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## Memorandum

TO: Vail Town Council

FROM: Community Development Department

DATE: May 21, 2019

SUBJECT: First Reading of Ordinance No. 9, Series of 2019, an ordinance to amend Section 14-10-6: Residential Development, Vail Town Code, pursuant to Section 12-3-7, Amendment, to add a paragraph pertaining to the unified architectural design requirement as it relates to existing separated duplexes, and setting forth details in regard thereto.

Applicant: Town of Vail  
Planner: Erik Gates

### **I. SUMMARY**

The Town of Vail Community Development Department is requesting a first reading of Ordinance No. 9, Series of 2019, to amend Section 14-10-6: Residential Development, Vail Town Code, to add a paragraph pertaining to the unified architectural design requirement as it relates to existing separated duplexes.

On April 22, 2019, the Planning and Environmental Commission (PEC) forwarded a recommendation for approval, with the conditions that Staff present the inventory of qualifying properties to the Design Review Board and that the Design Review Board has final approval of the inventory and any future additions to the inventory, to the Vail Town Council for the proposed amendment, subject to the findings noted in Section VIII of the staff memorandum sent to the PEC (Attachment B).

### **II. ACTION REQUESTED OF THE TOWN COUNCIL**

The Vail Town Council shall approve, approve with modifications, or deny Ordinance No. 9, Series of 2019, upon first reading.

### **III. DESCRIPTION OF REQUEST**

The Community Development Department requests that the Vail Town Council consider the proposed prescribed regulations amendment to Section 14-10-6, Residential Development, pursuant to Section 12-3-7, Amendment, Vail Town Code. The amendment would also add a registry of separated duplexes that qualify for the exemption created by this amendment. The Community Development Department

proposes the following additional subsection to be added to 14-10-6 Residential Development:

*D. Exemption.*

1. *Residential development meeting all the following criteria may be exempt from the unified architectural and landscaping design requirement of subsection A:*
  - a. *Existing separated duplexes (where two dwelling units share a development lot but are not physically connected);*
  - b. *That do not share a unified architectural and landscape design, as determined by the Design Review Board; and*
  - c. *That received Design Review Board approval prior to May 7, 2019.*
2. *A registry of qualifying properties shall be kept by the Community Development Department and made publically available.*
3. *This Section shall not exempt separated duplexes from any other approval requirements of this Code, including without limitation Section 12-11-3.*

#### **IV. BACKGROUND/SITUATION TO BE ADDRESSED**

Since as early as 1970, the Town of Vail has permitted, upon a determination by the Design Review Board (DRB), that the two units that make up a duplex may be physically separated if warranted by significant site constraints and are thus deemed separated. The determination that the two units may be separated is based on the following criteria in the Vail Town Code (Code) (**emphasis added**):

*14-10-6: Residential Development*

*B. The presence of significant site constraints may permit the physical separation of units and garages on a site. The determination of whether or not a lot has significant site constraints shall be made by the design review board. "Significant site constraints" shall be defined as natural features of a lot such as stands of mature trees, natural drainages, stream courses and other natural water features, rock outcroppings, wetlands, other natural features, and existing structures that may create practical difficulties in the site planning and development of a lot. Slope may be considered a physical site constraint that allows for the separation of a garage from a unit. It shall be the applicant's responsibility to request a determination from the design review board as to whether or not a site has significant site constraints before final design work on the project is presented. This determination shall be made at a conceptual review of the proposal based on review of the site, a detailed survey of the lot and a preliminary site plan of the proposed structure(s).*

While the two units do not share a single structure, they share a Development Lot and all dimensional standards including GRFA, pursuant to Title 12 Chapter 6 of the Code. The allowance of separation does not relieve applicants from the Unified Architectural

and Landscape Design requirements of the Code. This criterion requires residential development be designed in a manner that creates and architecturally integrated structure with unified site development. Per Code:

*14-10-6: Residential Development*

*A. ...Unified architectural and landscape design shall include, but not be limited to, the use of compatible building materials, architectural style, scale, roof forms, massing, architectural details, site grading and landscape materials and features.*

Furthermore, when a separation request is granted the DRB may require additional means to create unified site development. These are described in the Code as:

*14-6-10: Residential Development*

*C. ...In addition, the design review board may require that one or more of the following common design elements such as fences, walls, patios, decks, retaining walls, walkways, landscape elements, or other architectural features be incorporated to create unified site development.*

Within the TOV there are approximately 20 separated duplexes. Over time, adherence to the Unified Architectural and Landscape Design requirement has not been maintained on approximately 10 of them. This has resulted largely from prior Design Review Boards not enforcing this provision of the code and has been exacerbated by staff approvals. Because the Code, as written, requires that this criteria be met and does not allow for any alteration that would increase the discrepancy between the structures, an exterior alteration of any size would require that one or both of the duplexes significantly redevelop their property to come into compliance with the Code. This results in a financial and logistical constraint that can result in separated duplexes choosing to make no updates their architectural design.

The proposed text amendment is intended to address situations where existing separated duplexes do not share a unified architectural design. These changes will not impact separated duplexes with a unified architectural design, or new separated duplexes that may be granted in the future.

## **VI. CRITERIA FOR REVIEW**

Per Section 12-3-7, Amendment, Vail Town Code, before acting on a prescribed regulations amendment, the PEC and Town Council shall consider the following factors with respect to this proposal:

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

Staff finds the proposed zoning code amendments further the general and specific purposes of the zoning regulations by promoting the harmonious development of the Town's villages while maintaining established community qualities and economic values. The proposal also promotes the enhancement of the overall appearance of the Town. The proposal addresses a specific and limited situation that could result in adverse aesthetic conditions if remained unchecked. Without the text amendment, homeowners wishing to upgrade their residences may find it unfeasible to do so.

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 prescribed regulations amendments will better implement or achieve the applicable elements of the adopted goals, objectives, and policies outlined in the Vail Comprehensive Plan. Specifically, in the Vail Land Use Plan's adopted Goals and Policies, staff identified the following applicable statements:

**1. General Growth /Development**

- 1.1. Vail should continue to grow in a controlled environment, maintaining a balance between residential, commercial and recreational uses to serve both the visitor and the permanent resident.*

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**

Staff has found that due to the varying degree of adherence to Title 14, Chapter 10, Section 6, of the Code, conditions relating to the built environment of the town have substantially changed since the regulation's adoption. This has resulted in a number of separated duplexes that would need to incur a significant financial burden to come into compliance with the subject regulation. While the subject regulation remains appropriate, it has become insufficient to deal with this reality.

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, the proposed amendment has been narrowly tailored to affect only the design standards outlined in Title 14, Development Standards, for a limited number of separated duplexes. The objectives of this title read:

*Chapter 14-10-1: Purpose and Intent (in part)*

*The Development standards will help protect property values, ensure the aesthetic quality of the community and ensure adequate development of property within the Town of Vail.*

Staff finds that the proposed amendment helps to protect individual property values and aesthetic quality by providing greater flexibility for these separated duplexes to redevelop with up-to-date architectural and landscape design. Furthermore, staff believes the limited number of properties affected by this amendment would not significantly increase visual clutter within the Town.

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.**

**VIII. STAFF RECOMMENDATION**

Should the Vail Town Council choose to approve Ordinance No. 9, Series of 2019, upon first reading, the Community Development Department recommends the Commission pass the following **motion**:

*"The Vail Town Council approves, on first reading, Ordinance No. 9, Series of 2019, a Prescribed Regulation Amendment to amend Section 14-10-6: Residential Development, Vail Town Code, to add a paragraph pertaining to the unified architectural design requirement as it relates to existing separated duplexes, pursuant to Section 12-3-7, Amendment, Vail Town Code.."*

Should the Vail Town Council choose to approve Ordinance No. 9, Series of 2019, the Community Development Department recommends the Commission makes the following **findings**:

*"Based upon a review of the criteria outlined in Section VI of the April 22, 2019 of the staff memorandum to the Planning and Environmental Commission dated April 22, 2019,, and the evidence and testimony presented, the Vail Town Council 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."*

## **IX. ATTACHMENTS**

- A. Ordinance No. 9, Series of 2019
- B. Staff Memorandum, PEC19-0012, April 22, 2019
- C. PEC Minutes, April 22, 2019
- D. List of Qualifying Separated Duplexes, April 2019