20) feet and the footprint of the equipment is minimized and combined to the greatest extent practicable. ~~Certain additional restrictions may apply pursuant to Chapter 26.412, Commercial Design Review.~~

The height and placement of energy efficiency or production systems which are not located on top of a building (located independent of a building) shall be established by the Planning and Zoning Commission pursuant to the procedures and criteria of Chapter 26.430 – Special Review. (Also see setback requirements for these systems at sub-section E.5.)

- g) Church spires, bell towers and like architectural projections on Arts, Cultural and Civic buildings may extend over the height limit as may be approved pursuant to Commercial Design Review.
- h) Flag poles may extend over the specified maximum height limit.

- i) *Exceptions for buildings on slopes.* For properties with a slope that declines by 10% or greater from the front lot line, the maximum height of a building's front (street-facing) facade may extend horizontally for the first ten (10) feet of the building's depth

For properties located in the geographical area bounded by Durant Street, Main Street, Monarch Street and Original Street and have a maximum elevation change of three (3) feet, the maximum height measurement as determined from the highest point of the lot may extend the entire width or length of the lot. See Figure A, below, where “X” is the measured height.

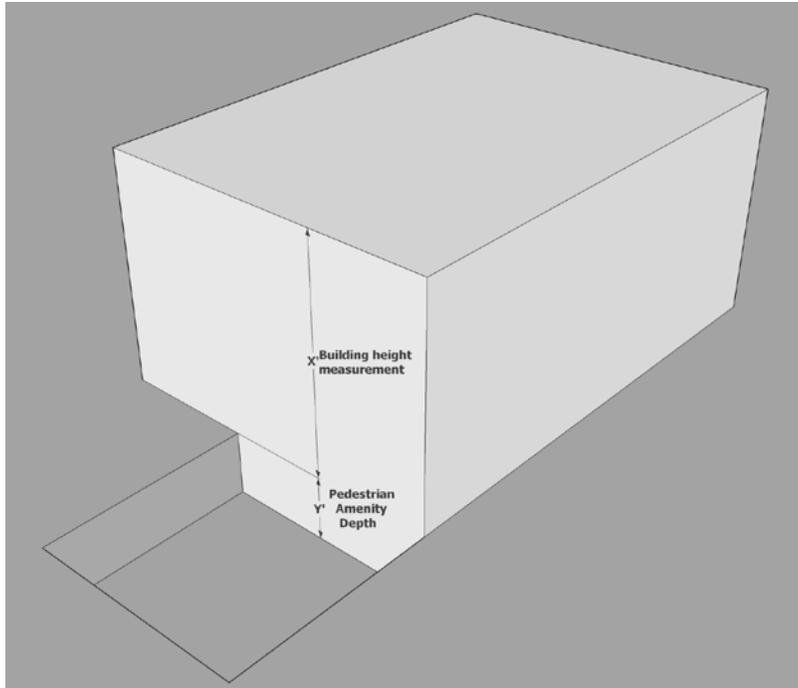
Figure A: Measurement on a Slope



- j) *Exceptions for lightwells and basement stairwells.* A basement stairwell required by Building Code for egress shall not be counted towards maximum permissible height. On street facing facades the minimum size lightwell entirely recessed behind the vertical plane established by the portion of the building façade(s) closest to any Street(s), and enclosed on all sides to within eighteen (18) inches of the first floor level (e.g. not a walk-out style light well) shall not be counted towards maximum permissible height. On non-street facing facades a lightwell that is no more than one hundred (100) square feet shall not be counted towards maximum permissible height. This exception does not apply to lightwells and stairwells that are located within a setback.

For properties that contain an areaway that counts toward the pedestrian amenity requirement, the qualifying areaway shall not be counted towards maximum permissible height. See Figure B, below, where “X” is the measured heights and “Y” is not counted if the subgrade area counts as pedestrian amenity.

Figure B: Measurement of heights with subgrade pedestrian amenity



The Historic Preservation Commission is authorized to grant an exception to height for lightwells larger than one hundred (100) square feet on historic landmark properties that contain a historic resource upon a finding that the following conditions are met:

- a. Lightwell is not easily visible from the right of way.
 - b. Approval of the exemption supports the preservation of the historic resource.
- k) For commercial, lodge, or mixed-use buildings located in the Commercial Core (CC), Commercial (C-1), or Neighborhood Commercial (NC) zone districts, decorative, non-functional architectural elements such as a parapet, cornice, spire, pediment, are exempted from height measurement up to twenty-four (24) inches only if approved by the Planning and Zoning Commission or Historic Preservation Commission as part of a Commercial Design Review. This exemption shall not be combined with any other height exemptions.
- l) *Permanent Rooftop Amenities.* Permanent rooftop amenities, such as built-in wet bars, built-in barbeque grills, cabinets, sinks, fire pits, pools, hot tubs, etc. shall be permanently installed and shall meet the following height and setback requirements to qualify for a height exemption. This only applies to a mixed use, lodge, or commercial building located in the Commercial Core (CC) Zone District, Mixed Use (MU) Zone District, the Commercial (C-1) Zone District, the Lodge (L) Zone District, the Neighborhood Commercial (NC) Zone District, or the Commercial Lodge (CL) Zone District. Permanent rooftop amenities may extend up to five (5) feet above height of the building at the point the equipment is attached to the roof. This allowance is inclusive of any pad the equipment is placed on. A trellis with a maximum height of ten (10) feet and a maximum floor area of no more than 5% of the useable deck area is permitted. All permanent rooftop amenities shall be set back from any Street facing façade of the building by a minimum of ten (10) feet.

- m) *Exceptions for skylight and light tubes* A skylight or light tube typical of industry standards and meeting minimum Building Code standards shall not be counted towards maximum permissible height.

G. Measuring Site coverage. Site coverage is typically expressed as a percentage. When calculating site coverage of a structure or building, the exterior walls of the structure or building at ground level should be used. When measuring to the exterior walls, the measurement shall be taken from the exterior face of framing, exterior face of structural block, or similar exterior surface of the nominal structure excluding sheathing, vapor barrier, weatherproofing membrane, exterior-mounted insulation systems, and excluding all exterior veneer and surface treatments such as stone, stucco, bricks, shingles, clapboards or other similar exterior veneer treatments. Porches, roofs or balcony overhangs, cantilevered building elements and similar features extending directly over grade shall be excluded from maximum allowable site coverage calculations.

~~H. *Measurement of Demolition.* The City Zoning Officer shall determine if a building is intended to be or has been demolished by applying the following process of calculation:~~

~~At the request of the Zoning Officer, the applicant shall prepare and submit a diagram showing the following:~~

- ~~1. The surface area of all existing (prior to commencing development) exterior wall assemblies above finished grade and all existing roof assemblies. Not counted in the existing exterior surface area calculations shall be all existing fenestration (doors, windows, skylights, etc.).~~
- ~~2. The exterior surface area, as described above, to be removed. Wall area or roof area being removed to accommodate new or relocated fenestration shall be counted as exterior surface area being removed.~~
- ~~3. The diagram shall depict each exterior wall and roof segment as a flat plane with an area tabulation.~~

~~Exterior wall assembly and roof assembly shall constitute the exterior surface of that element in addition to the necessary subsurface components for its structural integrity, including such items as studs, joists, rafters etc. If a portion of a wall or roof structural capacity is to be removed, the associated exterior surface area shall be diagrammed as being removed. If a portion of a wall or roof involuntarily collapses, regardless of the developer's intent, that portion shall be calculated as removed. Recalculation may be necessary during the process of development and the Zoning Officer may require updated calculations as a project progresses.~~

~~Replacement of fenestration shall not be calculated as wall area to be removed. New, relocated or expanded fenestration shall be counted as wall area to be removed.~~

~~Only exterior surface area above finished grade shall be used in the determination of demolition. Sub-grade elements and interior wall elements, while potentially necessary for a building's integrity, shall not be counted in the computation of exterior surface area.~~

~~According to the prepared diagram and area tabulation, the surface area of all portions of the exterior to be removed shall be divided by the surface area of all portions of the exterior of the~~

~~existing structure and expressed as a percentage. The Zoning Officer shall use this percentage to determine if the building is to be or has been demolished according to the definition in Section 26.104.100, Demolition. If portions of the building involuntarily collapse, regardless of the developer's intent, that portion shall be calculated as removed.~~

~~It shall be the responsibility of the applicant to accurately understand the structural capabilities of the building prior to undertaking a remodel. Failure to properly understand the structural capacity of elements intended to remain may result in an involuntary collapse of those portions and a requirement to recalculate the extent of demolition. Landowner's intent or unforeseen circumstances shall not affect the calculation of actual physical demolition. Additional requirements or restrictions of this Title may result upon actual demolition.~~

I.H. Measurement of Net Leasable Area and Net Livable Area. The calculation of net leasable area and net livable area shall include all interior space of a building measured from interior wall to interior wall, including interior partitions. Net leasable area and net livable area shall be attributed to the lot or parcel upon which it is developed. Net leasable area includes all interior areas which can be leased to an individual tenant with the exceptions noted below. Net livable area includes those areas of a building that are used or intended to be used for habitation with the exceptions noted below. Garages and carports are exempt from net leasable area and net livable area calculations.

1. Permanently installed interior airlock spaces are exempt from the calculation of net leasable space up to a maximum exemption of 100 square feet. Seasonal airlocks of more than 10 square feet, installed on the exterior of a building, shall be considered net leasable area and shall be subject to all requirements of the Land Use Code, including employee mitigation, prorated according to the portion of the year in which it is installed.
2. Unless specifically exempted through other provisions of this Title, outdoor displays, outdoor vending, and similar commercial activities located outside (not within a building) shall also be included in the calculation of net leasable area. The calculation of such area shall be the maximum footprint of the display or vending apparatus. For vending carts or similar commercial activities requiring an attendant, the calculation shall also include a reasonable amount of space for the attendant. Exterior decks and exterior seating are not included in the calculation of net leasable area. Vending machines, gas pumps, and similar devices without an attendant shall not be considered net leasable area.

The calculation of net leasable area and net livable area shall exclude areas of a building that are integral to the basic physical function of the building. All other areas are attributed to the measurement of net leasable commercial space or net livable area. When calculating interior stairways or elevators, the top most interior level served by the stairway or elevator is exempt from net livable or net leasable area calculations.

Shared areas that count toward net leasable area and net livable area shall be allocated on a proportionate basis of the use category using the percentages that are generated pursuant to Section 26.575.020.D.14 *Allocation of non-unit space in a mixed use building.*

Examples:

1. A broom closet of a minimum size to reasonably accommodate the storage of janitorial supplies for the entire building is considered integral to the physical function of the building and does not count toward net leasable area.
2. A shared commercial storage area that is larger than needed for the basic functionality of the building counts toward net leasable area because it is useable by the businesses.
3. A shared stairway and a shared circulation corridor (that access more than one use) are integral to the physical function of the building and do not count in the measurement of net livable area or net leasable area.
4. A stairway that is entirely within one residential unit counts toward the measurement of net livable area.
5. A private elevator that serves more than one residential unit, and does not provide access to other uses, does not count toward the measurement of net livable area.
6. A private elevator that serves only one residential unit, and does not provide access to other uses, counts toward the measurement of net livable area.
7. A shared mechanical room that is larger than the minimum space required to reasonably accommodate the mechanical equipment counts toward the measurement of net livable area or net leasable area as applicable. The area of the mechanical room that is the minimum size required for the mechanical equipment does not count in net livable area or net leasable area.

J.I. Exceptions for Energy Efficiency. The Community Development Director may approve exceptions to the dimensional restrictions of this Section to accommodate the addition of energy production systems or energy efficiency systems or equipment in or on existing buildings when ~~no other practical solution exists~~the site is constrained, or it is determined that flexibility is warranted to improve efficiency of the equipment. The Community Development Director must first determine that the visual impact of the exemption is minimal and that no other reasonable way to implement energy production or efficiency exists. ~~The Director may require notice be provided to adjacent landowners. Approval shall be in the form of a recordable administrative decision.~~Exception for Energy Efficiency may be approved during building permit review, or as part of a site-specific development approval.

K.J. Exceptions for Building Code Compliance. The Community Development Director may approve exceptions to the dimensional restrictions of this Section to accommodate improvements required to achieve compliance with building, fire, energy, or accessibility codes in or on existing buildings when no other practical solution exists. The Community Development Director must first determine that the visual impact of the exemption is minimal and that no other reasonable way to implement code compliance exists. ~~The Director may require notice be provided to adjacent landowners. Approval shall be in the form of a recordable administrative decision.~~Exception for Energy Efficiency may be approved during building permit review, or as part of a site-specific development approval.

L.K. Appeals. An applicant aggrieved by a decision made by the Community Development Director regarding this Calculations and Measurements Section may appeal the decision to the Administrative Hearing Officer, pursuant to Chapter 26.316.

(Ord. No. 44-1999, §7; Ord. No. 55-2000, §14; Ord. No. 56-2000, §§5, 6, 8; Ord. No. 25-2001, §§6, 7; Ord. No. 46-2001, §4; Ord. No. 55, 2003, §§2—4; Ord. No. 12-2006, §19; Ord. No. 12, 2007, §32; Ord. No. 27-2010, §1; Ord. No. 12-2012, §3; Ord. No. 25-2012, §4; Ord. No. 7-2014; §§ 1-9; Ord. No. 31-2014, §2; Ord. No. 4-2015, §1; Ord. No. 46-2015, §§ 12-20; Ord. No. 30, 2016, §6)

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MEMORANDUM

To: City of Aspen

From: Design Workshop

Date: February 28, 2022

Project Name: City of Aspen Moratorium

Project #: 6829

Subject: Relevant Code Analysis Summary

Introduction:

Design Workshop completed a review of several case study Development Codes related to issues involved in the moratorium, including sections pertaining to Administrative Procedures, Affordable Housing, Growth Management and Demolition Reviews. This analysis is intended to inform how the City of Aspen might incorporate certain ideas and policies into Land Use Code updates and completes deliverables for Task 1.5.

Affordable Housing (AH) codes in Cambridge, MA, San Francisco, CA, and Berkley, CA. Growth management codes in Santa Monica, CA, Mount Pleasant, SC, and Thornton, CO were analyzed for the way in which they limit the pace and scale of development. Demolition provisions were reviewed based on an area’s complexity as well as its environmental constraints and mitigation measures. Telluride, CO and Berkley, CA codes were analyzed under this section. Lastly, administrative procedures in Glenwood Springs, CO and Malibu, CA were reviewed related to public hearings and overall review processes.

The case studies provide examples that can be implemented into Aspen’s code, reveal where the code may be lacking and give considerations of what to avoid. It should also be noted that these ideas and requirements are reflective of the overall regulatory environment in each community. Scaling to Aspen’s needs should not only reflect Aspen’s goals and vision, but also its staff capacity, ability, and willingness to perform the duties necessitated by these review requirements.

Affordable Housing

Communities across the country are seeking to address affordable housing needs. The case studies focus on affordable housing overlays and zoning tools that can be used to increase the amount of affordable housing in a community.

1. Cambridge, MA

A. Definitions

Cambridge includes two specific zoning tools to increase affordable housing. The first, “Inclusionary Housing Projects,” focuses on creating new affordable housing throughout the city. This type of project can be anywhere and may include single-family, two-family, multifamily and townhouse housing, elderly oriented congregate housing, and lodging or mixed-use housing. This type of housing must create “at least ten (10) dwelling units or at least ten thousand (10,000) square feet of residential Gross Floor Area on one (1) lot or Development Parcel or two (2) or more adjoining lots in common ownership or under common control at any time within five (5) years following the first date of application for any special or building permit for development on the lot or lots or at any time within the twelve (12) months immediately preceding the first date of application for any special or building permit”. For the purpose of this definition, development must include at least one of the following:

1. Construction of new buildings or additions
2. Increasing the number of dwelling units or amount of residential Gross Floor Area within an existing residential building
3. Occupancy of existing buildings which have not been used for any residential use for a period of at least two (2) years
4. Conversion of gross floor area in existing buildings from non-residential to residential use.

A developer of fewer than ten (10) dwelling units and fewer than ten thousand (10,000) square feet of residential gross floor area can choose to voluntarily comply with the provisions. All Inclusionary Housing Projects are required to be sold to “eligible households,” defined elsewhere in the code.

The second type of affordable housing is within an Affordable Housing Overlay (AHO). This overlay allows construction of 100% affordable four (4) story apartments anywhere in the city by-right. The overlay offers flexibility and relaxation to zoning codes for residential developments that are permanently affordable to households earning up to 100% of the area’s median income. An AHO Dwelling unit is defined as the construction of new development and/or the modification of an existing structure resulting in single-family, two-family, townhouse, or multifamily dwellings that comply with Cambridge’s AHO standards. It is important to note that an AHO Project that meets the standards within its section are not required to comply with Inclusionary Housing Requirements.

B. 11.200, Incentive Zoning and Inclusionary Housing

I. 11.202, Calculation of Housing Contribution

The code states that the developer or owner of an “Incentive Project” must make a housing contribution. This contribution is calculated by multiplying the gross floor area of the project by the housing contribution rate in effect when the first building permit is issued. The rate is subject to annual escalation based on the Consumer Price Index (CPI) Housing Index. Table 1 below shows the adjustment of this rate over time.

Table 1: Housing Contribution Rate

Effective Date	Housing Contribution Rate
September 28, 2015	\$12.00 per square foot.
September 28, 2016 (Annual Adjustment)	\$13.00 per square foot.
November 16, 2016 (CPI Adjustment)	\$13.50 per square foot.
September 28, 2017 (Annual Adjustment)	\$14.50 per square foot.
October 18, 2017 (CPI Adjustment)	\$14.95 per square foot.
September 28, 2018 (Annual Adjustment)	\$15.95 per square foot.
November 18, 2019 (CPI Adjustment)	\$17.10 per square foot.
January 28, 2020 (City Council Amendment)	\$20.10 per square foot.

Source: Cambridge Municipal Code, 11.202.b

The housing contribution rate and the incentive zoning provisions must be reevaluated on a three-year minimum rate from the time of City Council’s last amendment.

II. Section 11.203.1, Applicability

The requirements apply to all zoning districts throughout the city. For Inclusionary Housing Projects, twenty percent (20%) of the total dwelling unit net floor area is required to be affordable dwelling units. This requirement must be reevaluated at least every five (5) years. Reevaluation is based on factors including demographic characteristics, residential development activity and housing trends.

III. Section 11.203.3-4 Standards

This section of the code contains standards for Affordable Dwelling Units to make them uniform to market rate units. They require similar elements such as being in the same location within the development, having

a proportionate size and bedroom number, and possessing the same amenities (common areas, facilities, and services). The standards contain three calculations related to the number of Affordable Dwelling Units provided in a building.

1. A ratio of family-sized (units with two or more bedrooms) Affordable Dwelling Units to all Affordable Units must be equal or more than the same ratio of family-sized and all market rate units.
2. Townhouse or multifamily residential projects above thirty thousand (30,000) square feet in net floor area. These projects must provide family-sized Affordable Dwelling Units of at least one per every six thousand (6,000) square feet of the project's required Affordable Dwelling net floor area.
3. The rental to owner-occupied Affordable Dwelling Units must equal the same ratio of market rate units. If the CDD finds that these ratios result in a total net floor area required for Affordable Dwelling Units that is less than the required twenty percent (20%) set in Section 11.203.1 (above), a payment equal to the unmet area is required.

IV. Section 11.203.5, Incentives

The dimensional requirements of any zoning district, including base or overlay zoning districts, will be flexible to Inclusionary Housing Projects as-of-right. These include an increase of thirty percent (30%) to the number of permitted dwelling units or a thirty percent (30%) increase to the gross floor area. This additional area must be used for residential uses not including hotel or motel use.

C. Section 11.207, Affordable Housing Overlay

An AHO Project is permitted by-right within any zoning district if it meets all of the AHO standards, which override the requirements of the project's zoning district and special permits. Any development that does not meet all of the standards of the AH Overlay will be subject to the requirements in the zoning district, including any requirements for special permits.

I. Section 11.207.3-4, Standards and Use

AHO Dwelling Units can only be rented or sold to AHO Eligible Households guaranteed by a recorded covenant, with preference given first to Cambridge residents. AHO Projects may contain single-family, two-family, townhouse or multifamily dwellings by-right without the need for special permit procedures. Active, commercial ground floor uses that provide are allowed if the base zoning district or applicably overlay allows it.

II. Section 11.207.5 – 11.207.6, Development Standards

An AHO Project that conforms to the following development standards are generally not subject to other limitations found within the Zoning Ordinance. Standards that are relaxed for AHO Projects include dimensional district development standards, residential density, yard setbacks and open space. Table 2 displays the code's District Dimensional Standards compared to the AHO standards.

Table 2: District Development Standards vs Affordable Housing Overlay Standards

District Development Standards	AHO Project Standards
Dimensional Standards and Stories Above Grade	
Residential building height of 40 (or less) feet maximum	Residential building height of 45 feet maximum - 50 feet maximum for projects containing an active non-residential ground floor Maximum of four stories above grade
Residential building height of 40 - 50 feet	Residential building height of 65 feet maximum - 70 feet maximum for projects containing an active non-residential ground floor

	<ul style="list-style-type: none"> - Portions of the project that abut a nonresidential use and are within 35 feet of a district with a maximum of 40 or less are subject to the above standards. Maximum of six stories above grade
Residential building height of 50 feet and above maximum	Residential building height of 80 feet maximum <ul style="list-style-type: none"> - Portions of the project that abut a nonresidential use and are within 35 feet of a district with a maximum of 40 or less may be a maximum of 60 feet or five stories Maximum of seven stories above grade
Residential Density	
Floor area ratio (FAR) of less than 1.00	Maximum FAR of 2.00 No minimum lot area per dwelling unit

** This table was developed by Design Workshop and is not contained within Cambridge's code*

In addition to dimensional district development standards and residential density, more relaxed standards include provisions for yard setbacks, redevelopment or reconstruction, biking and parking, and transportation. The codes most relevant to Aspen are "Standards for Existing Buildings." An existing building that does not conform to the dimensional standards for AHO may be altered, reconstructed, extended, relocated, and/or enlarged for use as an AHO Project as-of-right. One allowed adjustment includes the construction occurring entirely within an existing structure that may violate or further violate the permitted FAR. Other allowed adjustments are those to openings to the exterior of a building, the addition of insulation to improve energy efficiency, the instillation of features to improve accessibility, and the repair, reconstruction, or replacement of preexisting nonconforming portions of buildings. Though AHO standards apply over others, the projects must still conform to the city's Environmental Design Standards.

III. Section 11.207.8, Advisory Design Consultation Procedure.

While AHO projects are intended to be by-right, certain board level reviews are still required. An "Advisory Design Consultation Procedure" provides the opportunity for non-binding input by the Planning Board and community. This is intended to promote design outcomes that are compatible with the current neighborhood development and advances the City's current and future goals.

This procedure includes at least two (2) community meetings. The Community Development Department (CDD) will be notified of the time and location and must give notification to neighbors surrounding the property or those who ask to be notified.

- Meeting #1: The purpose of the first community meeting is intended for the developer to share the site and street context analysis with the community prior to building design and receive feedback from community members. Within 65 days of receipt of a complete set of materials by CDD, the Planning Board will schedule a design consultation at a public meeting. During the consultation, the Planning Board will evaluate the proposal for general compliance with the requirements of the AHO Standards and appropriateness with other development activities in the area. The Board may also suggest specific project adjustments and alterations to further the purposes of this Ordinance. Up to 20 days after the design consultation, the Planning Board must communicate its findings in a written report provided to the developer and CDD.
- Meeting #2: The purpose of the second meeting is for the developer to share preliminary project designs, answer community questions, and receive feedback on the design. If necessary, the developer may make revisions to the design in consultation with the CDD staff and submit a new set of documents. The Planning Board will then review and discuss the revised documents at a second design consultation meeting. Following the second design consultation, the Planning Board may submit

a revised report prior to a final report (the "Final Report"). The Final Report from the Planning Board to the Superintendent of Buildings certifies compliance with the procedural requirements.

- **Subsequent Meetings:** At subsequent meetings, the developer will prepare materials including, but not limited to, distances and dimensions, context analysis, existing conditions of the site and a design statement on compatibility. Any additional design consultations to review further revisions may occur only at the discretion and on the request of the developer or the Cambridge Affordable Housing Trust.

IV. Section 11.207.10-11, Enforcement and Review of Affordable Housing Overlay

The Community Development Department (CDD) is required to provide an annual status report to the City Council containing the following information:

1. List of sites considered for affordable housing development under the Affordable Housing Overlay, to the extent known by CDD, including site location, actions taken to initiate an AHO Project, and site status;
2. Description of each AHO Project underway or completed, including site location, number of units, unit types (number of bedrooms), tenure and project status; and
3. Number of residents served by AHO Projects.

A five-year progress report that assesses the effectiveness of the Affordable Housing Overlay in increasing the number of affordable housing units in the city, distributing affordable housing across City neighborhoods, and serving the housing needs of residents is required. The report must also assess the effectiveness of the Advisory Design Consultation Procedure in gathering meaningful input from community members and the Planning Board and shaping AHO Projects to be consistent with the stated Design Objectives.

CONSIDERATIONS FOR ASPEN:

1. These provisions allow for 100% affordable housing by right in every zoning district. The use of a single overlay may make individual neighborhoods feel less singled out as opposed to picking and choosing specific zone districts or neighborhoods.
2. Although the community consultation procedures provide an opportunity for public comment prior to building permits, the consultation meetings may also lengthen the process that is supposed to be by-right.
3. The overlay requires at least four-story apartment buildings. While by-right multi-family development is effective, a four-story building may not be compatible in all areas of Aspen.
4. Reviewing the progress of AHO is a beneficial component. The information required can help establish how the system is working and how it may be adjusted in the future.

2. San Francisco, CA

San Francisco has adopted a program called HOME-SF that allows affordable housing development in certain zone districts. Development in the city's single family and duplex zones are not permitted to participate in the program. As a result, only the section on development bonuses will be analyzed for the purpose of this case study. An applicable project must contain three or more dwelling units, must not demolish any residential units, will consist of new construction only and must not demolish or significantly alter a historic resource. HOME-SF projects are required to have twenty to thirty percent (20-30%) of units designated for affordable, middle and moderate-income residents. They are also required to have either forty percent (40%) of the units as two bedrooms or larger or fifty percent (50%) of all bedrooms must be two (2) or more bedrooms.

A. Section 206.3, Housing Opportunities Mean Equity

Any HOME-SF project can receive any or all of the offered bonuses summarized below:

1. **Form based density:** Includes height, bulk, setbacks, required open space, exposure and unit mix in addition to design guideline and review elements

2. Height: Up to twenty (20) additional feet of the designated height restriction. This height must be used to provide two additional ten (10) foot stories or one additional ten (10) foot story.
3. Ground floor ceiling: Projects with active ground floor uses may receive up to a maximum of five (5) additional feet in addition to the twenty (20) feet listed above. The additional five (5) feet must be used at the ground floor to provide a fourteen (14)-foot ceiling for nonresidential units.
4. Zoning modifications include reductions in rear yard setbacks of up to twenty percent (20%) of the lot depth, or fifteen (15) feet. Dwelling unit exposure requirements are also allowed to be met through qualifying windows facing an unobstructed open area that is no less than twenty five (25) feet in dimension. Additional modifications include no off street loading spaces necessary, a seventy five percent (75%) reduction in parking requirement and reductions to the open space and in inner court requirements.
5. Priority processing and planning commission approval

In addition to the incentives listed above, the code also has three different tier-based incentives that an applicant may request. These provide different levels of relaxation for ground floor ceiling height, building height and form, illustrated in Table 3.

Table 3: HOME-SF Tiers

Tier Description	Zoning Modifications	Additional height	On-site affordability requirement
Tier 1:	Relief from density limit and seven zoning modifications	N/A	20-30%
Tier 2		1 story, 10 feet	25%
Tier 3		2 stories, 20 feet	30%

B. Section 206.4, The 100% Affordable Housing Bonus Program

Also relevant to this analysis is San Francisco’s 100% affordable housing provisions. A 100% affordable housing bonus project is defined as a project that contains three (3) or more units, allows residential uses, and is not in their single-family and duplex zone districts. These projects may not seek a density or development bonus from another program, and it cannot demolish any existing units.

I. Development Bonuses:

Similar to HOME-SF standards, a 100 Percent Affordable Housing Bonus Project can receive development bonuses as well. In addition to the zoning modifications (the same as those listed above in paragraph A. Section 206.3, Housing Opportunities Mean Equity) any or all bonuses including priority processing, form based density, thirty foot (30) height increases and ground floor ceiling height increase by five feet (5).

CONSIDERATIONS FOR ASPEN:

1. The tiers provide flexibility for those who want to develop affordable housing. This flexibility encourages more people to develop this type of housing.
2. There are many incentives that this code provides that may motivate developers to create affordable housing.
3. The scale of building in San Francisco drives the incentives, which may be inappropriately scaled for Aspen.

3. Berkley, CA

A. 23.328, Inclusionary Housing

I. Section 23.328.010, Chapter Purpose and Applicability

Applicable to this chapter are residential housing projects constructing five or more dwelling units or one to four units when added to a four-unit property (resulting in five or more units).

II. Section 23.328.020, General Requirements

Inclusionary housing projects are required to include at least twenty percent (20%) of the total number of dwelling units within the project as inclusionary units. In applying this percentage, any decimal fraction above a whole number of dwelling units must be paid through a fee-in-lieu.

II. Section 23.328.030, Payment of In-Lieu Fees as an Alternative to Providing Inclusionary Units

As an alternative to providing inclusionary units required in an ownership project, the applicant may provide a fee in-lieu. This fee is calculated as sixty two and one half percent (62.5%) of the difference between the permitted sale price for inclusionary units and the amount for which those are sold. The fee must only apply to units in a project that are counted in determining the required number of inclusionary units in a project and will not apply to any units provided as a density bonus.

III. Section 23.328.040 Requirements Applicable to All Inclusionary Units.

All units must be reasonable dispersed, the same size and number of bedrooms (on average) as the non-inclusionary units, and comparable to the design of non-inclusionary units. Where the applicant shows that the direct construction and financing costs of the inclusionary units exceeds the sales prices allowed for inclusionary units, the Zoning Adjustments Board may approve one or more of the following measures to reduce costs or increase profitability.

1. Reduce the floor area or the interior amenities of the inclusionary units, provided that such units conform to applicable building and housing codes.
2. Increase the number of bedrooms in the inclusionary units.
3. In a home ownership project, construct rental units in a number required to meet the inclusionary provisions of this chapter applicable to rental housing projects.
4. Waive the in-lieu fees for fractions of units.

B. Chapter 19.62, Priority Permit Processing for Housing for Low and Moderate Income Persons

This section provides the opportunity for relaxed regulations for low income households (a household with income less than 80% of the median income in Oakland PMSA).

The City Manager has the ability to waive or defer the payment of any permit fees, as well as expedite the permitting process, for any housing project in which at least 25% of the units are low and/or moderate income housing.

C. Chapter 22.20, Mitigation and Fees--Conditions for Approval of Development Projects

1. 22.20.065.A.3-6 Affordable Housing Mitigation Fee

This section of the chapter states findings of the financial constraints of developing affordable housing in Berkeley. Though the City has Housing Trust Funds, which play a key financial role, they are unable to single-handedly cover the current costs of affordable housing. Affordable housing developments also leverage multiple federal and state funding sources. Even when the financial aid and the finance from the Housing Trust Fund are combined, affordable housing still is not able to meet the housing needs for lower income households.

Nonetheless, the adoption of the Inclusionary Housing Ordinance altered the ability to develop affordable housing in Berkeley. The ordinance (described above in paragraph A, 23.328 Inclusionary Housing) requires a percentage of all new rental developments with five (5) or more units to provide below market rates. This was a transformative tool to create affordable housing. Similarly, the City also created an affordable housing linkage fee on commercial development. This fee mitigates the need for the affordable housing that it creates. Another finding in this section is that despite both of these ordinances, even when in combination with other funding sources, the City is financially unable to sufficiently address local housing needs. Another financial tool for the City, according to section 22.20.65.C, is that the City can require impact fees on new rental housing. Developers have flexibility to avoid the fee by providing twenty percent (20%) of the

units at their “low income” and “very low income” levels. All units must be reasonably dispersed throughout the project and be comparable to the size, bedrooms, appearance and quality of market rate units. For projects that provide more than one unit for low or very low income households, at least fifty percent (50%) must be for very low income households. When there is an uneven number of units, a majority must be very low income.

Applicants who feel that they have been aggrieved by any mitigation or fee required in this chapter may make an appeal of the decision to the Zoning Adjustments Board. Appeals to decisions made by the Planning Commission or Zoning Adjustments Board will go to the City Council.

CONSIDERATIONS FOR ASPEN:

1. Applicants are required to pay a fee-in-lieu if the calculation for dwelling units results in a decimal. This standard sets consistent measures for the calculation and also ensures all that all benefits from the affordable dwelling units are being realized.
2. Applicants are able to have a reduced requirement if they can show that the construction costs for the units will exceed what they would be able to sell the unit for under the city’s housing price limitations. This could be a consideration for Aspen related to the Housing Credits Program. The city could provide a process that enables a developer to include a single free-market unit or an RO unit as part of a housing credits project to drive the rest of the project. Or the city could provide other fee reductions or reductions in requirements to enable a housing project to financially pencil.
3. Berkley’s findings about the financial struggles of providing affordable housing is an important analysis. According to both Zillow and the US Census Bureau, the median annual income of Berkley is \$85,530 and the typical home value is \$1,626,505. For Aspen, the median annual income is \$78,292 and the typical home value is \$2,659,788. While the income of Aspen residents is lower, the home value is almost \$1,000,000 more than in Berkley. This means that the need to provide low income housing is even greater and the struggle to do so without several tools for significant financial aid is nearly impossible. However, the population and development potential in Berkley should be considered in this as well.
4. When the cost of developing inclusionary units is greater than the profitability of those units, adjustments may be made to adjust the outcome. This is a way to ensure that developing inclusionary units is attractive.

Affordable Housing Summary

Cambridge and San Francisco both have quality standards to encourage the creation of affordable housing and deter the demolition of it. A key concern for Aspen is the development of affordable housing. By allowing 100% AH in each district by right, such as Cambridge does, developers will have greater opportunities to develop housing units. This may also lessen the potential for districts and “NIMBY” homeowners to feel individually selected.

While Cambridge includes a public review process for affordable housing developed by-right, this appears to have the effect of lengthening the review. Allowing for public comment and consultation before the application is turned in and money/time is spent, will help to ensure that each opinion from those surrounding the project is heard. However, if too many meetings are allowed then the process may be unnecessarily extended. If Aspen considered adopting this type of process, careful consideration should be given to what is truly by-right. The land use and permit process should be optimized to easily process the types of development Aspen wants to encourage.

Aspen should consider what incentives, if any, should be provided for the development of affordable housing. The additional height, density, and floor area permitted in Cambridge and San Francisco may be out of scale with Aspen’s small mountain town character. However, these or financial incentives may be needed to help jump start private sector development of affordable housing. Smaller scale incentives could be more appropriate, such as setback variances or nominal height increases to allow taller ceiling heights. Incentives that enable reduced parking could be meaningful if implemented in Aspen. The prioritization of affordable housing permits is a benefit that could be replicable in Aspen.

The Berkely example that allows the Board of Adjustment to vary requirements for Inclusionary Housing Units if the project's construction costs exceed the unit sales prices is a potential opportunity for Aspen. This process could be useful in Aspen as a way to try and prioritize the development of housing units. There is potential to tie this to the credit program.

Growth Management

1. Santa Monica, CA

A. 9.37.110, Construction Rate Program

Santa Monica prohibits projects involving the new construction or alteration of two or more dwelling units in certain residential zone districts from within a 500-foot radius where a development application was deemed complete. This limitation applies for 15 months after the issuance of a building permit. Unless the owner of the previously permitted project has given away the building permit for that project or received a Certificate of Occupancy, a project may only begin construction in the area after 15 months. The building permits are given on a first-come first-served basis. The code states that if the Building Officer determines that another permit has been issued less than 15 months prior, then the applicant is placed on a waiting list in order of the date and time that the permit application and all approvals have been received.

Exemptions apply to projects including 100% affordable housing units, structures that are subject to City-mandated upgrading, vacant sites or those that are uninhabitable and projects that serve the purpose of historic preservation.

CONSIDERATIONS FOR ASPEN:

1. This system does not use allocations or rollovers, which creates efficiency in the system from an administrative tracking perspective.
2. This code relates to both alterations and new construction. Therefore, it is limiting the impact of both types of development within one area.
3. The code exempts 100% affordable housing, which could have the effect of helping to encourage upgrades to existing units, or the creation of new units.

2. Mount Pleasant, SC

A. Residential Building Permit Allocation System, § 156.070 – 156.083

This section limits new units of residential development (one-family, duplex, townhouse, multifamily, and accessory dwelling unit [ADU]) for a five-year period which began in January 2019. Exemptions are provided for renovations, replacement (including demolition), and affordable housing.

Available allocations for single family dwellings (one-family, townhouse, and duplex) are limited to 480 per year, with half (240) made available in January, and half (240) in July, resulting in a maximum of 2,400 new single family units over the five-year period. Available allocations for ADUs are limited to 20 per year, with half (10) made available in January, and half (10) in July, resulting in a maximum of 100 new ADUs over the five-year period. Available allocations for multi-family units is set at 500 for the entire five-year period. Annual multi-family allocations do not appear to be set explicitly, though § 1256.076 (B) (1) alludes to a total annual allocation of 600 dwelling units (480 single-family + 20 ADU + an assumed 100 multi-family). Any unused allocations are rolled over to the following 6-month cycle.

No separate allocation application is required – the building permit application serves both purposes. A maximum of 25 allocation units may be applied for by any single development in a given 6-month cycle. Allocations are awarded on a first-come, first-served basis. If applications exceed available allocations, such applications are held as “first in line” for the subsequent 6-month cycle.

CONSIDERATIONS FOR ASPEN:

1. The straightforward allocation limits (no calculations) and a first-come, first-served system make this an easy to implement ordinance.
2. Bi-annual allocation structure (and program evaluation) allows for real-time development phasing and assessment of what's working and what isn't.
3. The focus is purely on new residential development, which is targeted to fit the issue faced by this community. Aspen may want to consider this for redevelopment rather than net new residential development given the current growth and development patterns.
4. The program includes exemptions for renovations, replacements, and affordable housing, which Aspen may want to consider.

3. Thornton, CO

A. Article VIII, Residential Growth Pacing System

This Article establishes a system for limiting the construction of new residential units through “residential development allocations.” While this code section exists, it was unclear in our research if it has been activated, and calls requesting information were not returned. The framework is instructive so is summarized here.

Renovations of existing residential developments are exempted, unless they result in an increase of the number of units on the site. Additional exemptions are provided for nonresidential development, multifamily residential development with a minimum density of 25 units per acre located within the City Center Area, development in certain annexed areas, individual homes, and residential development determined to be of “Special Merit” (e.g. for expanding the economic base, for providing infrastructure beyond the needs of the specific development, for fulfilling community goals, for property in a special district, for multifamily residential development that meets certain design requirements, or for reducing on-site water usage by one-third).

Annual allocations are established for the following categories:

1. Single-family (defined as residential of < 5 units per acre),
2. Medium density (5-12 units per acre),
3. Multifamily (> 12 units per acre),
4. Manufactured home parks, and
5. Housing mix (special category to assign allocations to housing types that have limited availability in the city's current inventory). Annual single-family and medium density allocations are further broken down into even fourths, made available by quarter.

The total number of citywide annual allocations is not a set amount but is instead up to council discretion based on their review of such things as: projected revenues and economic base, traffic and school occupancy, growth trends, allocation application trends, and staff recommendations. Single-family allocations must be at least equal to the trimmed mean of the past five years of issued building permits (removing the lowest and highest years in that period).

Single-family and medium-density allocations must be applied for no later than 30 days prior to the first day of the calendar quarter for which a building permit is sought. Applications are to include a proposed schedule of additional estimated allocations sought for the next five years as part of any multi-unit / subdivision developments. The maximum annual allocation request per project, per phase is 120 units. If all application and eligibility criteria are met, awarding of requested allocations is administrative. If the number of allocations applied for exceeds the number available in a given quarter, awarded allocations are prorated amongst all qualifying applicants. Applicants looking to close out a subdivision phase in which ten or fewer lots have not yet received allocations are given priority. Any unused allocations from a given quarter are rolled to the next quarter, but unused fourth quarter allocations cannot be rolled over to the following year. Instead, these are awarded on a first-come, first-served basis once the original fourth quarter application period ends.

Multi-family, manufactured home, and housing mix category applications are reviewed on a rolling basis annually (not quarterly). Manufactured home and housing mix allocations are awarded first-come, first-served until the citywide annual allocation limit is reached. For multi-family allocations, first priority is given to applications that did not receive allocations in the previous calendar year and that were placed “on file” (in the queue) by the department. Any remaining multi-family allocations are awarded on a first-come, first-served basis. In addition, the overall annual allocation limit may be raised to allow the “last in line” project to be completed, provided that the additional allocation does not exceed 10% of the proposed project’s unit count.

CONSIDERATIONS FOR ASPEN:

1. Focus is purely on residential resulting in additional units (new construction and renovation) – targeted to fit the issue faced by this community
2. Exemptions for high-density multi-family and projects of “special merit” – allowing discretionary pass through when needed (could become difficult to manage, or an avenue for loopholes; but also incentivizes compliance with other planning / design goals).
3. Single-family allocations awarded quarterly, which seems administratively tedious. Could be more impactful if quarterly allocation limits were dynamic and adjusted to new information.
4. Pro-rated distribution of single-family allocations exceeding a given quarter’s limit adds staffing certainty to the process (no rush to process requests as in first-come, first-served systems).
5. Innovative approaches to multi-family applications that exceed current limits:
 - a. Opportunity for increase of annual limit to allow that “last project” to squeak through the door
 - b. Placement of projects that don’t make the cut on a “first in line” waitlist for the following year

Growth Management Summary

Santa Monica’s approach to growth management is hyper-local, limiting development within 500ft of recent development for a period of 15-months. While this ensures no neighborhood experiences a “sea of cranes,” it may prove inappropriate in situations where the City may desire more intensive development. It also would appear difficult for the development community to track, and likely causes City staff to feel intense pressure to process applications, as being the first application through the gate in a given area is paramount.

Mount Pleasant and Thornton and take a more citywide approach, leveraging annual, semi-annual, or quarterly allocation limits to pace development. This allows for a smooth application process and establishes certainty for the development community. Thornton’s quarterly application process for single-family units, in particular, seems to prove administratively efficient, substituting a pro-rated distribution for the first-come, first-served approach used in other processes.

All three communities have built in exemptions for affordable housing or other community planning and design goals, either through explicit exception or through discretionary review. Critically, Mount Pleasant and Thornton do not exempt single-family units, as they have found that these developments are just as impactful, if not more so, to their built and natural environments.

As Aspen considers the potential to evolve the Growth Management Quota System, it may be helpful to consider implementing the following practices:

1. Require allotments for single-family residential development
2. Replace first-come, first-served processes with procedures for pro-rating and the creation of “first in line” queues to reduce pressure on staff review
3. Establish a review and assessment schedule to adjust allotment limits to respond to recent trends

Demolition

1. Telluride, CO

A. Division 3, Relocation and Demolition

I. Definitions

Telluride regulates two types of demolition. The first, partial demolition, is limited demolition of a structure which occurs solely as part of a remodel, alteration, or addition to an existing structure. The second is full demolition. This is defined as “destruction, disassembly, dismantling, damage, razing, or tearing down of fifty percent (50%) or more of an existing structure (prior to commencing development) as measured by the finished surface of all exterior wall and roof area above finished grade and associated assembly and components necessary for the structural integrity of such wall and roof area.” For demolition related to designated employee housing units, the code states that no demolition, removal, or relocation of any structure which contains a designated employee dwelling unit is permitted unless first approved by Planning and Zoning.

II. Section 7-306, Standards for Review of Demolition

The demolition standards are applicable to non-rated or non-designated structures. The demolition may only be approved if:

1. The historical integrity and architectural character will not be compromised
2. Development will add to the architectural character of the area
3. The demolition mitigates impact on historical importance of the surrounding structures
4. The demolition mitigates the impact on the architectural character of the structure
5. The applicant has agreed to redevelop the originating site after demolition pursuant to a redevelopment plan which is compatible with/enhances the integrity of the immediate area and neighborhood

III. 7-308, Measurement of Demolition

Applicants are required to submit a diagram that highlight the surface of all existing exterior walls and roofs. Existing fenestration (doors, windows, skylights, etc.) are not counted in the measurement. Also required to be included in the diagram is the exterior surface area to be removed. The wall and roof area that is being removed to accommodate new or relocated fenestration is counted as exterior surface area being removed. Lastly, each exterior wall and roof segment as a flat plane with an area tabulation is also required and counted in the measurement.

CONSIDERATIONS FOR ASPEN:

1. The town defines both partial and complete demolition. This can help to set proper mitigation impacts that reflect the amount of demolition being done.
2. While the code deals mostly with mitigating historical and architectural character, the purpose behind each of them may be used in Aspen’s demolition codes.

2. International Existing Building Code

A. Section 501-50, Classification of Work

This section of the Building Code defines classifications of demolition. It applies to alteration, repair, addition and change of occupancy of existing structures. The International Existing Building Code defines three (3) levels of alteration:

- Level 1: The removal and replacement or the covering of existing materials, elements, equipment or fixtures using new materials, elements, equipment, or fixtures that serve the same purpose.
- Level 2: The reconfiguration of space, the addition or elimination of any door or window, the reconfiguration or extension of any system, or the installation of any additional equipment.
- Level 3: In level 3, the work area exceeds fifty percent (50%) of the building area.

This section requires projects with different levels, or a change in occupancy, to comply with different chapters of the applicable building codes. The higher the level, the more current regulations apply to the project.

B. Section International Residential Code appendix AJ501.3, Extensive Alterations

This section uses the term “alterations” but has the same meaning as demolition in the land use code. It defines when an extensive alteration as situations when the entire scope of work will change 50% or more of the floor area in a dwelling unit. In these situations, the project is considered “reconstruction” and subject to upgrade requirements in the current applicable building codes.

CONSIDERATIONS FOR ASPEN:

1. Taken together, these building code provisions require compliance with current codes when 50% or more of a dwelling unit or building is being remodeled or upgraded. This takes the full scope of work into account, rather than relying on the impact only to exterior walls and roof assemblies. Using this measurement may be more restrictive than the land use code’s current threshold of 40% of the walls and roof being removed.

3. Berkley, CA

A. Section 23.326, Demolition and Dwelling Unit Control

There are two sections for eliminating dwelling units through demolition. The first is for buildings constructed before June 1980 with two or more units. The Zoning Adjustments Board (ZAB) will approve a demolition permit to these properties if they are considered hazardous or unusable, if the building will be moved with no net loss to units and no change in affordability, if the demolition is necessary to permit construction of special housing needs facilities, and if the demolition is necessary to permit construction of at least the same number of dwelling units. The applicant is required to pay a fee set by the City Council for each demolished unit to mitigate the loss of affordable housing. An alternative to the fee is a unit in the new project designated to a below market rate household. Through this fee in lieu, the applicant will enter into a regulatory agreement with the City of Berkley.

With the exception of one hundred percent (100%) affordable housing projects, the applicant is required to provide assistance with moving expenses, subsidize the rent differential for a comparable replacement unit in the same neighborhood, if feasible.

The second set of restrictions are for buildings constructed before June 1980 with only one dwelling unit. Demolition on these buildings is prohibited if the building was removed from the market under the Ellis Act, there have been verified cases of threats or illegal eviction within the last three years.

I. Affordable Housing Mitigation Fee

According to this section, any project for the conversion of housing units to condominiums is subject to an affordable housing mitigation fee. The sum of such fees will go to the Housing Trust Fund program. This fee is nexus-based and is calculated by:

1. The sum of monthly mortgage payments, taxes and homeowners’ association fees, multiplied by 12. Mortgage payments will be the current average fixed rate 30-year mortgage as reported by the Federal Housing Administration applied to 95% of the purchase price.
2. Rental costs shall be the current rent of the unit at the time of filing an application for conversion under this chapter, also multiplied by 12. If the unit is owner-occupied or has not been rented within the previous 12 months, the rental costs shall be the monthly rental rate for comparable recently rented dwelling units within a reasonable radius of the property.
3. The difference between the condominium ownership costs of the unit less the rental costs shall then be divided by the current fixed mortgage rate as set by the Federal Housing Administration to determine this fee.

II. Exemptions

Inclusionary housing units are exempt from the affordable housing fee. This fee may also be reduced to either four (4%) or eight percent (8%) depending on units, if the owner converting the property has agreed

as part of the application to limit future rent increases for any resident to no more than sixty five percent (65%) of the increase in CPI.

CONSIDERATIONS FOR ASPEN:

1. This code is very specific and emphasizes direct citations to California law. We recommend the City's legal consultants, White and Smith review the code to confirm if it is legally enforceable in Aspen.
2. This zoning code sets valuable provisions for affordable housing mitigation. Aspen may consider adding a provision to require applicants to pay a fee as part of the multi-family replacement program for each demolished unit to mitigate the loss of affordable housing.

Demolition Summary

The demolition calculations in Telluride and in the IBC are instructive for Aspen. Telluride uses similar methodology as Aspen does but has some specific criteria that can be used to evaluate the demolition. This could be instructive if the city implements a permitting / allotment system for demolitions. Aspen could consider if the current 40% threshold is appropriate, or if a 50% threshold that aligns with the IBC and Telluride makes more sense.

The Berkely example may be most useful when considered in the context of Aspen's multi-family replacement program and could be a post-moratorium work product. Considerations for displaced owners is an interesting component that does not exist in Aspen's code today. The system appears to be deeply rooted in California law, so review by the city's legal team is recommended.

Administrative Procedure

The administrative procedures review focuses on how communities complete their general review processes, which types of authorities are granted to the Community Development Director and how interpretations of code are completed.

1. Glenwood Springs, CO:

A. Title 070, Article 070.060 Administration and Procedures:

1. 070.060.020 , Summary Table of Development Review Procedures

The relevant section of code includes in its introduction a table that summarizes Development Review Procedures. It is categorized by procedure and lays out the code reference, type of notice and meetings necessary, and the reviewing/decision-making body/bodies. Depending on the type of application there are different legislative bodies who may review, recommend revisions, review, issues a decision or hear an appeal. These legislative bodies include City Administration, Development Review Committee, Planning Commission and City Council. A neighborhood may also act as another reviewing entity during a Pre-Application Neighborhood Meeting. The reviewers and/or decisions making bodies for each procedure are summarized in Table 4 below.

Table 4: Summary Table of Development Review Procedures (Glenwood Springs Municipal Code, 070.060.030.a - Figure 060 1: Summary of Common Review Procedures)

Table 060.1: Summary of Development Review Procedures										
KEY: R= Review and Recommendation D= Review and Decision A= Appeal ✓ = required										
Procedure	Code Reference	Notice			Pre-App. Neigh. Meeting	Pre-Application Conference	Review and Decision-Making Bodies			
		Published	Mailed	Posted			Staff	DRC	Planning Comm.	City Council
ORDINANCE AMENDMENTS										
Rezoning	070.060.040(a)	✓	✓	✓	✓	✓	R	R	R	D
Rezoning to Planned Unit Development (PUD)	070.060.040(b)	✓	✓	✓	✓	✓	R	R	R	D
Code Amendment (Text)	070.060.040(c)	✓					R	R	R	D
Annexation	070.060.040(d)	Per Colorado statutes								
DEVELOPMENT PERMITS										
Site/Architectural Plan Review	Admin.	070.060.050(a)(3)	Note [1]		✓	D	R	A		
	Minor	070.060.050(a)(4)	✓	✓	✓		✓	R	R	D A
	Major	070.060.050(a)(5)	✓	✓	✓	✓	✓	R	R	R D
Optional Master Plan	070.060.050(b)	✓	✓	✓	✓	✓	R	R	R	D
Construction Final Plans	070.060.050(c)					✓	D	R ^[2]	A	
Location and Extent	070.060.050(d)	✓	✓	✓		optional	R	R	D	
Special Use Permit	070.060.050(e)	✓	✓	✓		✓	R	R	D ^[4]	A ^[4]
SUBDIVISION PROCEDURES										
Minor Subdivision	070.060.060(a)					✓	D	R	A	
Preliminary Plat	070.060.060(b)	✓	✓	✓	✓	✓	R	R	R	D
Final Plat	070.060.060(c)					✓	D	R	A	
Condominiumization	070.060.060(d)	<i>Procedure depends on number of condominium units. See Subsection 070.060.060(d).</i>								
Vacation of ROW	070.060.060(e)	✓	✓	✓		✓	R	R	R	D
FLEXIBILITY AND RELIEF PROCEDURES										
Variance	070.060.070(a)	✓	✓	✓		✓	R	R	D	
Administrative Adjustment	070.060.070(b)					optional	<i>Considered by decision-maker for associated application.</i>			
Appeal	070.060.070(c)	✓	✓	✓	optional	R	<i>According to previous rows in this table.</i>			
Notes:										
[1] Administrative Site/Architectural Review involving five or more units is required to follow public noticing procedures in Subsection 070.060.030(f)(3).										
[2] Director has discretion to refer the application to the DRC.										
[3] Director has approval authority for non-permanent right-of-way encroachments. All others require Council approval.										
[4] Special Use Permits involving Medical Marijuana Business, Retail Marijuana Business, and Marijuana Cultivation uses require hearings before the Planning and Zoning Commission and City Council. The Planning and Zoning Commission has review and recommending authority and City Council has review and decision making authority.										

Figure 1 and Table 5 below summarize two of the processes for review procedures. The code section contains a figure similar to Figure 1 for multiple procedures including ordinance amendments, subdivision procedures and flexibility and relief procedures. Table 2 summarizes the thresholds for each reviewing body based on the development type.

Figure 1: Summary of Common Review Procedures



Source: Glenwood Springs Municipal Code, 070.060.030.a - Figure 060 1: Summary of Common Review Procedures

Table 5: Site/Architectural Plan Review Thresholds

Table 060.2: Site/Architectural Plan Review Thresholds ^[1]			
Type of Development	Administrative Site/Architectural Plan (Director) ^[2]	Minor Site/Architectural Plan (Planning Commission)	Major Site/Architectural Plan (City Council)
Residential	1 to 8 new dwelling units	9 to 24 new dwelling units	Any new development on site larger than 10 acres; 25 or more new dwelling units
Nonresidential	Less than 10,000 square feet gross floor area	At least 10,000 and no more than 30,000 square feet gross floor area	Any new development on site larger than 10 acres; development of greater than 30,000 square feet gross floor area
Mixed-Use	1 to 8 new dwelling units and less than 10,000 square feet nonresidential gross floor area	9 to 24 new dwelling units or at least 10,000 and no more than 30,000 square feet nonresidential gross floor area	Any new development on site larger than 10 acres; 25 or more new dwelling units or greater than 30,000 square feet nonresidential gross floor area
Parking as a Principal Use, or Parking Structure	Up to 25 vehicle spaces	26 or more spaces	Parking structure

Source: Glenwood Springs Municipal Code , 070.060.030.a - Figure 060 1: Summary of Common Review Procedures

II. Procedure Timeline

The Glenwood Springs code outlines specific timelines for different application types, which are summarized in Table 6 below.

Glenwood Springs includes a number of key thresholds related to administrative applications.

- The applicant must be notified through a written notification, of the final decisions within ten (10) days of it being made.
- If given an approval, the applicant has up to three (3) years before the approval expires. However, the Director may grant extensions for up to one (1) year.
- For all applications other than administrative site/architectural plans that were subject to staff decision, the Director's decision is immediately final. The Planning Commission and City Council must be notified within three (3) business days of the administrative decision.
- For administrative site/ architectural plans, the Director may refer the final decision to Planning Commission. The Commission will vote for a final decision or refer the application to City Council.

Table 6: Summary of Procedural Timeline*

Time	Action
10 days prior to pre-application meeting	Application must be submitted with all requirements
5 days after application submittal	Director determines completion
6 months after staff recommendations	If no resubmittal, application is abandoned
10-15 days prior to a hearing	Public notices are sent out and posted notices go up
7 days after the first notice	Second public notices are sent out
10 days after public hearing	Applicant must be notified of a decision
3 days after administrative approval	Planning Commission and City Council are notified of decision
3 years after approval	Expiration of approval
1 year after denial	Decision-making bodies are unable to decide on significantly similar applications

* This table was developed by Design Workshop and is not contained within Glenwood Springs' code

III. Interpretation

The Director is responsible for interpretations of applicability or design requirements during the Site/Architectural Plan Review Process. An applicant may appeal the Director's interpretation to the designated body listed under "Administrations and Procedures." For the review of an interpretation, the review body may affirm, reverse, or amend the interpretation. The decision of the review body must be based on several factors. These include the facts stated in the application, the requirements and intent of the applicable standards compared to the appealed decision, evidence related to how the applicable standards have been interpreted in the past, and consistency with the Comprehensive Plan. The ten (10) day notice period in Table 6 applies to the applicant's notification of this decision.

IV. Neighborhood Meetings

A Pre-Application Neighborhood Meeting serves as a way to allow the surrounding community in the area to comment on a project early on in the process. This avoids significant funds being spent on the project prior to receiving feedback from the public which can potentially lead to costly revisions. This type of meeting is required for a Rezoning, Rezoning to PUD, Site/Architectural Plan Administrative review, Major Site/Architectural Plan Review, Optional Master Plan and Preliminary Plat. Neighbors within three hundred feet (300') of the project will receive a mailed or electronic notification in advance of the meeting date. The Pre-Application Neighborhood Meetings may be required in addition to a Public Hearing.

VI. Development Permit Exemptions:

Section 070.060.050.a.2 lists the application types that are exempt from site/architectural plan review procedure. These include a change in use that does not require other development, conversion of non-residential building area into up to five (5) units without a change in building area or footprint, alterations that are less than a twenty-five percent (25%) increase in area, tenant improvements that do not impact

area, height, density, or development standards, construction of, additions to, or accessory structures for a single or two-family detached dwelling, and construction of accessory buildings, fences, or walls. In order to be exempt from the review procedure, they must comply with the standards of Glenwood's code.

CONSIDERATIONS FOR ASPEN:

1. Glenwood Springs has a clearly defined process for administration procedures. The code contains a number of flow charts and a summary table for development review procedures which help to clearly explain the review process. Such visual illustrations should be considered for inclusion within revised section of the Aspen code. Although the code helps describe the overall process, a flowchart or other visual aids could be used to show the timeline for each process.
2. The Pre-Application Neighborhood Meetings are a resourceful tactic within Glenwood Springs. Aspen requires some neighborhood outreach prior to the first public hearing for certain application types. It may be worth considering if a neighborhood meeting should be included as a step prior to the submission of an application, as is the case in Glenwood Springs. Given that Aspen typically has a longer land use review process than Glenwood Springs, this addition may further complicate or extend the existing process.
3. Currently, Aspen's Community Development Director is responsible for interpretations of the code, with appeals going to Council. It may make sense to have some appeals of interpretations go to the Planning and Zoning Commission for areas that are typically in their realm of review.

2. Malibu, CA

A. Chapter 17.04 Administration and Enforcement:

I. 17.045.060-.090, Interpretations, Conflicting Regulations and Enforcement

When interpreting the provisions under this chapter, they must be held to the minimum requirements. However, when conflicts occur between the regulations under this title and the building code or other regulations, the more restrictive regulations apply. Another standard in this section states that nothing in Title 17, Zoning, serves the purpose of amending any city regulation requiring a permit and/or license or entirely repeal the City's building code. In order to enforce the standards within this Title and conditions made on approvals, the planning department is responsible for inspecting city properties to monitor compliance.

II. 17.04.220, Appeal of Action

A person may request an appeal on decisions made for site plan review, variance, stringline modification, conditional use permit, reasonable accommodation request, determination of permitted use, sign permit, cultural resources review, highway dedication or improvement, or temporary use permit applications. An appeal for a decision by the Director is made to the Planning Commission and to the City Council for appeals to a decision made by the Planning Commission. An appeal is limited to only being reviewed based on matters raised within it. In the event of a deadlock vote decision, the original decision is final, unless appeals to Planning Commission are reappealed to City Council.

CONSIDERATIONS FOR ASPEN:

1. There are specific regulations for both code and deciding body conflicts. These are helpful in avoiding clashing and confusion.
2. The factors that appeal decisions are made upon are limited. This limitation offers adequate notice to both the decision-making bodies, the community and applicants. This also helps to eliminate the necessity of rehearing matters not subject to challenge.

3. Malibu does not state when the public hearings are required within the public hearing section. Although the processes can be found individually in other chapters, it may cause confusion. For ease of usability, requirements relating to specific topics should be kept under that topic's section.

Administrative Procedures Summary

Both Glenwood Springs and Malibu have similar complexities that their development applications must deal with. These include environmental concerns, worries concerning sprawl and complex residential development. Out of the two case studies, Glenwood Springs was significantly more user friendly in both its online application and in the way that the code itself reads. One concern of Aspen is the complexity of the code and the way in which it contradicts itself. By adding flowcharts and tables, users would be able to more easily understand the process in which they will go through.

Both Malibu and Glenwood Springs have certain appeals reviewed by the Planning Commission, which could be beneficial for Aspen to consider.

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MEMORANDUM

To: City of Aspen
From: Design Workshop
Date: April 8, 2022
Project Name: Aspen Moratorium Support
Project #: 6829
Subject: Review of Residential Development Impacts

Introduction

To assess the impacts of residential development on Aspen and its neighborhoods, Design Workshop completed a review and analysis of trends related to the Pitkin County Landfill, construction and demolition, residential sales and property transfers, building and permitting, assessment rates, and affordable housing mitigation. This analysis is intended to inform how residential construction has impacted the City of Aspen and how city staff might update policies within the Land Use Code to respond to current challenges driven by new residential development. The data used to inform this memorandum was reviewed and confirmed for accuracy by City of Aspen staff. This memorandum completes the deliverables for Task 3.3.

Housing in Aspen Today

Within the City of Aspen there are 6,197 housing units, 3,540 (57%) of which are occupied, meaning that “the persons living in the unit must consider it their usual place of residence or have no usual place of residence elsewhere.”¹² The city’s remaining 2,657 units are classified as vacant, meaning that the unit is “entirely occupied by persons who have a usual residence elsewhere” or that no one was living in the unit at the time of the interview.³ This excludes occupants that are temporary absent.⁴

Of the city’s 6,197 housing units, 2,176 (35%) are deed restricted units managed by the Aspen Pitkin County Housing Authority (APCHA). These 2,176 units are comprised of 963 owner-occupied units and 1,213 renter occupied units.⁵ APCHA does not require that tenants work in the same city as their unit is located in, only that tenants work a minimum of 1,500 hours in Pitkin County, use the unit as their primary residence (at least nine month per year), and own no other developed residential property in the Ownership Exclusion Areas.⁶ Because APCHA does not require that that tenants work in the same city or area as their unit is located in, it is difficult to determine what fraction of APCHA tenants work full-time in Aspen. According to Census data, Aspen’s 2020 population was 7,004 persons. The city has an estimated 1,191 businesses employing 13,920 individuals. The City of Aspen has established housing targets over the years, which has been reflected in the city’s growth management requirements.⁷

¹ U.S. Census Bureau, Subject Definitions.

² U.S. Census, 2021 ACS 5-year Estimates

³ U.S. Census Bureau, Subject Definitions.

⁴ Ibid.

⁵ City of Aspen Maps, Arc GIS. 2022.

⁶ APCHA, Basic Eligibility Requirements.

⁷ Chapter 26.470, Growth Management Quota System requires 65% housing mitigation for commercial and lodge development

Landfill Trends & Impacts

The Pitkin County Solid Waste Center, also known as the Pitkin County Landfill, is the primary destination for municipal solid waste and construction and demolition debris generated in Aspen. Due to the pace and scale of construction and demolition (C&D) in Aspen, more than half of what ends up in the landfill each year is generated by construction and demolition activities.⁸ As a result, the landfill's usable space and air rights are quickly diminishing, with the landfill expected reach its capacity in the next two to four years. The rate of landfill use is also rising, with the annual number of landfill visits increasing 13% between 2019 and 2021.⁹ The rise in use has been accompanied by increases in the amount of waste deposited, with C&D debris and concrete seeing the largest increase in tonnage since 2019, increasing 17% and 41%, respectively.¹⁰

Figure 1 illustrates the gross tonnage of construction and demolition debris and municipal solid waste deposited in the landfill since 2015. While the total tonnage of waste buried from construction and demolition debris has decreased by 24% since 2015, it still remains greater than the total amount of municipal waste produced by of Aspen businesses and residents.¹¹ A 2016 analysis of C&D loads sent to the landfill determined that 35% of those materials could have been diverted through existing recycling and reuse programs at the Solid Waste Center.¹² While there has been an effort amongst the Aspen development community and Solid Waste Center to divert re-use materials where possible, a significant amount of construction waste is unable to be re-purposed or re-used.

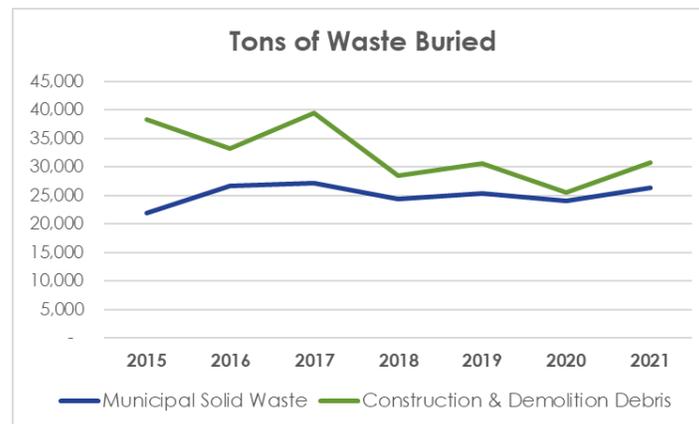


Figure 1. Tons of Waste Buried by Type. Source: Pitkin County Landfill.

Given current usage trends, the Landfill's usable space is anticipated to be capable of accommodating waste for approximately two to four more years. Following the consumption of usable space, the landfill could repurpose the current compost area, measuring scales, and road from the landfill to the operations facility to stretch the useable life of the landfill to 2031.¹³ Once the landfill is completely full, waste from Aspen will have to be transported to other landfill facilities in Garfield County, Grand Junction, or to communities throughout the front range with the additional cost of transporting waste being absorbed by Aspen residents and businesses.¹⁴

⁸ Pitkin County Landfill, Construction and Demolition Debris.

⁹ Pitkin County Landfill

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ Interview with Pitkin County Solid Waste Center staff. February 16, 2022.

Demolition Trends¹⁵

The City of Aspen defines demolition as razing, disassembling, or destroying 40% or more of an existing structure as measured by the surface of all exterior wall and roof area above finished.¹⁶ A project that passes the 40% threshold for demolition is required to remedy structural non-conformities and is typically more impactful to the community due to the project's duration, waste generation, and required labor force.

Residential demolitions have accounted for approximately 81% of all real estate related demolitions since 2013. The demolition of single-family homes has been specifically prevalent in Aspen, with single-family homes accounting for 66% of all real estate related demolition. The rate of demolition for residential projects has also increased, with the number of demolitions in 2021 being more than double the previous two years. Table 1 provides a breakdown of real estate related demolitions by structure type since 2013.

Year	Single Family	Duplex	Mixed Use	Multi-Family	Commercial	Hotel/Lodge	Total Residential Demolition	Total Demolitions	Residential Share of Total Demolitions
2013	3				2		3	5	60%
2014	4	1	1				5	6	83%
2015	2	1				1	3	4	75%
2016	3	4			2		7	9	78%
2017	3					1	3	4	75%
2018	9					1	9	10	90%
2019	5	1	1	1			7	8	88%
2020	5	2			1		7	8	88%
2021	14	1			1	3	15	19	79%
Total	48	10	2	1	6	6	59	73	81%

Table 1. Demolition by Structure Type. Source: City of Aspen.

As a result of the permitting and cost implications of passing the demolition threshold on a project, many projects work to demolish near or up to the threshold of 39.9%. This results in situations whereby a project may have a significant construction impacts on a neighborhoods but not be subject to the same level of review or mitigation as a demolished project. Between 2019 and 2021, there were 85 projects that were valued over \$200,000, but did not require a demolition permit. Additionally, the number of projects above \$200,000 that do not require a demolition permit has increased 41% between 2019 and 2021. Table 2 illustrates the number of residential projects since 2019 that have not passed the demolition threshold.

	2019	2020	2021
Total Residential Building Permits	114	178	231
Number of Residential Projects that Trigger Demolition	7	7	15
Number of Residential Projects that Do Not Trigger Demolition	107	171	216
Number of Residential Projects Over \$200,000 that Do Not Trigger Demolition	34	45	58

Table 2. Changes in the Rate of Demolition for Residential Development Projects. Source: City of Aspen.

Residential Transaction & Sales Trends

Since 2018, there has been a steady increase in the pace and value of residential sales in Aspen. Both the number of sales and details on sale amounts can be examined and quantified using Real Estate Transfer Tax (RETT) data. The City of Aspen's RETT is equal to 1.5% of the property's closing price and assessed

¹⁵ Data obtained from the City of Aspen's Community Development Department.

¹⁶ City of Aspen, City Municipal Code.

against the purchaser of the property.¹⁷ The 1.5% RETT is distributed amongst two uses, with 1% going to towards the city’s affordable housing trust fund and 0.5% going towards the Wheeler Opera House.¹⁸ Not all properties that are exchanged in Aspen are subject to the RETT. For example, in cases where a property is deed restricted, or gifted to another and where no monetary consideration other than love and affection is present, a RETT payment would not be required by the recipient of the property. A full list of exemptions can be found on the City of Aspen’s website. Table 3 illustrates a breakdown by year of non-fractional residential property sales and transfers. These numbers are inclusive of both properties that did and did not pay Real Estate Transfer Taxes. Sales and transfers for fractional ownership properties were omitted from this analysis.

Neighborhood	2018	2019	2020	2021	Percent Change: 2018-2021
Maroon Creek & Five Trees	77	75	144	171	55%
Cemetary Lane	24	26	43	39	38%
West End	90	85	124	139	35%
Smuggler's Run	88	75	82	78	-13%
Downtown	304	320	341	455	33%
East End	19	37	38	31	39%
Total	602	618	772	913	34%

Table 3. Residential Property Sales & Transfers. Source: City of Aspen.

The City of Aspen has experienced a 34% increase in the number of residential transactions since 2018. In 2021, 913 non-fractional and non-deed restricted dwelling units exchanged ownership, the equivalent of approximately 15% of all dwelling units and 23% of all non-deed restricted dwelling units within the city. While an increase in residential transaction has occurred in most neighborhoods, The Maroon Creek & Five Trees neighborhoods have experienced the most significant increase, with the number of transactions increasing 55% over the past four years.

Increases in the number of residential transactions in Aspen have been accompanied by a significant increase in the total value of sales recorded. The total value of residential sales in Aspen increased by 58% in four years, increasing from approximately \$689,000,000 in 2018 to \$1.6 billion dollars in 2021. All neighborhoods have seen an increase in sales value, with Downtown and the Maroon Creek & Five Trees neighborhoods seeing the largest increases of 59% and 85%, respectively. Table 4 illustrates the total value of sales in Aspen neighborhoods from 2018 through 2021.

Neighborhood	2018	2019	2020	2021	Percent Change: 2018-2021
Maroon Creek & Five Trees	\$32,925,000	\$87,872,641	\$129,711,050	\$223,496,001	85%
Cemetary Lane	\$70,550,000	\$62,193,190	\$202,566,696	\$141,276,687	50%
Downtown	\$253,342,970	\$255,881,110	\$630,427,781	\$625,172,762	59%
East End	\$52,602,500	\$90,881,759	\$122,949,333	\$113,657,510	54%
Smuggler	\$86,485,500	\$78,058,500	\$178,991,133	\$114,439,187	24%
West End	\$192,959,404	\$166,119,603	\$400,704,323	\$424,287,795	55%
Total	\$688,865,374	\$741,006,803	\$1,665,350,316	\$1,642,329,942	58%

Table 4: Value of Sales by Neighborhood. Source: City of Aspen.

As the total value of sales have increased so has the median and average sale price per dwelling unit. The median sale price for a market-rate residential unit in Aspen in 2021 was \$2,650,000, 33% percent higher than the 2018 median sale price of \$1,757,000. Similarly, the average sale price for a market-rate residential unit in 2021 was \$4,922,000, 36% higher than the 2018 average sale price of \$3,160,000. Almost all neighborhoods have seen increases in the median & average sale price of homes, with the West

¹⁷ City of Aspen, Finance Department.

¹⁸ Ibid.

End, East End, and the Maroon Creek and Five Trees areas seeing the largest increases in both median and average sale prices. Table 5 and Table 6 illustrates the median and average sale price shifts in neighborhoods from 2018 through 2021.

Neighborhood	2018	2019	2020	2021	Percent Change: 2018-2021
Maroon Creek & Five Trees	\$3,840,000	\$6,825,000	\$5,837,500	\$7,825,000	51%
Cemetery Lane	\$4,000,000	\$3,612,500	\$6,325,000	\$4,660,000	14%
Downtown	\$1,252,500	\$1,660,000	\$2,650,000	\$2,312,500	46%
East End	\$3,275,000	\$4,675,000	\$4,325,000	\$6,675,000	51%
Smuggler	\$840,000	\$925,000	\$890,875	\$923,465	9%
West End	\$2,195,000	\$3,237,500	\$3,647,000	\$4,672,667	53%

Table 5: Median Sale Price by Neighborhood. Source: City of Aspen.

Neighborhood	2018	2019	2020	2021	Percent Change: 2018-2021
Maroon Creek & Five Trees	\$3,658,333	\$9,763,627	\$7,206,169	\$11,174,800	67%
Cemetery Lane	\$4,409,375	\$3,887,074	\$6,985,058	\$6,727,461	34%
Downtown	\$2,435,990	\$2,460,395	\$4,740,059	\$3,512,207	31%
East End	\$4,782,045	\$5,345,986	\$4,728,821	\$8,118,394	41%
Smuggler	\$2,982,259	\$2,691,672	\$6,392,540	\$2,934,338	-2%
West End	\$3,640,743	\$5,191,238	\$5,489,100	\$7,071,463	49%

Table 6: Average Sale Price by Neighborhood. Source: City of Aspen.

Building & Permitting Trends¹⁹

The rapid increase of construction activity in Aspen is visible when examining building permits from 2019 through 2021. Between 2019 and 2021, the total number of building permits issued has increased 51%, while the total number of permits related to physical construction activities (i.e., Building Permits, Interior Finish and Fixture Removal, and Building Repair) has increased 44%. As a result of the Building Department's tracking software transition during 2019, the number and value of permits during 2019 are an approximation based on the best available data.

As the number of building permits has increased, so has the estimated value of permits. While there is no mechanism during the permitting process to determine a project's construction and environmental impacts on the surrounding area, a building permit's estimated value can serve as type of proxy to assess the impact of a project, with permits with a larger valuation having more significant impacts. Between 2019 and 2021 the valuation of building permits increased 45%, from \$83.7 million to \$152.8 million. The total value of building permits over the three-year period was approximately \$369,336,000.

For the purpose of this analysis, the number of building permits with a valuation of over \$200,000 was quantified for the years 2019 through 2021. The amount of \$200,000 was chosen as a threshold to filter out smaller projects that are likely to require less time to complete and create fewer substantive impacts for a neighborhood. From 2019 through 2021, residential building permits with a value over \$200,000 made up approximately 32% of all building permits and increased by 44% over the three period. Despite accounting for only 32% of all building permits, projects valued over \$200,000 accounted for 96% of the total value of residential permits from 2019 through 2021, totaling approximately \$353,447,000. Table 7 illustrates building permit and valuation data from 2019 through 2021.

¹⁹ Data obtained from the City of Aspen's Community Development Department.

	2019	2020	2021	Change: 2019-2021
Total Residential Building Permits	114	178	231	51%
Total Building, IFFR, & Roofing Permits	106	119	188	44%
Total Residential Building Permits with a Value over \$200,000	41	53	73	44%
Percent of Residential Permits with a Values over \$200,000	35.96%	29.78%	31.60%	N/A
Total Value of Building Permits	\$ 83,711,155	\$ 132,779,707	\$ 152,845,152	45%
Value of Permits over \$200,000	\$ 80,325,195	\$ 128,128,699	\$ 144,993,776	45%
Percent of Value Generated by Projects Over \$200,000	95.96%	96.50%	94.86%	N/A

*As a result of the Building Department's tracking software transition during 2019, the number and value of permits during 2019 are an approximation based on the best available data.

Table 7. Building Permit Amount & Valuation. Source: City of Aspen.

Assessment Trends²⁰

To assess how new construction and recent increases in sale prices effect home valuation within Aspen, Design Workshop analyzed current and historic Pitkin County Assessor's data. Using Assessor's data, the median and average Actual Value, meaning the total value in which a home's appraised value is calculated, was calculated for both market-rate single-family homes and condominiums. Residential properties that were deed restricted or were categorized by the Assessor's office as Lodge properties were omitted. For single-family dwelling units, the 2021 median Actual Value was \$6.93 million while the average Actual Value was \$7.76 million. For condominium dwelling units, the 2021 median Actual Value was \$1.92 million while the average Actual Value was \$2.74 million.

To examine how changes in the residential real estate market effected property values throughout Aspen's neighborhoods, changes in actual values from 2018 through 2021 were analyzed. Market-rate residential and condominium properties throughout Aspen's six major neighborhoods, listed in Table 8, were chosen at random and the rate of Value change from 2018 through 2021 was recorded. The largest increased in Actual Values were present in the East End and Downtown, which increased 26% and 19%, respectively. The smallest increase in Actual Values were present in the Smuggler's Run and Cemetery Lane Neighborhoods, which both increased 9% between 2018 and 2021. Newly constructed properties on pre-established lots were also examined to assess the rate of Actual Value change for new residential buildings. These properties experienced, on average, a 60% increase in Actual Value change between the old and new structures.

Existing residential properties adjacent to newly developed residential properties were also analyzed to determine if proximity to newly built homes had an effect on their Actual Value. While in most cases adjacent properties experienced an increase in Actual Value, it is not possible to determine if that increase was caused by the newly constructed property, or market dynamics.

²⁰ Data obtained from the Pitkin County Assessor's Office.

Neighborhood	Actual Value Change: 2018-2021
Maroon Creek & Five Trees	13%
West End	14%
Smuggler	9%
Downtown	19%
East End	26%
Cemetary Lane	9%
New Construction	60%

Table 8. Actual Value Change by Neighborhood, 2018-2021. Source. Pitkin County Assessor's office.

Affordable Housing Mitigation Trends²¹

Building projects, including both new development, redevelopment, and remodels/renovations that expand the floor area of dwelling units are required to pay affordable housing mitigation. The degree to which mitigation is required is determined by the number of Full-Time-Equivalents (FTEs) generated by the project's net new square footage. The City of Aspen provides five options for providing affordable housing mitigation:

1. Record a deed restriction on the project itself;
2. Provide a deed restricted unit within the Aspen Infill Area;
3. Extinguish a Certificate of Affordable Housing Credit;
4. Make a fee-in-lieu payment; or
5. Enter into a Deferral Agreement with the City of Aspen and APCHA.

As the city's land use code is currently written, houses that are demolished and rebuilt receive a credit for existing floor area and do not pay mitigation for sub-grade square footage. This has resulted in few building projects contributing to affordable housing mitigation. Out of the 413 residential building permits issued over the past three years that involved physical construction (i.e., Building Permits, Interior Finish and Fixture Removal, and Building Repair) only 85 projects, or 21%, provided some type of affordable housing mitigation. Additionally, while the number of overall building permits has increased 51% since 2019, the number of projects providing affordable housing mitigation has decreased 160%, with only 15 projects providing affordable housing mitigation in 2021.

As the number of projects providing affordable housing mitigation has decreased since 2019, so has the amount of mitigation fees collected by the City of Aspen. In total, only \$3,939,000 in affordable housing mitigation in fee in lieu and affordable housing credits has been collected since 2019. The amount of affordable housing mitigation collected has progressively decreased year over year from since 2019, with total 2019 mitigation equaling approximately \$2.58 million, total 2020 mitigation equaling approximately \$1.37 million, and year to date 2021 mitigation equaling \$410,000. The average mitigation by project has also decreased, decreasing from \$55,343 in 2019 to \$27,386 in 2021. It should be noted that all 2021 affordable housing mitigation has not yet been collected, meaning that the current 2021 number of \$410,000 is likely to increase.

When considering that the median sale price for a dwelling unit in Aspen in 2022 is approximately \$2.65 million, mitigation collected from 2019 through 2021 would not be sufficient to purchase two market-rate

²¹ Data obtained from the City of Aspen's Community Development Department.

dwellings. When considering the current costs of developing new affordable housing, estimated to be approximately \$1 million per unit, the \$3.9 million in mitigation collected would barely be sufficient to construct four new dwelling units.

Table 9 illustrates the number of building permits issued, the number of projects that provided affordable housing mitigation, and the total mitigation collected from 2019 through 2021.

	2019	2020	2021	Change: 2019-2021
Total Residential Building Permits	114	178	231	51%
Total Building, IFFR, & Roofing Permits	106	119	188	44%
Number of Residential Projects that Pay Mitigation	39	31	15	-160%
Total Mitigation Collected (FIL & Credits)	\$ 2,158,374	\$ 1,370,396	\$ 410,784	-425%
Total Mitigation Collected (FIL Only - Projects under 0.10 FTEs)	\$ 181,577	\$ 219,263	\$ 23,839	-662%
Average Mitigation Fee Per Mitigating Projects	\$ 55,343	\$ 44,206	\$ 27,386	-102%

*The number of permits during 2019 are an approximation based on the best available data.

** Total 2021 affordable housing mitigation has not yet been collected. This number is anticipated to increase.

Table 9. Affordable Housing Mitigation Generated, 2019-2021. Source: City of Aspen.

Conclusion

The pace and value of residential development in Aspen has rapidly increased since 2019. While the city has experienced a surge in the number and value development projects, the amount of these projects providing any type of affordable housing mitigation has decreased, along with the value of mitigation collected. The repercussions of this are substantial, in that homes that generate significant employment within Aspen are not providing sufficient mitigation to fund the acquisition and/or development of new employee housing. It is recommended that the City of Aspen pursue substantive changes to its land use code to ensure that current and future employees are able to find price and size appropriate housing within the city.

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MEMORANDUM

To: City of Aspen
From: Design Workshop
Date: May 18, 2022
Project Name: Aspen Moratorium Support
Project #: 6829
Subject: Buy-down Feasibility Analysis

Introduction

To assess the feasibility of a buy-down program, Design Workshop completed a review and analysis of current affordable housing mitigation funds, potential funds resulting from the elimination of the existing floor area credit, and sale prices for single-family, condominium, and townhomes in both Aspen and communities down valley. This analysis is intended to inform how mitigation collected could be used to fund a buy-down program, and the extent to which such a program could provide affordable housing to residents. This memorandum partially completes the deliverables for Task 3.4. Following receipt of updated Full-Time-Equivalent rates from RRC and EPS, additional analysis will be performed to measure the impact of rate changes to affordable housing mitigation and a buy-down program.

Affordable Housing Mitigation: Current Vs. Proposed Exemptions

Currently, building projects, including both new development, redevelopment, and remodels/renovations that expand the floor area of dwelling units are required to pay affordable housing mitigation. The degree to which mitigation is required is determined by the number of Full-Time-Equivalents (FTEs) generated by the project's net new square footage. A project is required to mitigate 0.16 FTEs per 1,000 square feet of Floor Area for the first 4,500 square feet of Floor Area. Projects in which the net new square feet of Floor Area exceed 4,500 square feet are required to mitigate 0.36 FTEs per 1,000 square feet over the 4,500 threshold.

As the city's land use code is currently written, houses that are demolished and rebuilt receive a credit for existing floor area and do not pay mitigation for sub-grade square footage regardless of if they previously provided mitigation. This has resulted in relatively few residential building projects contributing to affordable housing mitigation. Since 2019, affordable housing mitigation valuing only \$3,939,000 has been received through a fee in lieu payment or affordable housing credits. The amount of affordable housing mitigation collected has progressively decreased year over year from since 2019, with total 2019 mitigation equaling approximately \$2.58 million, total 2020 mitigation equaling approximately \$1.37 million, and year to date 2021 mitigation equaling \$410,000. The average mitigation by project has also decreased, decreasing from \$55,343 in 2019 to \$27,386 in 2021. It should be noted that all 2021 affordable housing mitigation has not yet been collected, meaning that the current 2021 number of \$410,000 is likely to increase.

To assess the implications of removing the credit for existing floor area, an analysis was performed that examined the amount of mitigation that could be collected on projects that were permitted and received a certificate of occupancy between 2019 and 2021. This analysis assumed that that projects had not provided affording housing mitigation in the past. To calculate potential mitigation, a project's total new floor area

was used to calculate FTE generation, and no credit was given to existing floor area. The result of this analysis was a substantial increase in funds generated through affordable housing mitigation in fee-in-lieu and affordable housing credits, with the amount of affordable housing mitigation increasing from \$3,939,000 to an estimated \$17,404,141.

Table 1 illustrates total mitigation collected from 2019 through 2021 with current exemptions and FIL rate and potential mitigation collected with the elimination of the existing floor area credit.

	2019	2020	2021*	Total Mitigation
Mitigation Collected with Current Exemptions and FIL Rates				
Total Mitigation Collected (FIL & Credits)	\$ 2,158,374	\$ 1,370,396	\$ 410,784	\$ 3,939,554
Average Mitigation Fee Per Mitigating Projects	\$ 55,343	\$ 44,206	\$ 27,386	N/A
Mitigation Collected without Existing Floor Area Credit and Current FIL Rates				
Total Mitigation Collected (FIL & Credits)	\$ 6,776,176	\$ 7,885,138	\$ 2,742,827	\$ 17,404,141
Average Mitigation Fee Per Mitigating Projects	\$ 173,748	\$ 254,359	\$ 182,855	N/A
*2021 has several outstanding certificates of occupancy. Mitigation has not been collected on these projects.				

Table 1. Mitigation Collected 2019-2021. Source: City of Aspen.

Buy-down Program Feasibility

A Buy-down Program is a program in which an entity (i.e., housing authority or municipality) purchases free-market homes for that are for sale, places a deed restriction on the property, and then sells or rents the property to qualified renters or buyers at a reduced price. To determine the viability of a Buy-down Program, and how such a program may be most impactful to the creation of affordable housing, an impact analysis was performed to determine the relative impact of using affordable housing mitigation funds to purchase and deed restrict residential properties. Because of the high cost of housing within Aspen, the analysis explored the cost of purchasing properties in Aspen, as well as other communities throughout Pitkin County and Garfield County, including Basalt, Carbondale, Glenwood Springs, and Snowmass Village.

The first step in analyses was to determine the price, size, and type of homes for sale both in Aspen and down valley communities. To filter out exorbitantly high prices properties that would not be feasible to purchase through a buy-down program, and maximum price filter of \$2 million was applied. Using Realtor.com, currently for-sale and pending single-family homes, condominiums, and townhomes were recorded. In total, 109 homes were cataloged as part of the analysis. The following section details the findings of the Buy-down analysis and provides guidance as to its feasibility as a method to produce affordable housing for Aspen residents.

Housing Sale Price Analysis: Aspen and Down Valley Communities

Aspen

Aspen only had five free-market residential properties for sale or recently sold or pending at or below \$2 million. Each of the five properties were condo units, and consisted of studio, one-, and two-bedroom units. The average price of a condo unit was approximately \$1,280,000 and the average size of a unit was 484 square feet.

Basalt

Aspen had eight properties for sale or recently sold or pending for under \$2 million. Properties included three condos, nine townhomes, and 20 single-family homes. The average sale price for a home in Basalt was approximately \$1,270,000 with an average home size of 1,721 square feet.

Carbondale

Carbondale had 32 properties for sale or pending for under \$2 million. Properties included three condos, three townhomes, and 26 single-family homes. The average sale price for a home in Carbondale was approximately \$1,356,000 with an average home size of 2,028 square feet.

Glenwood Springs

Glenwood Springs had 43 properties for sale or pending for under \$2 million. Properties included three condos, one townhome, and 39 single-family homes. The average sale price for a home in Glenwood Springs was approximately \$659,000 with an average home size 1,718 square feet.

Snowmass Village

Snowmass Village had 18 properties for sale or pending for under \$2 million. Properties included 17 condos, and one single-family homes. The average sale price for a home in Snowmass Village was approximately \$1,400,000 with an average home size 1,756 square feet.

Table 2 provides a breakdown, by community and home type, of average beds, baths, prices, and square footage of properties for the buy-down analysis.

City	Home Type	Total Units	Average Beds	Average Baths	Average Price	Average SF
Aspen	Condo	3	1	1	\$ 1,287,600	484
	Townhome	9	N/A	N/A	N/A	N/A
	SFH	0	N/A	N/A	N/A	N/A
	Dwelling Unit Average	N/A	1	1	\$ 1,287,600	484
Basalt	Condo	3	2	2	\$ 1,312,333	1,254
	Townhome	9	2	2.5	\$ 1,211,633	1,560
	SFH	20	3	2.5	\$ 1,300,000	2,350
	Dwelling Unit Average	N/A	2.33	2.33	\$ 1,274,656	1,721
Carbondale	Condo	3	2	2	\$ 531,667	1,195
	Townhome	3	3	2.5	\$ 1,172,444	2,172
	SFH	26	3	2.5	\$ 1,364,900	2,717
	Dwelling Unit Average	N/A	2.67	2.33	\$ 1,023,004	2,028
Glenwood Springs	Condo	3	2	2	\$ 444,967	1,087
	Townhome	1	3	2.5	\$ 635,000	1,578
	SFH	39	3	2.5	\$ 898,074	2,489
	Dwelling Unit Average	N/A	2.67	2.33	\$ 659,347	1,718
Snowmass	Condo	17	2	2.5	\$ 1,008,235	1,270
	Townhome	0	N/A	N/A	N/A	N/A
	SFH	1	3	3	\$ 1,795,000	2,243
	Dwelling Unit Average	N/A	2.50	2.75	\$ 1,401,618	1,756

Table 2. Breakdown of properties for buy-down analysis. Source: Realtor.com

Buy-down Strategy: Purchase & Deed Restrict

Most buy-down programs use dedicated affordable housing funds to purchase for-sale free-market homes, place a deed restriction on the property, and then sell the property to qualified buyers at a reduced price.

To determine the impact of a buy-down, an analysis was performed to determine the number of units by community that could be purchased, and deed restricted using affordable housing mitigation funds. To analyze the number of the units available for purchase by community, the total amount of available affording housing funds from 2019-2021 were divided by the average unit cost.

Figure 3 illustrates the number of units available for purchase assuming current mitigation from 2019-2021 was available to purchase units. In total, the \$3,939,000 in funds could be used to purchase three units in Aspen, three units in Basalt, four units in Carbondale, six units in Glenwood Springs, or three units in Snowmass. To calculate the number of local residents that may housed through a buy down program, the number of units available for purchase by community was multiplied by the average number of bedrooms in that community for for-sale properties. The number of residents housed varies by community, with the least number of residents being housed in Aspen and the most in Glenwood Springs.

City	Dwelling Unit Average Cost	Max. Number of Units Purchased with Available Funds	Average Local Residents Housed*
Aspen	\$ 1,287,600	3	3
Basalt	\$ 1,274,656	3	7
Carbondale	\$ 1,023,004	4	10
Glenwood Springs	\$ 659,347	6	16
Snowmass	\$ 1,401,618	3	7

*Calculation based on max number of units available for purchase multiplied by average unit size (bedrooms).

Table 3. Number of units available for purchase by community with current mitigation.

Figure 4 illustrates the number of units available for purchase assuming the elimination of the existing floor area credit for projects occurring between 2019 and 2021. In total, the \$17,404,141 in mitigation collected could be used to purchase 14 units in Aspen, 14 units in Basalt, 45 units in Carbondale, 70 units in Glenwood Springs, or 12 in Snowmass. To calculate the number of local residents that may housed through a buy down program, the number of units available for purchase by community was multiplied by the average number of bedrooms in that community for for-sale properties. The number of residents housed varies by community, with the least number of residents being housed in Aspen and the most in Glenwood Springs.

City	Dwelling Unit Average Cost	Max. Number of Units Purchased with Available Funds	Average Local Residents Housed*
Aspen	\$ 1,287,600	14	14
Basalt	\$ 1,274,656	14	32
Carbondale	\$ 1,023,004	17	45
Glenwood Springs	\$ 659,347	26	70
Snowmass	\$ 1,401,618	12	31

*Calculation based on max number of units available for purchase multiplied by average unit size (bedrooms).

Table 4. Number of units available for purchase by community with the elimination of the existing floor area credit.

Conclusion

The elimination of the existing floor area credit will greatly increase the amount of affordable housing mitigation that the City of Aspen is able to collect. The extent to which these funds may be used to finance a buy-down, and the success of such a program, is greatly dependent on where homes are purchased through the program. Based on home prices, the number of homes available for purchase through a buy-down program increases down valley, with the most affordable homes being in Glenwood Springs.

Pursuing a buy-down program that purchases homes far the city is a double-edged sword in that while more homes may be available for purchase, owners working in Aspen will have to travel greater distances to reach their employers, adding to traffic and adverse environmental impacts. Additionally, while a buy-down program that aims to purchase homes in other communities may help Aspen residents, it can exacerbate affordability and housing issues in communities that are already struggling to provide sufficient affordable housing for their own residents.

It is important to note that the analysis assumes that all mitigation is provided as fee in lieu rather than through housing credits. The code does not currently allow the payment of fee in lieu by right for all projects. If the city chose to pursue a buy down program, a review of the implications for supporting fee in lieu versus other mitigation measures would need to be discussed. While this memo provides an initial understanding of the potential housing that could be deed restricted for local working residents, balancing these policy implications will be of critical importance. For this reason, Design Workshop recommends more policy discussion on the pros and cons of a buy down program following the moratorium.

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MEMORANDUM

To: City of Aspen
 From: Design Workshop
 Date: May 19, 2022
 Project Name: Aspen Moratorium Support
 Project #: 6829
 Subject: Affordable Housing Zoning Feasibility Analysis

Introduction

To quantify how changes to existing zoning conditions in the R-6, R-15, and R-30 zone districts may enable the development of affordable housing, Design Workshop completed an analysis of the number of affordable housing units that could be built in residential zone districts given existing dimensional requirements. The analysis informed how many units may be developed, the number of Affordable Housing Credits that could be generated as a result of the development, as well as the anticipated financial performance of the project. This memorandum completes the deliverables for Task 3.5.

Affordable Housing & Existing Zoning Requirements

As the City of Aspen’s Land Use Code is currently written, multi-family affordable housing within the R-6, R-15, and R-30 Residential Zone Districts is not a permitted use. Instead, single-family and duplex developments are allowed. A significant amount of the land within the City of Aspen is located in these zone districts, so this analysis explores potential opportunities to allow affordable multi-family housing within these areas.

Based on feedback collected during public engagement, the community has indicated a preference that any multi-family affordable housing developed in residential zone districts should conform to the existing dimensional standards and scale of the current neighborhood. Under this idea, the overall floor area and height allowed on a parcel would not change, only the total allowable units per lot would be subject to change. Table 1 summarizes existing density and dimensional standards for Aspen’s R-6, R-15, and R-30 zone districts

Zone District	Permitted Residential Uses	Minimum Lot Size	Maximum Site Coverage	FAR: Single Family	FAR: Two Dwellings or One Duplex	Max Height	Total Allowable Units per Lot
R-6	-Detached residential dwelling -Two detached residential dwellings -Duplex dwelling -Accessory dwelling units/carriage house	6,000 SF	50%	2,400 SF for 6,000 SF lot	2,700 SF for 6,000 SF lot With TDR for extinguishment of historic property: 2,950 SF for 6,000 SF lot	25 ft.	2
R-15	-Detached residential dwelling -Two detached residential dwellings -Duplex dwelling -Accessory dwelling units/carriage house	-15,000 SF single family -7,500 SF duplex	N/A	4,500 SF for 15,000 SF lot	4,920 SF for 15,000 SF lot With TDR for extinguishment of historic property: 5,200 SF for 15,000 SF lot	25 ft.	2
R-30	-Detached residential dwelling -Two detached residential dwellings -Duplex dwelling	-30,000 SF single family -15,000 SF duplex	N/A	4,590 SF for 30,000 SF lot	5,010 SF for 30,000 SF lot	25 ft.	2

Table 1. Current Density and Dimensional Standards.

Affordable Housing Financial Model

In order to test the financial and development feasibility of affordable housing in the R-6, R-15, and R-30 zone districts, a financial model was created for each zone district. To ground the models in reality, each model was based off of an existing parcel within the city, one each of the R-6, R-15, and R-30 zone districts. Assumptions for each model, including development and sale costs per square foot, unit sizes, the category and type of unit tested, and subgrade unit allowances were reviewed and confirmed with staff. It was assumed that all units would be for-sale units and that units, once built, would be deed restricted and managed by the Aspen Pitkin County Housing Authority (APCHA).

The models were designed to be used to generally gauge the overall cost of new development, the maximum number of units and bedrooms able to be developed given floor area limitations, net revenue, return on investment (ROI), and the number and value of Affordable Housing Credits created. Sale prices and unit sizes were set using APCHA guidelines, while Fee-in-Lieu used to set Affordable Housing Credit value and Full-Time-Equivalents (FTEs) per unit type were set using the City of Aspen's Land Use Code. At the direction of Staff, Category 3 one- and two-bedroom units were prioritized in the modeling. The model included the ability to test how sales to Aspen area employers may effect the financial performance of the development.

The analysis that follows identifies the maximum number of units that may be developed in the R-6, R-15, and R-30 zone districts given existing dimensional standards for a duplex, the number of Affordable Housing Credits created, as well as the financial performance of the project. Due the high cost of development in Aspen, current value of credits in the market, and predesignated APCHA unit sale prices, no development scenario resulted in a profitable development. While the profitability of development is a result of the number, type, and category of units developed, the allowable density of development plays a significant role in improving the financial performance of a project by offsetting land costs. Inversely, as the number of units in a project decreases, the financial feasibility diminishes.

R-6 Density Analysis

Under the existing dimensional requirements of the R-6 zone district and APCHA minimum unit sizes, a developer could potentially build six units of affordable housing on the test R-6 parcel. The units would be a mix of one and two bedrooms and combine for a total of 10 bedrooms within the development. The total cost of construction is estimated to be \$6,718,010. With units set at Category 3 pricing, total project revenues, including both unit and credit sales, are estimated to be \$5,611,138. The projected net profit of the development is -\$1,106,873, with an estimated ROI of -16%. The anticipated building program and pricing are illustrated in Figure 1.

Project Assumptions & Performance

- Zone: R-6
- Lot Size: 6,000 SF
- Max. Floor Area Duplex: 3,240 SF
- Max. Height 25 FT
- FAR: 0.60
- Credits Generated: 12.50 Category 3 credits.
- Total Project Cost: \$6,718,010
- Total Project Revenues: \$5,611,138
- Net Profit: **-\$1,106,873**
- ROI: -16%

Building Program								
Program	SF / Unit	Bedrooms / Unit	Employer Sale	Subgrade	FTE	Category	Sale Price / Unit	Total Units
Studio	500	1	No	No	1.25	3	\$175,000	
Studio	500	1	No	Yes	1.25	3	\$175,000	
1 Bedroom	700	1	No	No	1.75	3	\$191,000	1
1 Bedroom	700	1	No	Yes	1.75	3	\$191,000	1
2 Bedroom	900	2	No	No	2.25	3	\$227,000	2
2 Bedroom	900	2	No	Yes	2.25	3	\$227,000	2
3 Bedroom	1200	3	No	No	3	5	\$621,000	
3 Bedroom	1200	3	No	Yes	3	1	\$81,000	
4 Bedroom	1300	4	No	No	3.5	3	\$277,000	
4 Bedroom	1300	4	No	Yes	3.5	RO	\$750,000	
Single Family Home Detached	1500	4	No	No	3.5	1	\$101,000	
Total Units								6
Total Subgrade								3
Total Above Grade Units								3
Total Bedrooms								10
Subgrade Unit Credit								12%
Lot Size (sf)								6000
Total Above Grade Floor Area								2500
Total Subgrade Floor Area								300
Total Floor Area								2800
Over / Under Allowable Floor Area								Under
Total Livable Area								5000
Net-to-Gross Ratio								90%
Total Project Size (GSF):								5500
Total FTEs Generated								13
Parking Ratio / Bedroom								100%
Parking Spaces								10

Figure 1. R-6 Building Program.

R-15 Density Analysis

Under the existing dimensional requirements of the R-15 zone district and APCHA minimum unit sizes, a developer could potentially build eight units of affordable housing on the test R-15 parcel. The units would be a mix of studio, one, and two bedrooms and combine for a total of 12 bedrooms within the development. The total cost of construction is estimated to be \$8,328,412. With units set at Category 3 pricing, total project revenues, including both unit and credit sales, are estimated to be \$7,014, 211. The projected net profit of the development is -\$1,314,202, with an estimated ROI of -16%. The anticipated building program and pricing are illustrated in Figure 2.

Project Assumptions & Performance

- Zone: R-15
- Lot Size: 10,055 SF
- Max. Floor Area Duplex: 4,574 SF
- Max. Height 25 FT
- FAR: 0.45
- Credits Generated: 15.50 Category 3 credits.
- Total Project Cost: \$8,328,412
- Total Project Revenues: \$7,014, 211
- Net Profit: **-\$1,314,202**
- ROI: -16%

Building Program								
Program	SF / Unit	Bedrooms / Unit	Employer Sale	Subgrade	FTE	Category	Sale Price / Unit	Total Units
Studio	500	1	No	No	1.25	3	\$175,000	1
Studio	500	1	No	Yes	1.25	3	\$175,000	
1 Bedroom	700	1	No	No	1.75	3	\$191,000	2
1 Bedroom	700	1	No	Yes	1.75	3	\$191,000	1
2 Bedroom	900	2	No	No	2.25	3	\$227,000	2
2 Bedroom	900	2	No	Yes	2.25	3	\$227,000	2
3 Bedroom	1200	3	No	No	3	5	\$621,000	
3 Bedroom	1200	3	No	Yes	3	1	\$81,000	
4 Bedroom	1300	4	No	No	3.5	3	\$277,000	
4 Bedroom	1300	4	No	Yes	3.5	RO	\$750,000	
Single Family Home Detached	1500	4	No	No	3.5	1	\$101,000	
Total Units								8
Total Subgrade								3
Total Above Grade Units								5
Total Bedrooms								12
Subgrade Unit Credit								12%
Lot Size (sf)								10055
Total Above Grade Floor Area								3700
Total Subgrade Floor Area								300
Total Floor Area								4000
Over / Under Allowable Floor Area								Under
Total Livable Area								6200
Net-to-Gross Ratio								90%
Total Project Size (GSF):								6820
Total FTEs Generated								16
Parking Ratio / Bedroom								100%
Parking Spaces								12

Figure 2. R-15 Building Program

R-30 Density Analysis

Under the existing dimensional requirements of the R-30 zone district and APCHA minimum unit sizes, a developer could potentially build 11 units of affordable housing on the test R-15 parcel. The units would be a mix of studio, one, and two bedrooms and combine for a total of 16 bedrooms within the development. The total cost of construction is estimated to be \$11,415,016. With units set at Category 3 pricing, total project revenues, including both unit and credit sales, are estimated to be \$9,610,934. The projected net profit of the development is -\$1,804,082 with an estimated ROI of -16%. The anticipated building program and pricing are illustrated in Figure X.

Project Assumptions & Performance

- Zone: R-30
- Lot Size: 30,280 SF
- Max. Floor Area Duplex: 5,837 SF
- Max. Height 25 FT
- FAR: 0.19
- Credits Generated: 21.25 Category 3 credits.
- Total Project Cost: \$11,415,016
- Total Project Revenues: \$9,610,934
- Net Profit: **-\$1,804,082**
- ROI: -16%

Building Program								
Program	SF / Unit	Bedrooms / Unit	Employer Sale	Subgrade	FTE	Category	Sale Price / Unit	Total Units
Studio	500	1	No	No	1.25	3	\$175,000	1
Studio	500	1	No	Yes	1.25	3	\$175,000	
1 Bedroom	700	1	No	No	1.75	3	\$191,000	3
1 Bedroom	700	1	No	Yes	1.75	3	\$191,000	2
2 Bedroom	900	2	No	No	2.25	3	\$227,000	3
2 Bedroom	900	2	No	Yes	2.25	3	\$227,000	2
3 Bedroom	1200	3	No	No	3	5	\$621,000	
3 Bedroom	1200	3	No	Yes	3	1	\$81,000	
4 Bedroom	1300	4	No	No	3.5	3	\$277,000	
4 Bedroom	1300	4	No	Yes	3.5	RO	\$750,000	
Single Family Home Detached	1500	4	No	No	3.5	1	\$101,000	
Total Units								11
Total Subgrade								4
Total Above Grade Units								7
Total Bedrooms								16
Subgrade Unit Credit								12%
Lot Size (sf)								30280
Total Above Grade Floor Area								5300
Total Subgrade Floor Area								384
Total Floor Area								5684
Over / Under Allowable Floor Area								Under
Total Livable Area								8500
Net-to-Gross Ratio								90%
Total Project Size (GSF):								9350
Total FTEs Generated								21
Parking Ratio / Bedroom								100%
Parking Spaces								16

Figure 3. R-30 Building Program.

Conclusion

With current dimensional standards there is significant opportunity to development multi-family affordable housing projects within the R-6, R-15, and R-30 zone district. Given current land and development costs no development scenario resulted in profitable projects. However, enabling affordable multi-family development in residential districts is a critical first step in incentivizing more affordable housing development within the City of Aspen.

As a next step following the Residential Development Moratorium, it is recommended that the City of Aspen investigate the possibility of using Affordable Housing Mitigation funds, or some other source of city revenue, to financially subsidize these types of affordable housing projects. The amount of subsidy provided could be determined based on the type and category of unit development, enabling predictably on the amount of subsidy available and putting the responsibility on the development sector to manage costs in order to reach their targeted level of profitability. There may also be an opportunity to leverage the housing credits program to support additional affordable housing development on these properties.

Shaping Aspen's Built Environment

RESIDENTIAL BUILDING

TURNING UP THE DIAL ON ASPEN AREA COMMUNITY PLAN GOALS



I.1	Achieve sustainable growth practices - Limit energy consumption and burden on public infrastructure (p24)
II.1	Housing mix should bolster (\$) diversity (p41)
II.2	AH should plan for retirees (p41)
VIII.1	Restore public confidence in the Code (p27)
VIII.2	Create certainty in zoning + land use (p27)
VIII.3	PD process to result in community benefits (p27)
IV.2	Locate AH within Urban Growth Boundary (p42)
IV.3	On-site AH mitigation preferred (p42)
IV.5	AH to optimize density and mirror Aspen
V.1	Encourage meeting needs of both residents and visitors (p26)
V.2	Facilitate sustainability of essential businesses (p26)
V.3	Ensure code results in development that reflects heritage and design (p26)
P.20	Pursue aggressive measures to meet community needs and preserves character

LOCATION	1. Allow multi-family affordable housing to be developed in all residential zone districts. Density allowances would be increased, but existing floor area and other dimensional limitations would remain in place.
	2. Create an administrative review path for affordable housing projects.
	3. Eliminate non-conformity limitations for non-conforming lots of record for projects that are 100% affordable housing.
HOUSING MITIGATION	1. Update employee generation rates to reflect impacts of construction and long-term operation of residential units.
	2. Update mitigation calculations to be based on "liveable area" rather than "floor area."
	3. Eliminate the credit for existing square footage that did not previously provide affordable housing mitigation.
	4. Update the deferral agreement for local residents.
	5. Consider and evaluate a depreciation factor for affordable housing mitigation for residents. Mitigation requirements would be deferred for local residents while living in their home, and the required mitigation due would depreciate over time.
FREE MARKET	1. Allow existing free-market residential units to be updated and redeveloped in the Mixed-Use Zone District (MU), but prohibit the establishment of new free market units or existing uses being converted into free market units.

PROPOSED ALLOTMENTS	1. Implement a growth management allotment system for demolition projects. The allotments would be part of the 19 allotments currently available for free-market units.
	2. Use performance criteria to evaluate applications for demolition allotments.
	3. Creation of a framework of performance standards and expectations for demolition projects that can be adjusted over time to respond to new trends and community desires related to projects that have significant construction and other impacts.
CALCULATIONS	1. Bring clarity to the definition and calculation of Demolition.
	2. Incorporate exemptions or adjusted applicability statements for certain projects to be exempt from the provisions of demolition (ex; unsafe structures, water damage, acts of god, etc.)
	3. Continue to evaluate Demolition threshold and calculation measurements.
TRACKING	1. Implement a tracking system for cumulative demolition that "resets" after five (5) to ten (10) years of a Certificate of Occupancy (CO).

SETBACKS	1. Allow encroachments into setbacks for certain energy improvements, fire protection, etc.
	2. Allow increased encroachments into setbacks for subgrade mechanical structures.
HEIGHT	1. Allow exterior energy improvements to a building roof to exceed building height.
	2. Allow mechanical equipment height increases that accommodate efficient equipment.
	3. Increase allowances for the development of solar panels (height or setbacks) or create an administrative review path.
FLOOR AREA	1. Bring consistency and clarity to the terms, dimensions and calculations in measuring the internal, horizontal areas of a building Occupancy (CO).

Shaping Aspen's Built Environment

RESIDENTIAL BUILDING

AACP GOALS - FULL STATEMENTS

I.1 Achieve sustainable growth practices to ensure long-term vitality and stability of our community and diverse visitor-based economy (Pg 24).

II.1 The housing inventory should bolster our socioeconomic diversity (Pg 41).

II.2 Affordable housing should be prepared for the growing number of retiring Aspenites (Pg 41).

VIII.1 Restore public confidence in the development process (Pg 27).

VIII.2 Create certainty in zoning and the land use process. (Pg 27).

VIII.3 Ensure that the Planned Development process results in tangible, long-term community benefits and does not degrade the built or natural environment through mass and scale that exceeds the Land Use Code standards. (p27)

IV.2 All affordable housing must be located within the Urban Growth Boundary (Pg 42).

IV.3 On-site housing mitigation is preferred (Pg 42).

IV.5 The design of new affordable housing should optimize density while demonstrating compatibility with the massing, scale, and character of the neighborhood (Pg 42).

V.1 Encourage a commercial mix that is balanced, diverse and vital and meets the needs of year-round residents and visitors (Pg 26).

V.2 Facilitate the sustainability of essential businesses that provide basic community needs (Pg 26).

V.3 Ensure that the City Land Use Code results in development that reflects our architectural heritage in terms of site coverage, mass, scale, density and a diversity of heights, in order to: a. Create certainty in land development, b. Prioritize maintaining our mountain views, c. Protect our small-town community character and historical heritage, d. Limit consumption of energy and building materials, e. Limit the burden on public infrastructure and ongoing public operating costs, f. Reduce short- and long-term job generation impacts, such as traffic congestion and demand for affordable housing (Pg 26).

P.20 We must pursue more aggressive measures to ensure the needs of the community are met, and to preserve our unique community character.