

**ORDINANCE NO. 4
SERIES 2017**

**AN ORDINANCE AMENDING TITLE 12 OF THE VAIL TOWN CODE BY
THE ADDITION OF A NEW CHAPTER 26, ENTITLED
"TRANSPORTATION IMPACT FEES"**

WHEREAS, to ensure the provision of adequate public transportation services and facilities in the Town, the Town Council wishes to condition certain land use approvals on payment of a transportation impact fee;

WHEREAS, it is widely recognized that municipalities may impose exactions (impact fees) on the granting of land use approvals, provided that there is an essential nexus between the exaction and a legitimate local government interest, and provided that the exaction is roughly proportional, both in nature and extent, to the impact of the proposed use or development, pursuant to *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987), *Dolan v. City of Tigard*, 512 U.S. 374 (1994); C.R.S. § 29-20-203 and related case law;

WHEREAS, the Town has conducted and adopted a study to provide the basis for the imposition of the transportation impact fee and to determine the appropriate amount of the transportation impact fee, which study was prepared by TischlerBise on March 10, 2017; and

WHEREAS, the Town Council finds and determines that the public health, safety, and welfare will be served by adopting regulations delineating the Town's procedure for imposing a transportation impact fee.

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

Section 1. Title 12 of the Vail Town Code is hereby amended by the addition of a new Chapter 26, which shall read as follows:

**CHAPTER 26
TRANSPORTATION IMPACT FEES**

12-26-1: FINDINGS AND PURPOSE:

A. Findings. The Town Council finds and determines as follows:

1. A legitimate, identifiable public purpose is served by requiring a transportation impact fee for new development and redevelopment projects in the Town;
2. There is an essential nexus between the transportation impact fee imposed in this Chapter and the Town's interest in providing transportation infrastructure, facilities and services;

3. The Town is acting within its power to provide transportation infrastructure, facilities and services;

4. But for new development and redevelopment projects, the Town would not be considering either the provision or expansion of transportation infrastructure, services or facilities;

5. New development and redevelopment projects are contributing causes to the need for new or expanded transportation infrastructure, facilities and services;

6. The Town would be legally justified in denying applications for new development or redevelopment projects unless the transportation impact fee is imposed, because of the burden the new development or redevelopment projects would place on the Town's transportation infrastructure, facilities and services; and

7. The Town has conducted a study to determine the amount of the transportation impact fee, and the study demonstrates that the transportation impact fee will be roughly proportional, both in nature and extent, to the impacts of new development and redevelopment projects.

B. Purpose. The purpose of this Chapter is to impose a transportation impact fee on new development and redevelopment projects in the Town, as set forth herein.

12-26-2: APPLICABILITY:

A. The transportation impact fee shall be imposed on the following construction, development or redevelopment in the Town:

1. For commercial development (except accommodation units), on any net new square footage to be constructed.

2. For residential development, on each new residential unit to be constructed.

3. For accommodation units, on each new accommodation unit to be constructed.

B. The transportation impact fee shall not be imposed on the construction, development or redevelopment of any Employee Housing Unit.

12-26-3: FEE:

The transportation impact fee shall be in the amount set by resolution of the Town Council. The fee shall be imposed by the Community

Development Department, Design Review Board, Planning and Environmental Commission or Town Council, as part of the last land use approval for the project. The fee shall be payable prior to issuance of the building permit for the project.

12-26-4: CREDIT:

A. An applicant may apply for a credit as set forth in this Section, which credit shall be applied to offset the transportation impact fee that would otherwise be imposed for the project.

B. Credit shall be provided for any dedication or conveyance of land from the applicant to the Town. The amount of the credit shall be the present, fair market value of the land being dedicated or conveyed, as determined by the Town in its reasonable discretion.

C. Credit shall be provided for any construction of Town-approved transportation infrastructure or facilities undertaken by the applicant at the applicant's cost that offset the transportation impacts of the project. The transportation infrastructure or facilities may be constructed as part of the project, or in other areas of the Town, as determined by the Town and the applicant. The value of the credit shall be determined by the Town, in its reasonable discretion, considering the total cost of construction and other relevant factors.

D. Credit shall be provided for any transportation services provided by the applicant at the applicant's cost, that offset the transportation impacts of the project, as approved by the Town. The value of the credit shall be determined by the Town, in its reasonable discretion, considering actual costs to provide the services and other relevant factors.

12-26-5: REVIEW:

A. An applicant aggrieved by the application of this Chapter by the Community Development Department, the Planning and Environmental Commission or Design Review Board may apply for review by the Town Council, by filing a written request for review within 10 days of the decision at issue.

B. Within 30 days of receipt of the written request, the Town Council shall hold a public hearing. At such hearing, the burden of proof shall be on the applicant to establish that the imposition of the transportation impact fee as assessed would result in an unconstitutional taking of private property without just compensation.

C. If the Town Council determines that the application of this Chapter would result in an unconstitutional taking of private property without just

compensation, the Town Council may decrease the transportation impact fee (or increase any credit) to ensure that there is no unconstitutional taking. The decision of the Town Council shall be final, subject only to judicial review pursuant to C.R.C.P. 106(a)(4).

D. An applicant aggrieved by the application of this Chapter by the Town Council may seek judicial review pursuant to C.R.C.P. 106(a)(4).

Section 2. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not effect the validity of the remaining portions of this ordinance; and the Town Council hereby declares it would have passed this ordinance, and each part, section, subsection, sentence, clause or phrase thereof, regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

Section 3. The Town Council hereby finds, determines and declares that this ordinance is necessary and proper for the health, safety and welfare of the Town of Vail and the inhabitants thereof.

Section 4. The amendment of any provision of the Town Code as provided in this ordinance shall not affect any right which has accrued, any duty imposed, any violation that occurred prior to the effective date hereof, any prosecution commenced, nor any other action or proceeding as commenced under or by virtue of the provision amended. The amendment of any provision hereby shall not revive any provision or any ordinance previously repealed or superseded unless expressly stated herein.

Section 5. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are repealed to the extent only of such inconsistency. This repealer shall not be construed to revise any bylaw, order, resolution or ordinance, or part thereof, theretofore repealed.

INTRODUCED, READ ON FIRST READING, APPROVED, AND ORDERED
PUBLISHED ONCE IN FULL ON FIRST READING this ____ day of _____, 2017 and
a public hearing for second reading of this Ordinance set for the ____ day of _____,
2017, in the Council Chambers of the Vail Municipal Building, Vail, Colorado.

Dave Chapin, Mayor

ATTEST:

Patty McKenny, Town Clerk