



## Memorandum

TO: Planning and Environmental Commission

FROM: Community Development Department

DATE: August 8, 2016

SUBJECT: A request for a recommendation to the Vail Town Council for a Prescribed Regulations Amendment, pursuant to Section 12-3-7, Amendment, Vail Town Code, to amend Section 12-13-5, Employee Housing; Employee Housing Unit Deed Restriction Exchange Program (Exchange Program), Section 12-23-6, Commercial Linkage; Methods of Mitigation, and Section 12-24-6, Inclusionary Zoning; Methods of Mitigation, Vail Town Code, concerning the payment of Fees in Lieu of providing Employee Housing and setting forth details in regard thereto (PEC16-0025).

Applicant: Town of Vail  
Planner: Alan J. Nazzaro, Housing Manager  
Jonathan Spence, Planner

### I. SUMMARY

Upon recommendation from the Vail Local Housing Authority (VLHA), the Community Development Department proposes a change to the policy concerning the acceptance of fee in lieu payments under the Town of Vail's Inclusionary Zoning, Commercial Linkage and Employee Housing Deed Restriction Exchange Programs. This change in policy is proposed to be codified through amendments to *Section 12-13-5 Employee Housing Unit Deed Restriction Exchange Program*, *Section 12-23-6, Methods of Mitigation under Commercial Linkage*, and *Section 12-24-6, Methods of Mitigation under Inclusionary Zoning* of the Vail Town Code (Code). In addition to the proposed text amendments related to the change in policy, staff has also proposed minor changes to the language of the sections to improve readability and clarity.

This change in policy is proposed to better define the circumstances under which a fee in lieu payment may be accepted by the Vail Town Council for mitigation of employee housing obligations. Currently, fees in lieu may be proposed to satisfy these obligations largely at the discretion of an applicant. The change in policy proposed would change the circumstances when fees in lieu may be accepted only to fractional requirements (partial or remainder obligations) with the only exception being for participation in the Exchange Program involving Employee Housing Units with deed restrictions approved prior to July 22, 1994. Please find a more detailed explanation of this proposed change in policy below in Section II or, alternatively, in the matrix provided as Attachment A.

Based upon staff's review of the criteria outlined in Section VI of this memorandum and the recommendation of the VLHA as requested by Town Council on this matter, the Community Development Department recommends the Planning and Environmental Commission forward a **recommendation of approval** for the Prescribed Regulation Amendment to the Vail Town Council.

## II. DESCRIPTION OF REQUEST

The purpose of the amendment is to define the acceptance of fees in lieu for employee housing mitigation requirements under:

- The Exchange Program involving Employee Housing Units as:
  - mitigation for any fractional portion of the required square footage not provided by a proposed EHU
  - or in full only for Employee Housing Units with deed restrictions approved prior to July 22, 1994. These deed restrictions contained the following language: "*if the unit is rented, it shall be rented only to tenants who are full time employees...*";
- The Commercial Linkage Program to fractional requirements (partial or remainder obligations) less than 1.25 employees;
- The Inclusionary Zoning Program to fractional requirements (partial or remainder obligations) less than 438 square feet.

### Existing Policy

As currently written, the Code allows the use of fees in lieu at the discretion of the applicant to satisfy any and all calculated mitigation requirements of the Exchange Program (Section 12-13-5). Similarly, the Code allows the use of fees in lieu at the discretion of the applicant to satisfy any employee housing obligations not required to be fulfilled on-site in both the Inclusionary Zoning and Commercial Linkage programs (Sections 12-23-6 and 12-24-6).

### Proposed Policy

The proposed policy changes are recommended as follows:

- With respect to the Employee Housing Unit Deed Restriction Exchange program (Section 12-13-5); Fees in lieu shall only be accepted as mitigation for any fractional portion of the required square footage not provided by a proposed EHU or in full only for Employee Housing Units with deed restrictions approved prior to July 22, 1994. These deed restrictions contained the following language: "*if the unit is rented, it shall be rented only to tenants who are full time employees...*". The rationale for accepting fees for these units is that the deed restriction language does not require the units to be occupied and therefore their value to the community may be less than that of other, more recently established units that are required to be occupied.

- With respect to Commercial Linkage program (Section 12-23): Fees in lieu shall only be accepted for a fractional unit requirement resulting from an employee generation of less than 1.25 employees or a fractional remainder.
- With respect to the Inclusionary Zoning program (Section 12-24): Fees in lieu shall only be accepted for the mitigation of housing obligations that are a result of a fractional unit requirements resulting from and obligation of less than 438 square feet or a fractional remainder.
- With respect to contingency language for instances of extraordinary circumstances the following is proposed :

"At the sole discretion of the Town, an exception may be granted from the requirements of this Chapter based upon a finding by the Town Council that exceptional or extraordinary circumstances or conditions apply that prevent the implementation of the required mitigation methods and a mutual agreement is reached between the Town and the Applicant with regard to mitigation."

#### Resulting Effects of the Change in Policy

The effects resulting from the proposed changes to the policy regarding the acceptance of fees in lieu as mitigation will be felt by both the development community as well as owners of existing deed restricted units that were not created as a result of Inclusionary Zoning or Commercial Linkage Requirements. For the development community, the change in policy removes one mitigation option for meeting the housing obligation not required on-site. Remaining mitigation options include meeting the full requirement on-site with either EHU's or dormitory style housing, off site units or the conveyance of off site property. The removal of the fee in lieu option will require the development community to meet the housing obligation, unless satisfied through the conveyance of vacant property, with actual units of housing, either through new construction or through the placement of a deed restriction on an existing housing unit.

For the owners of deed restricted units wishing to participate in the Employee Housing Unit Deed Restriction Exchange Program, fees in lieu will only be accepted for any fractional portion of the required square footage not provided by a proposed EHU or in full for units with deed restrictions approved prior to July 22, 1994 containing the above mentioned language. As a result, for owners of units otherwise eligible created after this date, the exchange unit must be replaced with another unit, as outlined in Section 12-13-5 D.2.

### **III. BACKGROUND**

In February of 2016, the Town Council requested background information and began discussions on how the Town of Vail calculates its annual fee in lieu for mitigation of employee housing impacts (Code Sections 12-23, 12-24) and the Employee Housing Unit (EHU) Exchange Program (Section 12-13-5). Several work sessions have been

held since then, including a joint work session with the Vail Local Housing Authority (VLHA) to determine if the fees charged are adequate, are achieving their goals, and what changes could be made to improve performance towards meeting those goals.

The VLHA has been tasked with making recommendations to the Council on options for changes to the fee in lieu policy. On June 27, 2016 staff presented to the Planning and Environmental Commission (PEC) the options under consideration by the VLHA for feedback. The VLHA has considered this feedback and at their July 26, 2016 voted to forward their recommendation contained herein to the PEC for their recommendation to the Town Council.

#### **IV. PROPOSED TEXT AMENDMENT LANGUAGE**

The proposed changes to Section 12-13-5, Employee Housing; Employee Housing Unit Deed Restriction Exchange Program, Section 12-23-6, Commercial Linkage: Methods of Mitigation and Section 12-24-6, Inclusionary Zoning: Methods of Mitigation to implement the proposed change in policy can be found below. In addition to the changes necessary for the implementation of the revised policy, staff has also included a number of minor changes to improve the readability. Please refer to the matrix included as Attachment A for a further explanation of these changes.

The proposed language is as follows with new language in **bold** and language to be removed ~~stricken~~ through.

##### **12-13-5: EMPLOYEE HOUSING UNIT DEED RESTRICTION EXCHANGE PROGRAM:**

- A. Purpose: The purpose of this section is to provide occupied livable, affordable employee housing units within the town of Vail through the establishment of an employee housing unit deed restriction exchange program. The exchange program allows the town council to release a deed restriction from an existing employee housing unit in exchange for the placement of an employee housing deed restriction on another dwelling unit
- B. Applicability: The program established under this section applies to existing employee housing units. This shall not apply to any existing employee housing unit that is already price appreciation capped or any employee housing unit established to meet the on site employee mitigation requirements of chapter 23, "Commercial Linkage", or chapter 24, "Inclusionary Zoning", of this title or as part of an approved development plan.
- C. Definitions: For the purpose of this section:

**COMMERCIAL JOB CORE:** Those areas located south of Interstate 70, east of the intersection of Forest Road and South Frontage Road, north of Vail Mountain, and

west of the town of Vail soccer fields on Vail Valley Road, as further defined by exhibit A of this section.

**EXCHANGE EHU:** The existing nonprice appreciation capped employee housing unit or other unit with an employee housing deed restriction that is being proposed to have the deed restriction released as part of this program.

**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 onto another dwelling unit the proposed EHU, and/or the payment of a fee in lieu, **as described in Paragraph 5 below.**
5. Fee 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:~~

**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..."**.

**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 payment. 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.**

**The town shall use monies collected from fees in lieu only 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 3~~

- 6. At the sole discretion of the Town, an exception may be granted from the requirements of this Chapter based upon a finding by the Town Council that exceptional or extraordinary circumstances or conditions apply that prevent the implementation of the required mitigation methods and a mutual agreement is reached between the Town and the Applicant with regard to mitigation.**

E. Fees: The ~~town~~ **Town 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:

1. Submittal Requirements: The administrator shall establish the submittal requirements for an employee housing deed restriction exchange application. A complete list of the submittal requirements shall be maintained by the administrator and filed in the community development department. Certain submittal requirements may be waived and/or modified by the administrator and/or the reviewing body if it is demonstrated by the applicant that the information and materials required are not relevant to the proposed exchange. The administrator and/or the reviewing body may require the submission of additional materials if deemed necessary to properly evaluate the application.

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 ~~Local~~ ~~Housing~~ ~~Authority~~.
- b. Vail Local Housing Authority Review: The review of a proposed employee housing deed restriction exchange application shall be held by the Vail ~~Local~~ ~~Housing~~ ~~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~~ ~~Local~~ ~~Housing~~ ~~Authority~~. Within twenty (20) days of the closing of a public hearing on a proposed amendment, the Vail ~~Local~~ ~~Housing~~ ~~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 town council.
- c. Town Council Review: Upon receipt of the report and recommendation of the authority, the ~~town~~ ~~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 town council shall act on the application. The ~~town~~ ~~council~~ shall consider but shall not be bound by the recommendation of the Vail ~~Local~~ ~~Housing~~ ~~Authority~~. The ~~town~~ ~~council~~ may approve, either in accordance with the recommendation of the Vail ~~Local~~ ~~Housing~~ ~~Authority~~ or in modified form, or the council may deny the application.
- d. Appeal: Administrator and ~~town~~ ~~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 ~~Local~~ ~~Housing~~ ~~Authority~~ and Vail ~~town~~ ~~council~~ shall consider the following criteria with respect to the application:
  - (1) The proximity and accessibility of the proposed EHU(s) to the commercial job core and public transportation; and
  - (2) The size of the proposed EHU(s) in relation to the minimum employee housing unit sizes established for commercial linkage mitigation in section 12-23-3 of this title; and

- (3) The effect of any homeowners' association dues or maintenance fees imposed upon the proposed EHU(s) on the affordability of the proposed unit for an employee; and
  - (4) The correlation between any homeowners' association fees imposed upon the proposed EHU(s) and the services and amenities provided by the homeowners' association; and
  - (5) The extent to which the exchange is consistent with the applicable elements of the adopted goals, objectives and policies outlined in the Vail comprehensive plan and is compatible with the development objectives of the town; and
  - (6) The extent to which the exchange presents a harmonious, convenient, workable relationship among land uses consistent with municipal development objectives; and
  - (7) The extent to which the exchange provides for the growth of an orderly viable community and serves the best interests of the community as a whole.
- b. Necessary Findings: Before recommending and/or granting an approval of an employee housing deed restriction exchange application, the Vail **Local Housing Authority** and the Vail **Town Council** shall make the following findings with respect to the application:
- (1) The application meets the general requirements of subsection D of this section; and
  - (2) The application is consistent with the applicable elements of the adopted goals, objectives and policies outlined in the Vail comprehensive plan and is compatible with the development objectives of the town; and
  - (3) The application furthers the general and specific purposes of the zoning regulations, section 12-1-2 of this title, and the employee housing regulations, section 12-13-1 of this chapter; and
  - (4) The application promotes the health, safety, morals, and general welfare of the town and promotes 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. (Ord. 10(2011) §§ 1, 2, 3, 4: Ord. 31(2008) § 1)

### **12-23-6: METHODS OF MITIGATION:**

- 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.

1. Exceptions: At the sole discretion of the applicable governing body, an exception may be granted from this subsection based upon one of the following findings:
    - a. Implementation of the on site unit mitigation method would be contrary to the intent and purpose of the applicable zone district.
    - b. Implementation of the on site unit mitigation method would be contrary to the goals of the applicable elements of the Vail comprehensive plan and the town's development objectives.
    - c. Exceptional or extraordinary circumstances or conditions apply to the site that prevents the implementation of the on site unit mitigation method.
    - d. The method of mitigation proposed better achieves the intent and purpose of this chapter and general and specific purposes of this title than the on site mitigation unit method.
  2. On Site EHUs: All on site EHUs shall be deed restricted as a "type IV-CL" (type four, commercial linkage mitigation) or "type VII-CL" (type seven, commercial linkage mitigation) EHU in accordance with chapter 13, "Employee Housing", of this title.
  3. On Site Dormitory Style Units: At the sole discretion of the applicable governing body, an applicant may provide on site dormitory style units.
  4. Fees **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** 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.
- 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.
1. On Site Units:
    - a. All on site EHUs shall be deed restricted as a "type IV-CL" (type four, commercial linkage mitigation) or "type VII-CL" (type seven, commercial linkage

mitigation) EHU in accordance with chapter 13, "Employee Housing", of this title.

- b. At the sole discretion of the applicable governing body, an applicant may provide on site dormitory style units.
2. Conveyance Of **Vacant** Property On Site: An applicant may convey on site real property to the town on which no covenants, restrictions or issues exist that would limit the construction of EHUs, at the sole discretion of the town council. This method does not mitigate the on site unit requirements of subsection A of this section.
  3. Off Site Units:
    - a. The requisite number of EHUs, or a portion thereof, may be provided off site within the town, provided that such EHUs are deed restricted in accordance with this chapter.
    - b. At the sole discretion of the planning and environmental commission, an applicant may provide off site dormitory units, unless the application is for a special development district, in which case, the town council, in its sole discretion, may accept dormitory units as a method of mitigation.
  4. Payment of Fees in Lieu:
    - a. The fee in lieu for each employee to be housed shall be established annually by resolution of the town council, provided that, in calculating that fee, the town council shall include the net cost (total cost less the amount covered by rental or sale income) of real property and all related planning, design, site development, legal, construction and construction management costs of the project, in current dollars, which would be incurred by the town to provide housing for the employee to be housed in that year.
    - b. An administrative fee, established by resolution of the town council, shall be added to the amount set forth in subsection B4a of this section.
    - c. Fees in lieu shall be due and payable prior to the issuance of a building permit for the development.
    - d. 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 1.25 employees.**

5. Conveyance **of Vacant** Property Off Site: The town council 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)
6. **At the sole discretion of the Town, an exception may be granted from the requirements of this Chapter based upon a finding by the Town Council that exceptional or extraordinary circumstances or conditions apply that prevent the implementation of the required mitigation methods and a mutual agreement is reached between the Town and the Applicant with regard to mitigation.**

#### **12-24-6: METHODS OF MITIGATION:**

- 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.
  1. Exceptions: At the sole discretion of the applicable governing body, an exception may be granted from this subsection based upon one of the following findings:
    - a. Implementation of the on site unit mitigation method would be contrary to the intent and purpose of the applicable zone district.
    - b. Implementation of the on site unit mitigation method would be contrary to the goals of the applicable elements of the Vail comprehensive plan and the town's development objectives.
    - c. Exceptional or extraordinary circumstances or conditions apply to the site that prevents the implementation of the on site unit mitigation method.
    - d. The method of mitigation proposed better achieves the intent and purpose of this chapter and general and specific purposes of this title than the on site mitigation unit method.
  2. On Site EHUs: All on site EHUs shall be deed restricted as a "type IV-IZ" (type four, inclusionary zoning mitigation) or "type VII-IZ" (type seven, inclusionary zoning mitigation) EHU in accordance with chapter 13, "Employee Housing", of this title.
  3. On Site Dormitory Style Units: At the sole discretion of the applicable governing body, an applicant may provide on site dormitory style units.

4. Fees **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** 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.
- 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.
1. On Site Units:
    - a. All on site EHUs shall be deed restricted as a "type IV-IZ" (type four, inclusionary zoning mitigation) or "type VII-IZ" (type seven, inclusionary zoning mitigation) EHU in accordance with chapter 13, "Employee Housing", of this title.
    - b. At the sole discretion of the applicable governing body, an applicant may provide on site dormitory style units.
  2. Conveyance **of Vacant** Property On Site: An applicant may convey on site real property to the town of Vail on which no covenants, restrictions or issues exist that would limit the construction of EHUs, at the sole discretion of the town council. This method does not mitigate the on site unit requirements of subsection A of this section.
  3. Off Site Units:
    - a. The requisite number of EHUs, or a portion thereof, may be provided off site within the town, provided that such EHUs are deed restricted in accordance with this chapter.
    - b. At the sole discretion of the ~~p~~Planning and ~~e~~Environmental ~~e~~Commission, an applicant may provide off site dormitory units, unless the application is for a special development district, in which case, the ~~t~~Town ~~c~~Council, in its sole discretion, may accept dormitory units as a method of mitigation.
  4. Payment **of Fees in** Lieu:
    - a. The fee in lieu for each square foot shall be established annually by resolution of the town council, provided that in calculating that fee, the town council shall include the net cost (total cost less the amount covered by rental or sale

income) of real property and all related planning, design, site development, legal, construction and construction management costs of the project, in current dollars, which would be incurred by the town to provide the square feet in that year.

- b. An administrative fee, established by resolution of the town council, shall be added to the amount set forth in subsection B4a of this section.
  - c. Fees in lieu shall be due and payable prior to the issuance of a building permit for the development.
  - d. 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 **Vacant** Property Off Site: The ~~town~~ **Town** ~~council~~ **Council** may, at its sole discretion, accept a conveyance of real property off site in lieu of requiring construction of EHUs, provided that no covenants, restrictions or issues exist on the property that would limit the construction of EHUs. (Ord. 1(2008) § 25)
6. **At the sole discretion of the Town, an exception may be granted from the requirements of this Chapter based upon a finding by the Town Council that exceptional or extraordinary circumstances or conditions apply that prevent the implementation of the required mitigation methods and a mutual agreement is reached between the Town and the Applicant with regard to mitigation.**

## V. APPLICABLE PLANNING DOCUMENTS

Title 12 – Zoning Regulations, Vail Town Code

*Purpose:*

*A. General: These regulations are enacted for the purpose of promoting the health, safety, morals, and general welfare of the town, and to promote the coordinated and harmonious development of the town in a manner that will conserve and enhance its natural environment and its established character as a resort and residential community of high quality.*

*B. Specific: These regulations are intended to achieve the following more specific purposes:*

- 1. *To provide for adequate light, air, sanitation, drainage, and public facilities.*

2. *To secure safety from fire, panic, flood, avalanche, accumulation of snow, and other dangerous conditions.*
3. *To promote safe and efficient pedestrian and vehicular traffic circulation and to lessen congestion in the streets.*
4. *To promote adequate and appropriately located off street parking and loading facilities.*
5. *To conserve and maintain established community qualities and economic values.*
6. *To encourage a harmonious, convenient, workable relationship among land uses, consistent with municipal development objectives.*
7. *To prevent excessive population densities and overcrowding of the land with structures.*
8. *To safeguard and enhance the appearance of the town.*
9. *To conserve and protect wildlife, streams, woods, hillsides, and other desirable natural features.*
10. *To assure adequate open space, recreation opportunities, and other amenities and facilities conducive to desired living quarters.*
11. *To otherwise provide for the growth of an orderly and viable community.*

*Section 3-7 Amendment (in part)*

*A. Prescription: The regulations prescribed in this title and the boundaries of the zone districts shown on the official zoning map may be amended, or repealed by the town council in accordance with the procedures prescribed in this chapter.*

*B. Initiation:*

1. *An amendment of the regulations of this title or a change in zone district boundaries may be initiated by the town council on its own motion, by the planning and environmental commission on its own motion, by petition of any resident or property owner in the town, or by the administrator.*
2. *A petition for amendment of the regulations or a change in zone district boundaries shall be filed on a form to be prescribed by the administrator. The petition shall include a summary of the proposed revision of the regulations, or a complete description of proposed changes in zone district boundaries and a map indicating the existing and proposed zone district boundaries. If the petition is for a change in zone district boundaries, the petition shall include a list of the owners of all*

*properties within the boundaries of the area to be rezoned or changed, and the property adjacent thereto. The owners' list shall include the names of all owners, their mailing and street addresses, and the legal description of the property owned by each. Accompanying the list shall be stamped, addressed envelopes to each owner to be used for the mailing of the notice of hearing. The petition also shall include such additional information as prescribed by the administrator.*

## **VI. CRITERIA FOR REVIEW**

Section 12-3-7(C)(2) of the Zoning Regulations identifies the factors that the Planning and Environmental Commission must consider before making a recommendation for a change to the text of the code. These factors include the following:

### **1. The extent to which the amendment furthers the general and specific purposes of the zoning regulations; and**

The proposed amendments are intended to further the general and specific purposes of the zoning regulations. Specifically, the purpose of the text amendments is to further the creation of deed restricted affordable housing units by restricting the circumstances where fees in lieu may be used to satisfy employee housing mitigation/exchange requirements generated by the Inclusionary Zoning, Commercial Linkage or Employee Housing Deed Restriction Exchange Programs. This in turn will further the Town's goal of providing deed restricted employee housing for 30% of the workforce. This will further the specific goals of the Zoning Regulations, including *conserving and maintaining "established community qualities and economic values," encouraging "a harmonious, convenient, workable relationship among land uses, consistent with municipal development objectives" and "to otherwise provide for the growth of an orderly and viable community."*

Therefore, staff finds this criterion to be met.

### **2. The extent to which the amendment would better implement and better achieve the applicable elements of the adopted goals, objectives, and policies outlined in the Vail comprehensive plan and is compatible with the development objectives of the town; and**

The Town of Vail adopted the Employee Housing Strategic Plan on September 2, 2008 and established the goal "to ensure there is deed restricted housing for at least 30% of Vail's workforce within the Town of Vail." The proposed amendment works to better achieve this goal through the restricting the circumstances where fees in lieu may be used and in turn by requiring the creation of deed restricted employee housing.

Therefore, staff finds this criterion to be met.

### **3. The extent to which the amendment demonstrates how conditions have substantially changed since the adoption of the subject regulation and how the existing regulation is no longer appropriate or is inapplicable; and**

The current policy pertaining to the acceptance of fees in lieu have not had the desired outcome of increasing the supply of deed restricted employee housing in the community. Staff has found that the acceptance of fees in lieu for anything more than a fractional requirement is a less desirable outcome than incrementally increasing the inventory of deed restricted employee housing units. The amendment, resulting from the proposed change in policy, is intended to better achieve the stated goal.

Therefore, staff finds this criterion to be met.

**4. The extent to which the amendment provides a harmonious, convenient, workable relationship among land use regulations consistent with municipal development objectives; and**

The proposed amendments are intended to provide clear policy, terminology, and consistent defined terms within the Vail Town Code so that land use regulations are consistent with municipal development objectives to affect a positive outcome.

Therefore, staff finds this criterion to be met.

**5. Such other factors and criteria the planning and environmental commission and/or council deem applicable to the proposed text amendment.**

**VII. STAFF RECOMMENDATION**

Based upon the analysis of the review criteria contained in Section VI of this memorandum, the Community Development Department recommends that the Planning and Environmental Commission make a recommendation to the Vail Town Council to approve the Prescribed Regulations Amendment, pursuant to Section 12-3-7, Amendment, Vail Town Code, to amend Section 12-13-5, Employee Housing; Employee Housing Unit Deed Restriction Exchange Program, Section 12-23-6, Commercial Linkage; Methods of Mitigation, and Section 12-24-6, Inclusionary Zoning; Methods of Mitigation, Vail Town Code, concerning the payment of Fees in Lieu of providing Employee Housing and setting forth details in regard thereto (PEC16-0025).

If the Planning and Environmental Commission chooses to recommend approval of the proposed text amendments, the Community Development Department recommends the following **motion**:

*“The Planning and Environmental Commission forwards a recommendation of **approval** to the Vail Town Council for a Prescribed Regulations Amendment, pursuant to Section 12-3-7, Amendment, Vail Town Code, to amend Section 12-13-5, Employee Housing; Employee Housing Unit Deed Restriction Exchange Program, Section 12-23-6, Commercial Linkage; Methods of Mitigation, and Section 12-24-6, Inclusionary Zoning; Methods of Mitigation, Vail Town Code, concerning the payment of Fees in Lieu of providing Employee Housing and setting forth details in regard thereto.”*

Should the Planning and Environmental Commission choose to forward a recommendation of approval to the Vail Town Council for the proposed prescribed regulation amendment, the Community Development Department recommends the Commission makes the following findings:

*"Based upon the review of the criteria outlined in Section VI this memorandum, and the evidence and testimony presented, the Planning and Environmental Commission finds:*

- 1. That the amendment is consistent with the applicable elements of the adopted goals, objectives and policies outlined in the Vail comprehensive plan and is compatible with the development objectives of the town; and*
- 2. That the amendment furthers the general and specific purposes of the zoning regulations; and*
- 3. That the amendment promotes the health, safety, morals, and general welfare of the town and promotes 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.*

## **VIII. ATTACHMENTS**

- A. Proposed text changes matrix