



**Memorandum**

TO: Vail Town Council

FROM: Community Development Department

DATE: November 17, 2020

SUBJECT: Second reading of Ordinance No. 16, Series of 2020, an ordinance Code to amend Section 12-16-7: Use Specific Criteria and Standards, Vail Town Code, to amend the use specific criteria for funiculars and other similar conveyances and setting forth details in regard thereto. (PEC20- 0023)

Applicant: Town of Vail  
Planner: Jonathan Spence

**I. SUMMARY**

The applicant, Mauriello Planning Group representing LSC 27 LLC, is requesting a second reading of Ordinance No. 14, Series of 2020, an ordinance Code to amend Section 12-16-7: Use Specific Criteria and Standards, Vail Town Code, to amend the use specific criteria for funiculars and other similar conveyances and setting forth details in regard thereto.

On October 12, the Planning and Environmental Commission (PEC) forwarded a unanimous recommendation, for approval, for a prescribed regulation amendment, pursuant to Section 12-3-7, Amendment, Vail Town Code. Please find the staff memorandum to the PEC included as Attachment B and the minutes from the October 12<sup>th</sup> meeting included as Attachment C.

On November 3, 2020 the Vail Town Council approved, on first reading, Ordinance No. 16, Series of 2020 5-2 (Councilors Langmaid and Foley opposed).

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

The Vail Town Council shall approve, approve with modifications, or deny Ordinance No. 16, Series of 2020, upon second reading.

**III. DESCRIPTION OF THE REQUEST**

The applicant is requesting a prescribed regulation amendment, pursuant to Section 12-3-7, Amendment, Vail Town Code, to amend the use specific criteria for funiculars and other similar conveyances. The proposed amendment will revise the criterion to allow for the use of a funicular to gain pedestrian access to accessory structures and recreation.

facilities/structures. Currently the use criterion restricts the use of funiculars to the access of residential dwellings only.

#### IV. BACKGROUND

Prior to 2003, the use of funiculars and other similar conveyances was an accessory use in residential zone districts. As an accessory use (customary and incidental to permitted uses) review was limited to the Design Review Board (DRB) with no specific criteria.

In 2003 staff proposed reclassifying the use as a Conditional Use in response to community concerns that as an accessory use the review process and community engagement were inadequate. On November 10, 2003, the Planning and Environmental Commission (PEC) voted to recommend approval of the request without any use specific criteria.

Subsequently, the Town Council, upon review of the use reclassification, added use specific criteria. Use specific criteria are additional criterion for specific Conditional Uses. Examples of other uses with use specific criterion are Brewpubs and Bakeries. This new language was not remanded to the PEC for further analysis and consideration. The criterion added by the Town Council had unintended consequences of effectively banning new funiculars, specifically by limiting their use to situations where vehicular access to a dwelling unit was not possible due to identified site constraints.

#### IV. PROPOSED TEXT AMENDMENT

New language is shown in bold.

##### *12-16-7 Use Specific Criteria and Standards*

*The following criteria and standards shall be applicable to the uses listed below in consideration of a conditional use permit. These criteria and standards shall be in addition to the criteria and findings required by section [12-16-6](#) of this chapter.*

##### *11. Funiculars and other similar conveyances:*

*a. Funiculars and other similar conveyances shall only be allowed when designed for the purpose of providing **pedestrian** access to a residential dwelling, **an accessory structure, or recreation facility/structure**, as determined by the planning and environmental commission.*

*b. Funiculars and other similar conveyances shall only be allowed when significant site constraints prevent conventional means of vehicular access to the residential dwelling, **an accessory structure, or recreation facility/structure**, as determined by the planning and environmental commission. "Significant site constraints" shall be defined as natural features such as mature trees, natural drainages, stream courses, and other natural water features, rock outcroppings, wetlands, excessive slopes, other natural features, and existing structures that may create practical difficulties in*

*the site planning and development of the lot.*

*c. Funiculars and other similar conveyances shall only be allowed when designed to be compatible with both the site upon which they are located and the residential dwelling to which they provide access, as determined by the planning and environmental commission.*

*d. Funiculars and other similar conveyances shall only be allowed when designed to be appropriately screened.*

## **VI. REVIEW CRITERIA**

Section 12-3-7(C)(2) of the Zoning Regulations identifies the criteria that Town Council must consider for a change to the text of the code. These criteria include the following:

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

The proposed text amendment expands, in a limited manner, the use of funiculars on unique properties in the Town of Vail and furthers the general and specific purposes of the zoning regulations as follows (emphasis added):

12-1-2 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.*

12-1-2 B

*5. To conserve and maintain established community qualities and economic values.*

*10. To assure adequate open space, recreation opportunities, and other amenities and facilities conducive to desired living quarters.*

Staff finds this criterion to be 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**

The proposed text amendment is compatible with the development objectives of the town and speaks to the origins of Vail and its Tyrolean roots. The following are relevant goals of the Town's Comprehensive Plan:

### Vail Land Use Plan:

- Goal 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.
- Goal 1.3. The quality of development should be maintained and upgraded whenever possible.
- Goal 1.6. Development proposals on the hillsides should be evaluated on a case by case basis.  
Limited development may be permitted for some low intensity uses in areas that are not highly visible from the Valley floor. New projects should be carefully controlled and developed with sensitivity to the environment.
- Goal 2.1. The community should emphasize its role as a destination resort while accommodating day visitors.

### Vail 20/20

- Sense of Place and Character: Vail values the strong history of the town and its unique character and legacy while acknowledging the importance of reinvention. This is reflected in the high quality of the built environment with design and features that endure over time.

Staff finds this criterion to be met.

### **3. The extent to which 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**

The criterion that was added by the Town Council in 2003 was not evaluated by the PEC and had the unintended consequence of effectively banning new funiculars, as demonstrated by no new development application or approvals in the last 17 years. The minor amendment is consistent with the underlying intent of the original language and maintains the additional review and community notification requirements of a Conditional Use.

Staff finds this criterion to be 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**

The proposed text amendment clarifies the use of funiculars while maintaining the extra review process and criterion afforded Conditional Uses. The amendment preserves a

harmonious, convenient, and workable relationship among land uses consistent with municipal objectives.

As a result, 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.**

**VI. RECOMMENDED MOTION**

Should the Vail Town Council choose to approve Ordinance No.16, Series of 2020, upon second reading, the Community Development Department recommends the Council pass the following **motion**:

*“The Vail Town Council approves, on second reading, Ordinance No. 16, Series of 2020, an ordinance Code to amend Section 12-16-7: Use Specific Criteria and Standards, Vail Town Code, to amend the use specific criteria for funiculars and other similar conveyances and setting forth details in regard thereto.”*

Should the Vail Town Council choose to approve Ordinance No. 16 Series of 2020, the Community Development Department recommends the Council make the following **findings**:

*“Based upon the review of the criteria outlined in Sections VIII of the Staff memorandum to the Planning and Environmental Commission dated October 12, 2020 and the evidence and testimony presented, the Vail Town Council finds:*

- 1. That the amendments are consistent with the adopted goals, objectives and policies outlined in the Vail comprehensive plan and compatible with the development objectives of the town;*
- 2. That the amendments are compatible with and suitable to adjacent uses and appropriate for the surrounding areas; and,*
- 3. 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.”*

**VII. ATTACHMENTS**

- A. Ordinance No. 16, Series of 2020
- B. Staff Memorandum, PEC20-0023, October 12, 2020
- C. PEC Minutes, October 12, 2020