

ORDINANCE NO. 23  
SERIES 2016

AN ORDINANCE AMENDING SECTION 12-13-5, EMPLOYEE HOUSING DEED RESTRICTION EXCHANGE PROGRAM, SECTION 12-23-6, COMMERCIAL LINKAGE, METHODS OF MITIGATION, SECTION 12-24-6 INCLUSIONARY ZONING, VAIL TOWN CODE, TO AMEND THE DEED - RESTRICTION EXCHANGE PROGRAM, COMMERCIAL LINKAGE, AND INCLUSIONARY ZONING, AND SETTING FORTH DETAILS IN REGARD THERETO.

WHEREAS, on June 3, 2008, the Vail Town Council directed the Community Development Department to prepare amendments to the Vail Town Code to establish an Employee Housing Unit (EHU) deed restriction exchange program;

WHEREAS, on July 26, 2016, the Vail Local Housing Authority of the Town of Vail held a public meeting and reviewed and forwarded a recommendation of approval to the Vail Town Council for the proposed text amendments to the Zoning Regulations;

WHEREAS, on August 8, 2016, the Planning and Environmental Commission of the Town of Vail held a public hearing and reviewed and forwarded a recommendation of approval to the Vail Town Council for the proposed text amendments to the Zoning Regulations in accordance with the procedures and criteria and findings outlined in Section 12-3-6 of the Vail Town Code;

WHEREAS, the Town Council finds and determines that the amendments are consistent with the applicable elements of the adopted goals, objectives and policies outlined in the Vail Comprehensive Plan and are compatible with the development objectives of the Town, based upon Section VII of the Staff memorandum to the Planning and Environmental Commission dated August 8, 2016, and the evidence and testimony presented;

WHEREAS, the Town Council finds and determines that the amendments further the general and specific purposes of the Zoning Regulations, based upon Section VII of the Staff memorandum to the Planning and Environmental Commission dated August 8, 2016, and the evidence and testimony presented; and

WHEREAS, the Town Council finds and determines that the amendments promote the health, safety, morals, and general welfare of the Town and promote the coordinated and harmonious development of the Town in a manner that conserves and enhances its natural environment and its established character as a resort and residential community of the highest quality, based upon Section VII of the Staff memorandum dated August 8, 2016.

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

Section 1. Section 12-13-5, Employee Housing Deed Restriction Exchange Program, of the Vail Town Code is hereby amended as follows (text to be deleted is in ~~strike through~~ text that is, to be added is **bold**. Sections of text that are not amended have been omitted.)

C. Definitions: For the purpose of this section:

PROPOSED EHU: The existing, **non-deed restricted** dwelling unit that is being proposed to receive an employee housing deed restriction as part of this program.

D. General Requirements: The ~~town~~ **Council** may approve the removal of an employee housing deed restriction from an existing employee housing unit in exchange for the placement of an employee housing deed restriction, and/or the payment of a fee in lieu, **as described in Paragraph 5 below**.

5. Fee ~~in~~ in Lieu: The applicant may ~~elect to provide~~ a fee in lieu payment to the town of Vail for any **fractional** portion of the required square footage less than 438 square feet not provided by a proposed EHU, **if the proposed EHU does not fulfill the required amount of calculated square footage**. ~~The town shall only use monies collected from the fees in lieu to provide new employee housing. The applicant shall pay a fee in lieu equal to the following formulas:~~

A. **The Town Council at its sole discretion may accept fee in lieu payment for the full required square footage only if the exchange EHU was approved prior to July 22, 1994, and has a deed restriction that includes the language stating "if the unit is rented, it shall be rented only to tenants who are full time employees..."**.

B. **The Fee in Lieu calculated amount shall be paid after approval of the application by Town Council, but prior to recording of the deed restriction release. The fee shall be based upon the current fee structure in place at the time of approval. Early payment of the fee in lieu shall not be accepted prior to approval. The approval for deed restriction release shall sunset one year from the date of approval and any fees paid are non-refundable.**

C. **The Town shall use monies collected from fees in lieu to provide incremental new employee housing units.**

Existing EHU **square feet** ~~x multiplier~~ x inclusionary zoning fee = fee in lieu payment

- a. ~~If the exchange EHU was approved prior to July 22, 1994, and has a deed restriction that includes the language stating "if the unit is rented, it shall be rented only to tenants who are full time employees...", the formula for fee in lieu payment is:~~

~~[the square footage of the exchange EHU as recorded on the deed restriction] x  
[the current rate for inclusionary zoning fee in lieu] x 1~~

- b. ~~If the exchange EHU was approved after July 22, 1994, and/or does not have a deed restriction that includes the language stating "if the unit is rented, it shall be rented only to tenants who are full time employees...", and if the exchange EHU is outside of the commercial job core, the formula for fee in lieu payment is:~~

~~[the square footage of the exchange EHU as recorded on the deed restriction] x  
[the current rate for inclusionary zoning fee in lieu] x 2~~

- c. ~~If the exchange EHU was approved after July 22, 1994, and/or does not have a deed restriction that includes the language stating "if the unit is rented, it shall be rented only to tenants who are full time employees...", and is within the commercial job core, the formula for fee in lieu payment is:~~

~~[the square footage of the exchange EHU as recorded on the deed restriction] x  
[the current rate for inclusionary zoning fee in lieu] x~~

- E. Fees: The ~~t~~**Town e**Council shall set an application fee schedule sufficient to cover the cost of town staff time and other expenses incidental to the review of the application. The fee shall be paid at the time of the application, and shall not be refundable.

F. Review Process:

2. Review Procedures:

- a. Administrator Review: The administrator shall review the application for completeness and compliance with this section, and shall make a determination of completeness and compliance with this section within fourteen (14) days of application submittal. Should the administrator deem that the application is incomplete or not in compliance with this section, the administrator shall deny the application. Should the administrator deem the application is both complete and in compliance with this section, the administrator shall forward the application for review by the Vail ~~h~~**Local h**Housing ~~a~~**Authority**.
- b. Vail Local Housing Authority Review: The review of a proposed employee housing deed restriction exchange application shall be held by the Vail ~~h~~**Local**

~~h~~**Housing a**Authority at a regularly scheduled meeting. A report of the community development department staff's findings and recommendations shall be made at the formal hearing before the ~~Vail l~~**Local h**~~Housing a~~**Authority**. Within twenty (20) days of the closing of a public hearing on a proposed amendment, the ~~Vail l~~**Local h**~~Housing a~~**Authority** shall act on the application. The ~~authority~~ **Vail Local Housing Authority** may recommend approval of the application as initiated, may recommend approval with such modifications as it deems necessary to accomplish the purposes of this title, or may recommend denial of the application. The ~~authority~~ **Vail Local Housing Authority** shall transmit its recommendation, together with a report on the public hearing and its deliberations and findings, to the ~~t~~**Town e**~~Council~~.

- c. Town Council Review: Upon receipt of the report and recommendation of the authority, the ~~t~~**Town e**~~Council~~ shall set a date for hearing within the following thirty (30) days. Within twenty (20) days of the closing of a public hearing on the application, the ~~t~~**Town e**~~Council~~ shall act on the application. The ~~t~~**Town e**~~Council~~ shall consider but shall not be bound by the recommendation of the ~~Vail l~~**Local h**~~Housing a~~**Authority**. The ~~t~~**Town e**~~Council~~ may approve, either in accordance with the recommendation of the ~~Vail l~~**Local h**~~Housing a~~**Authority** or in modified form, or the ~~t~~**Town e**~~Council~~ may deny the application.
- d. Appeal: Administrator and ~~t~~**Town e**~~Council~~ decisions may be appealed in accordance with the provisions in section 12-3-3, "Appeals", of this title.

### 3. Criteria and Findings:

- a. Criteria: Before acting on an employee housing deed restriction exchange application, the ~~Vail l~~**Local h**~~Housing a~~**Authority** and ~~Vail t~~**Town e**~~Council~~ shall consider the following criteria with respect to the application:
- b. Necessary Findings: Before recommending and/or granting an approval of an employee housing deed restriction exchange application, the ~~Vail l~~**Local h**~~Housing a~~**Authority** and the ~~Vail t~~**Town e**~~Council~~ shall make the following findings with respect to the application:

(Ord. 10(2011) §§ 1, 2, 3, 4: Ord. 31(2008) § 1)

Section 2. Section 12-23-6, Commercial Linkage, Methods of Mitigation, of the Vail Town Code is hereby amended as follows (text to be deleted is in ~~strikethrough~~ text that is, to be added is **bold**. Sections of text that are not amended have been omitted.)

- A. For all new construction (i.e., development that does not affect any existing buildings or structures) and demo/rebuild projects that result in a mitigation requirement of 1.25 employees or greater, no less than one-half ( $\frac{1}{2}$ ) the

mitigation of employee housing required by this chapter shall be accomplished with on site units.

4. Fees ~~in~~ **in** Lieu: An applicant may provide a payment of fees in lieu **only** for any fractional remainder of the requirement generated under this chapter totaling less than 1.25 employees.

5. Remaining Portion ~~Of~~ **of** Requirement: Any remaining portion of the mitigation requirement not provided with on site units **shall** be provided in accordance with subsection B of this section.

B. For all development projects except those mitigated by subsection A of this section, the mitigation of employee housing required by this chapter shall be accomplished through one, or any combination, of the methods further described in this section. Unless otherwise regulated by this title, the choice of method(s) used to mitigate the employee housing requirements of this chapter shall be at the sole discretion of the applicant.

2. Conveyance Of **Vacant** Property On Site: An applicant may convey on site real property to the ~~the~~**Town** on which no covenants, restrictions or issues exist that would limit the construction of EHUs, at the sole discretion of the ~~the~~**Town eCouncil**. This method does not mitigate the on site unit requirements of subsection A of this section.

4. Payment ~~Of~~ **of** Fees ~~in~~ **in** Lieu:

d. The ~~the~~**Town** shall ~~only~~ use monies collected from fees in lieu **only** to provide **incremental** new employee housing **units**.

e. **An applicant may provide a payment of fees in lieu only for any fractional remainder of the requirement generated under this chapter totaling less than 1.0 employees.**

5. Conveyance ~~Of~~ **of** **Vacant** Property Off Site: The ~~the~~**Town eCouncil** may, at its sole discretion, accept the conveyance of **vacant** property off site in lieu of requiring the provision of EHUs, provided that no covenants, restrictions or issues exist on such property that would limit the construction of EHUs. (Ord. 1(2008) § 24)

Section 3. Section 12-24-6, Inclusionary Zoning, Methods of Mitigation, of the Vail Town Code is hereby amended as follows (text to be deleted is in ~~striktethrough~~ text that is, to be added is **bold**. Sections of text that are not amended have been omitted.)

A. For all new construction (i.e., development that does not affect any existing buildings or structures) and demo/rebuild projects that result in a mitigation

requirement of four hundred thirty eight (438) square feet or greater, no less than one-half ( $\frac{1}{2}$ ) the mitigation of employee housing required by this chapter shall be accomplished with on site units.

4. ~~Fees In~~ **in Lieu**: An applicant may provide a payment of fees in lieu **only** for any fractional remainder of the requirement generated under this chapter totaling less than four hundred thirty eight (438) square feet of EHU floor area.

5. ~~Remaining Portion Of~~ **of Requirement**: Any remaining portion of the mitigation requirement not provided with on site units ~~may~~ **shall** be provided in accordance with subsection B of this section.

C. For all development projects except those mitigated by subsection A of this section, the mitigation of employee housing required by this chapter shall be accomplished through one, or any combination, of the methods further described in this section. Unless otherwise regulated by this title, the choice of method(s) used to mitigate the employee housing requirements of this chapter shall be at the sole discretion of the applicant.

2. ~~Conveyance Of~~ **Vacant Property On Site**: An applicant may convey on site real property to the ~~the~~ **Town** on which no covenants, restrictions or issues exist that would limit the construction of EHUs, at the sole discretion of the ~~the~~ **Town eCouncil**. This method does not mitigate the on site unit requirements of subsection A of this section.

4. ~~Payment Of~~ **of Fees In** **in Lieu**:

d. The ~~the~~ **Town** shall ~~only~~ use monies collected from fees in lieu **only** to provide **incremental** new employee housing **units**.

e. **An applicant may provide a payment of fees in lieu only for any fractional remainder of the requirement generated under this chapter totaling less than four hundred thirty eight (438) square feet of EHU floor area.**

5. ~~Conveyance Of~~ **of Vacant Property Off Site**: The ~~the~~ **Town eCouncil** may, at its sole discretion, accept the conveyance of **vacant** property off site in lieu of requiring the provision of EHUs, provided that no covenants, restrictions or issues exist on such property that would limit the construction of EHUs. (Ord. 1(2008) § 25)

Section 4. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not effect the validity of the remaining portions of this ordinance; and the Town Council hereby declares it would have passed this ordinance, and each part, section, subsection, sentence, clause

or phrase thereof, regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

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

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

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

INTRODUCED, READ ON FIRST READING, APPROVED, AND ORDERED  
PUBLISHED ONCE IN FULL ON FIRST READING this 6th day of September 2016 and  
a public hearing for second reading of this Ordinance set for the 20th day of September,  
2016, in the Council Chambers of the Vail Municipal Building, Vail, Colorado.

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Dave Chapin, Mayor

ATTEST:

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Patty McKenny, Town Clerk

INTRODUCED, READ, ADOPTED AND ENACTED ON SECOND READING  
AND ORDERED PUBLISHED IN FULL this 20th day of September, 2016.

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Dave Chapin, Mayor

ATTEST:

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Patty McKenny, Town Clerk