



Memorandum

TO: Planning and Environmental Commission

FROM: Community Development Department

DATE: August 28, 2017

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 12-23-2 Employee Generation and Mitigation Rates, Vail Town Code, to reflect the recommendations of the 2016 Vail Employer Survey Summary of Results, February 2017 (Nexus Study) and setting forth details in regard thereto. (PEC17-0033)

Applicant: Town of Vail, represented by Lynne Campbell, Housing Coordinator
Planner: Chris Neubecker

I. SUMMARY

The 2009 Vail Employer Survey Summary of Results (Nexus Study) must be updated regularly to remain effective and relevant. The applicant, the Town of Vail, represented by Lynne Campbell, Housing Coordinator, requests the review of a prescribed regulation amendment, pursuant to Section 12-3-7, Amendment, Vail Town Code, to amend Section 12-23-2 Employee Generation and Mitigation Rates, Vail Town Code, to reflect the recommendations for updating the 2009 Vail Employer Survey Summary of Results (Nexus Study) and setting forth details in regard thereto.

Based upon Staff's review of the criteria outlined in Section VI of this memorandum and the evidence and testimony presented, the Community Development Department recommends the Planning and Environmental Commission (PEC) **forward a recommendation of approval** to the Vail Town Council, of this application, subject to the findings noted in Section VII of this memorandum.

II. DESCRIPTION OF REQUEST

The Vail Employer Survey Summary of Results (Nexus Study) is used by the Town of Vail in administering commercial linkage requirements for development within the Town of Vail. To remain effective and relevant, the Nexus Study needs to be reviewed and updated at least every five (5) years, or more often if deemed necessary by the Town Council, to ensure an accurate reflection of the current and future employee housing needs resulting from new development and redevelopment in the town.

To that end, the applicant, the Town of Vail, is proposing to update and amend Section 12-23-2, Employee Generation and Mitigation Rates, within the Commercial Linkage regulations of the Vail Town Code. These changes are recommended in response to the “2016 Vail Employer Survey Summary of Results”, dated February 2017 (also known as the Nexus Study), which provides a current analysis of employee generation rates for various types of businesses. As recommended, the employee generation rates would change as follows:

- Accommodation Unit / Limited Service Lodge Unit – **decreased by 0.1 employee** per 1,000 square feet (from 0.7 to 0.6 employees per 1,000 square feet)
- Eating and Drinking Establishments - **increased by 3.45 employees** per 1,000 square feet (from 6.75 to 10.2 employees per 1,000 square feet)
- **Combine** Real Estate and Property Management Offices with Business and Professional Office.

III. BACKGROUND

The purpose of the chapter on Commercial Linkage is to ensure that new commercial development and redevelopment in the town provide for a reasonable amount of employee housing (20%) to mitigate the impact of the increased need for employee housing caused by commercial development and redevelopment. The employee generation rates are used to quantify the impacts of various types of commercial land uses on the demand for employee housing. These employee generation rates provide a policy that is fair, consistent, understandable, predictable and easily calculated. The proposed changes are supported by the following reasons:

- There is a substantial, direct and rational connection between the need for housing of employees generated by new development and redevelopment and the requirements for the provision of employee housing.
- It is the Town Council’s goal to provide housing for at least twenty percent (20%) of the net new employees generated from residential and commercial development in the Town of Vail through the Commercial Linkage and Inclusionary Zoning policies.
- On April 3, 2007, the Town Council adopted Chapter 23, Commercial Linkage and Chapter 24, Inclusionary Zoning, Vail Town Code, for the purpose of requiring new development and redevelopment to provide a reasonable and appropriate percentage of new employee housing, which has a rational nexus to new job creation.
- The last time that the Nexus Study was updated was in 2006. More than 11 years have passed since the last study, and more recent data must be considered. The Nexus Study needs to be updated every five (5) years, or more often if deemed necessary by the Town Council.

- The Vail Local Housing Authority discussed this 2016 Vail Employer Survey Summary of Results, February 2017 (Nexus Study) at their meeting on July 25, 2017 and again on August 22, 2017, and has forwarded its recommendation to update the Commercial Linkage regulations.

The PEC last reviewed this application during the public hearing on August 14, 2017. At that meeting Commissioners expressed concern with the response rate for the survey, and were generally unsupportive of making changes to the Section 12-23-2 Employee Generation and Mitigation Rates based on the existing study. The Commission was critical of the study itself and the methodology for obtaining feedback from local businesses, and questioned the study's validity because of the low response rate. The Commission also questioned some of the categories in the study, including real estate offices and other industries that may use independent contractors.

Since the hearing on August 14, staff contacted Chris Cares from RRC Associates (RRC) to discuss the concerns of the PEC members, and to discuss other potential sources for collecting data on commercial employee generation. We have also contacted the Town of Vail Finance Department to understand the type of information that is currently collected through the Town's business licensing process.

No changes are currently proposed from the version of the ordinance presented to the PEC at the meeting of August 14. The PEC is asked to review the proposed prescribed regulations amendment, and to make a recommendation to the Town Council, based on the criteria outlined in Section VI of this report.

Responses to Commission Concerns:

- Low Response Rate – Several Planning and Environmental Commission members questioned the validity of the data collection; more specifically, the response rate of the survey. RRC has verified that for statistical purpose the response rate and sample size are valid and can be used to accurately reflect employee generation rates of businesses located in Vail for the purpose of applying the Town's adopted commercial linkage requirements. In making this determination, RRC cross checked the data against previous data collected in Vail and across other mountain resort communities. It should be noted, that pursuant to Section 12-23-12, Review, an applicant may submit competent evidence to the Commission demonstrating how the Town's established employee generation rates may be in error and if not altered, lessened, or otherwise adjusted would result in an unlawful takings. On several occasions in the past the Commission has excepted such evidence and altered the employee housing requirement. Phase I of the Vail Valley Medical Center (VVMC) redevelopment is a recent example.
- Unfairness to Eating and Drinking Establishments – The Town policy is not designed to target specific industries, or around business profitability or margin

levels. The policy is designed to address the need for employee housing, and is based on the number of employees generated for each type of business. Restaurants generate more employees per square foot, and thus generate more need for employee housing.

- Employee Generation Rates Have Increased Too Much – The study looks at actual business in the Town of Vail. The proposed numbers are a reflection of the local businesses that responded to the survey. The fact that these numbers have gone up since the last Nexus Study in 2006 reflect the increase in demand for employees in local businesses, and the demand for higher levels of service.
- Disagreement with the Commercial Linkage Policy in General – The determination of whether or not to have a commercial linkage policy is a matter for the Town Council to decide. The Town Council has determined that this policy is necessary to meet the community's employee housing goals. The PEC is asked to provide a recommendation on the proposed changes, and also to help develop the implementation methods for the policy.

Other Considerations

- The Commercial Linkage requirements do not apply to existing business, unless the business expands its floor area. This policy will only apply to “net new” commercial development that results in an increase in employee generation.
- In cases where a business or developer does not believe that the employee generation rates in the Town Code accurately reflect the number of employees generated, the applicant may submit evidence that may warrant a deviation from the codified employee generation rates, per Section 12-23-2 B, which states:

“B. If an applicant submits competent evidence that the employee generation rates contained in table 23-1 of this section or the nexus study do not accurately reflect the number of employees generated by the proposed commercial development or redevelopment and the administrator finds that such evidence warrants a deviation from those employee generation rates, the administrator shall allow for such a deviation as the administrator deems appropriate.”

- The Nexus Study has been adjusted to reflect the fact that many local workers have multiple jobs.
- The results of the Nexus Study show that employment levels in Vail are consistently higher than the overall averages that RRC Associates has found through other studies. These higher employment levels are likely a response to the higher levels of customer service that local businesses provide and that our guests demand.

- Each commercial development or redevelopment is required to mitigate its impact on employee housing by providing employee housing units for twenty percent (20%) of the employees generated. There is not an expectation or requirement for provide housing for all of the employees generate by new development.

IV. PROPOSED TEXT AMENDMENT LANGUAGE

The proposed amendments include changing the chart in Section 12-23-2: Employee Generation and Mitigation Rates, Vail Town Code, as well as amending the definition of Nexus Study. (Language proposed for removal is shown as ~~striketrough~~. Language proposed to be added is shown in **bold**.)

No changes are proposed from the version presented during the meeting of August 14. One option that is not included in the recommendation, but which could be considered, would be to use the RRC Merged Database, which includes data from Vail businesses, plus other mountain resort communities. For example, the Merged Database for Accommodation Units would include approximately 190 lodging properties across +/-10 resort communities, including Vail. The result of using the Merged Database would be an increase in the employee generation rates for Accommodation Units (on a per room basis) and a reduced rate for some other uses (Eating and Drinking Establishments, for example). However, the Merged Database is not specific to Vail, and may artificially raise or lower the actual employee generation compared to using local data.

12-2-2: Definitions of Words and Terms

NEXUS STUDY: ~~A report, prepared at the request of the town council, updated at least every five (5) years or more often if deemed necessary by the town council, analyzing the current and future employee housing needs resulting from new development and redevelopment in the town.~~ **The “2016 Vail Employer Survey, Summary of Results” dated February 2017, prepared for the Town of Vail by RRC Associates, and on file with the office of the town clerk, analyzing the current and future employee housing needs resulting from new development and redevelopment in the town.**

The following table shows the existing rates, proposed rates, and the RRC Merged Database, which includes results from the same category of businesses in other mountain resort communities in which RRC Associates has performed similar research:

Table 23-1: Employee Generation Rates by Types of Commercial Use

<u>Types of Use</u>	<u>Existing</u>	<u>Proposed</u>	<u>RRC Merged Database</u>
Accommodation unit / limited service lodge unit	0.7 employee per net new units	0.6 employee per net new units (-0.1)	0.7 employee per net new units
Business office and professional office (including real estate and property management office)	3.2 employees per 1,000 feet of new net floor area	3.2 employees per 1,000 feet of new net floor area	3.1 employees per 1,000 feet of new net floor area
Conference facility	0.8 employee per 1,000 feet of new net floor area	0.8 employee per 1,000 feet of new net floor area	No data
Eating and drinking establishment	6.75 employee per 1,000 feet of new net floor area	10.2 employees per 1,000 feet of new net floor area (+3.45)	7.8 employees per 1,000 feet of new net floor area
Health club	0.96 employee per 1,000 feet of new net floor area	0.96 employee per 1,000 feet of new net floor area	No data
Real estate office	5.1 employee per 1,000 feet of new net floor area	5.1 employee per 1,000 feet of new net floor area	No data
Retail store / personal service / repair shop	2.4 employee per 1,000 feet of new net floor area	2.4 employee per 1,000 feet of new net floor area	3.0 employee per 1,000 feet of new net floor area
Spa	2.1 employee per 1,000 feet of new net floor area	2.1 employee per 1,000 feet of new net floor area	No data

The Nexus Study also recommends creating a multi-tiered formula for Accommodation Units, based on the differing employment and services levels provided by various hotels and lodges. The Community Development Department is researching options for how this classification could be fairly and accurately determined, since service levels for lodging is not part of the design review process, and can change based on various managers and brand affiliations.

Consideration could be made based upon commonly used definitions in the lodging industry. For example, Full Service hotels are generally upscale and luxury properties with a wide variety of on-site amenities such as restaurants, meeting spaces and exercise rooms and spas. Full Service hotels would include the Four Seasons and the Ritz-Carlton. Limited Service hotels typically have limited facilities and amenities without a full service restaurant. Limited Service hotels are often in the economy, midscale and upper midscale categories. Examples of properties in the Limited Service Lodge category might include the proposed new Marriott Residence Inn, or the former Holiday Inn in West Vail (although this property contains several full service restaurants).

The Community Development Department recommends separating Accommodation Units into categories based on service levels, possibly using the categories of Full Service and Limited Service. We will continue to research the best method to classify different levels of Accommodation Units, which will result in different employee generation rates, as recommended in the Nexus Study.

A change to further categorize Accommodation Units for the purpose of determining employee generation rates is a policy decision. At this time, we ask that the Commission provide a policy recommendation to the Town Council indicating support for this type of classification of Accommodation Units. Staff will continue to research how this can be best implemented, and will provide an update to the Town Council when the ordinance for this text amendment is presented at first reading.

V. APPLICABLE PLANNING DOCUMENTS

Staff believes that following provisions of the Vail Town Code and Vail Land Use Plan are relevant to the review of this proposal:

Title 12, Zoning Regulations, Vail Town Code

CHAPTER 12-1, TITLE, PURPOSE AND APPLICABILITY (in part)

Section 12-1-2: 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.

CHAPTER 12-2-2: DEFINITIONS OF WORDS AND TERMS (in part)

ACCOMMODATION UNIT: Any room or group of rooms without "kitchen facilities", as defined herein, which are designed for temporary occupancy by visitors, guests, individuals, or families on a short term rental basis, and accessible from common corridors, walks, or balconies without passing through another accommodation unit, limited service lodge unit, fractional fee club unit or dwelling unit. An accommodation unit is not intended for permanent residency and shall not be subdivided into an individual condominium unit, pursuant to [title 13](#), "Subdivision Regulations", of this code.

COMMERCIAL DEVELOPMENT: Any development that includes uses such as business offices, professional offices, accommodation units, general retail, grocery, liquor and convenience, recreational amenity, real estate offices, conference facilities, health clubs, eating and drinking establishments, service oriented businesses, or similar uses.

COMMERCIAL LINKAGE: An obligation that requires developers to provide housing for a certain number of new employees that are generated by a new commercial development, focusing solely on a development's impact as related to employee generation and not taking into account secondary impacts.

EMPLOYEE: A person who works an average of thirty (30) hours per week or more on a year round basis at a business located in Eagle County.

EMPLOYEE HOUSING UNIT (EHU): A dwelling unit which shall not be leased or rented for any period less than thirty (30) consecutive days, and shall be occupied by at least one person who is an employee. For the purposes of this definition "employee" shall mean a person who works an average of thirty (30) hours per week or more on a year round basis in Eagle County, Colorado.

NEXUS STUDY: A report, prepared at the request of the town council, updated at least every five (5) years or more often if deemed necessary by the town council, analyzing the current and future employee housing needs resulting from new development and redevelopment in the town.

OFFICE, BUSINESS: An office for the conduct of general business and service activities, such as offices of real estate or insurance agents, brokers, secretarial or

stenographic services, or offices for general business activities and transactions, where storage, sale, or display of merchandise on the premises occupies less than ten percent (10%) of the floor area.

OFFICE, PROFESSIONAL: An office for the practice of a profession, such as offices of physicians, dentists, lawyers, architects, engineers, musicians, teachers, accountants, and others who through training are qualified to perform services of a professional nature, where storage, sale, or display of merchandise on the premises occupies less than ten percent (10%) of the floor area.

OFFICE, TEMPORARY BUSINESS: An office for the conduct of general business and service activities and transactions for a limited time period to accommodate the temporary displacement of an existing business office within the town of Vail due to redevelopment construction activities.

REAL ESTATE OFFICE: An office for the purpose of conducting real estate transactions and/or property management.

REDEVELOPMENT: The construction, improvement, alteration, installation, erection, expansion or change in use of any existing building, structure or other improvement in the town that results in an increase in net floor area or GRFA.

12-23-1: Purpose and Applicability

A. The purpose of this chapter is to ensure that new commercial development and redevelopment in the town provide for a reasonable amount of employee housing to mitigate the impact on employee housing caused by such commercial development and redevelopment.

Vail 2020 Focus on the Future – Strategic Action Plan

Land Use - Goal #4: Provide for enough deed-restricted housing for at least 30 percent of the workforce through policies, regulations and publicly initiated development.

Environmental Sustainability - Goal #2: Energy Management in Buildings and Transportation: Reduce the town's 2007 baseline green house gas emissions.

- *Support employee housing initiatives in order to reduce trips into Vail.*

Housing - Goal: The Town of Vail recognizes the need for housing as infrastructure that promotes community, reduces transit needs and keeps more employees living in the town, and will provide for enough deed-restricted housing for at least 30 percent of the workforce through policies, regulations and publicly initiated development.

CRITERIA FOR REVIEW

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

Staff finds the prescribed regulation amendment furthers the general and specific purposes of the zoning regulations by promoting the coordinated and harmonious development of the Town in a manner that will enhance its established character as a resort and residential community of high quality. To have a high quality resort, a quality workforce is needed, and housing that is convenient and affordable is a key element of maintaining a high quality workforce.

This text amendment will also ensure that new commercial development and redevelopment in the town provide for a reasonable amount of employee housing to mitigate the impact on employee housing caused by such commercial development and redevelopment.

Staff finds that this criterion has been met.

2. The extent to which the text 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

Staff finds that the proposed text amendments will better implement or achieve the applicable elements of the adopted goals, objectives, and policies outlined in the Vail Comprehensive Plan by ensuring that the zoning regulations are current and responsive to actual employee generation in Vail. The Nexus Study is specific to Vail, and ensures that we are using real data, based upon local conditions.

Staff finds that this criterion has been met.

3. The text 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

Since the adoption of the subject regulations, conditions have changed by employers adding more employees, on a per square foot basis, to respond to market demands. The revised Nexus Study shows that employee generation at eating and drinking establishments as well as office uses and retail sales, have increased above the current regulations. It is appropriate to modify the current regulation to reflect the current employee generation rates.

Staff finds that this criterion has been met.

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

Staff believes this text amendment will ensure a harmonious, convenient, workable relationship among land use regulations consistent with the Town's development objectives. Specifically, these regulations will ensure that new commercial development and redevelopment in the town provide for a reasonable amount of employee housing to mitigate the impact on employee housing caused by such commercial development and redevelopment. The provision of employee housing within the community will help ensure that Vail can maintain a high quality workforce with housing options that are nearby to places of employment, and that Vail stays competitive with its peer destination reports.

Staff finds that this criterion has been 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

The Community Development Department recommends the Planning and Environmental Commission forwards a **recommendation of approval** for the prescribed regulation amendment to the Vail Town Council. This recommendation is based upon the review of the criteria outlined in Section VI of this memorandum and the evidence and testimony presented.

Should the Planning and Environmental Commission choose to forward a recommendation of approval to the Vail Town Council for the proposed text amendment, the Community Development Department recommends the Commission pass 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 12-23-2 Employee Generation and Mitigation Rates, Vail Town Code, to reflect the recommendations of the 2016 Vail Employer Survey Summary of Results, February 2017 (Nexus Study) and setting forth details in regard thereto. (PEC17-0033)

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 a review of Section VI of the August 28, 2017 staff memorandum to the Planning and Environmental Commission, 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 outlined in Section 12-1-2, Purpose, Vail Town Code; 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.”*

VI. ATTACHMENTS

- A. 2016 Vail Employer Survey Summary of Results, February 2017 (Nexus Study)
- B. Letter from Vail Local Housing Authority, dated August 14, 2017