

## CHAPTER 24

### INCLUSIONARY ZONING

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**12-24-1: PURPOSE AND APPLICABILITY:**

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

B. This chapter shall apply to all new residential development and redevelopment located within the following zone districts, except as provided in section 12-24-5 of this chapter:

1. High density multiple-family (HDMF);
2. Vail Village townhouse (VVT);
3. Public accommodation (PA);
4. Public accommodation 2 (PA-2);
5. Commercial core 1 (CC1);
6. Commercial core 2 (CC2);
7. Commercial core 3 (CC3);
8. Commercial service center (CSC);
9. Arterial business (ABD);
10. General use (GU);
11. Heavy service (HS);
12. Lionshead mixed use 1 (LMU-1);

- 13. Lionshead mixed use 2 (LMU-2);
- 14. Ski base/recreation (SBR);
- 15. Ski base/recreation 2 (SBR2);
- 16. Parking district (P); and
- 17. Special development (SDD).

C. The requirements of this chapter shall be in addition to all other requirements of this code.

D. When any provision of this chapter conflicts with any other provision of this code, the provision of this chapter shall control. (Ord. 2(2012) § 12: Ord. 1(2008) § 25)

**12-24-2: EMPLOYEE HOUSING REQUIREMENTS:**

Every residential development and redevelopment shall be required to mitigate its direct and secondary impacts on the town by providing employee housing at a mitigation rate of ten percent (10%) of the total new GRFA.

For example, for a development proposing five thousand five hundred (5,500) square feet of new GRFA, the calculation would be as follows:

5,500 square feet of new GRFA x 10% mitigation rate = 550 square feet of employee housing to be provided  
(Ord. 1(2008) § 25)

**12-24-3: BUILDING REQUIREMENTS:**

A. Table 24-1, "Size Of Employee Housing Units", of this section, establishes the minimum size requirements for EHUs under this chapter. All EHUs shall meet or exceed the minimum size requirements.

TABLE 24-1

SIZE OF EMPLOYEE HOUSING UNITS

<u>Type Of Unit</u>	<u>Minimum Size (GRFA)</u>
Dormitory	250
Studio	438
1 bedroom	613
2 bedroom	788
3 or more bedroom	1,225

B. Every EHU shall contain a kitchen facility or kitchenette and a bathroom.

C. All trash facilities shall be enclosed.

D. Parking shall be provided in accordance with chapter 10 of this title.

1. Exception For On Site EHUs: At the discretion of the applicable governing body, variations to the parking standards outlined in chapter 10 of this title may be approved during the review of an employee housing plan subject to a parking management plan. The parking management plan may be approved by the applicable governing body and may provide for a reduction in the parking requirements for on site units based on a demonstrated need for fewer parking spaces than chapter 10 of this title would require. For example, a demonstrated need for a reduction in the required parking could include:

- a. Proximity or availability of alternative modes of transportation including, but not limited to, public transit or shuttle services.
- b. A limitation placed in the deed restrictions limiting the number of cars for each unit.
- c. A demonstrated permanent program including, but not limited to, rideshare programs, car share programs, shuttle service, or staggered work shifts.

E. Each EHU shall have its own entrance. There shall be no interior access from any EHU to any dwelling unit to which it may be attached. (Ord. 1(2008) § 25)

#### **12-24-4: REDEVELOPMENT:**

Employee housing need only be provided for the increase in the GRFA of a redevelopment; provided however, that if any existing EHUs are to be removed, an equal amount of EHUs shall be replaced in addition to other requirements of this chapter. (Ord. 1(2008) § 25)

#### **12-24-5: EXEMPTIONS:**

The following shall be exempt from this chapter:

- A. The remodeling of an existing dwelling unit;
- B. The replacement of a demolished residential development, provided the replacement structure does not exceed the total GRFA of the original structure; and
- C. The construction of EHUs. (Ord. 1(2008) § 25)

#### **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 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 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 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 use monies collected from the 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 council may, at its sole discretion, accept a conveyance of vacant 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. 23(2016) § 3: Ord. 1(2008) § 25)

**12-24-7: MITIGATION BANK:**

A. The town will provide credit for any EHUs constructed on site, constructed off site, or otherwise acquired in anticipation of future residential development or redevelopment, provided that those EHUs meet all applicable requirements of this chapter. However, the construction or acquisition of EHUs in anticipation of future development is at the risk of the applicant, because the residential development shall be subject to all regulations pertaining to EHUs which are in effect at the time the application for development review is submitted to the town, even if those regulations change after the EHUs are constructed.

B. It shall be the applicant's responsibility to provide documentation of any existing EHU credits upon submission of an application for development review. If the applicant cannot adequately document such credits, the town shall not be obligated to provide such credits. (Ord. 1(2008) § 25)

**12-24-8: ADMINISTRATION:**

A. Employee Housing Plan: Each application for development review, except those exempt pursuant to section 12-24-5 of this chapter, shall include an employee housing plan which includes the following:

1. Calculation Method: The calculation of the inclusionary zoning requirement, including credits if applicable, and the mitigation method by which the applicant proposes to meet the requirements of this chapter;

2. Plans: A dimensioned site plan and architectural floor plan that demonstrates compliance with section 12-24-3, "Building Requirements", of this chapter;

3. Lot Size: The average lot size of the proposed EHUs and the average lot size of other dwelling units in the commercial development or redevelopment, if any;

4. Schedules: A time line for the provision of any off site EHUs;
5. Off Site Units: A proposal for the provision of any off site EHUs shall include a brief statement explaining the basis of the proposal;
6. Off Site Conveyance Request: A request for an off site conveyance shall include a brief statement explaining the basis for the request;
7. Fees In Lieu: A proposal to pay fees in lieu shall include a brief statement explaining the basis of the proposal; and
8. Written Narrative: A written narrative explaining how the employee housing plan meets the purposes of this chapter and complies with the town's comprehensive plan.

B. Review:

1. The administrator shall approve, approve with modifications or deny an employee housing plan involving a total mitigation requirement of less than four hundred thirty eight (438) square feet of EHU floor area.
2. The planning and environmental commission shall approve, approve with modifications, or deny an employee housing plan unless the plan involves less than four hundred thirty eight (438) square feet of EHU floor area; the development is located within a special development district; or the plan includes a request to convey property.
3. The town council shall approve, approve with modifications or deny an employee housing plan for a development located within a special development district or a plan requesting to convey property.
4. Before granting approval of an employee housing plan, the applicable governing body shall make findings that the employee housing plan conforms to the general and specific purposes of this title, and that the plan is compatible with the applicable elements of the Vail comprehensive plan and the development objectives of the town.

C. Housing Plan Modification: If modifications to a submitted application for development review changes the obligations of the applicant under this chapter, the applicant shall submit a modified employee housing plan. A modification to an employee housing plan shall be reviewed by the body that reviewed the initial employee housing plan, in accordance with the provisions of this chapter.

D. Approved Housing Plan: An approved employee housing plan shall become part of the approved application for development review for the affected site.

E. Amendment Requests: Requests to amend an approved employee housing plan shall be reviewed in accordance with the procedures described in this chapter. At the discretion of the administrator, minor amendments that do not alter the basic intent or methodology of the plan may be approved, or approved with modifications, or denied by the administrator. (Ord. 1(2008) § 25)

**12-24-9: OCCUPANCY AND DEED RESTRICTIONS:**

- A. No EHU shall be subdivided or divided into any form of timeshare unit or fractional fee club unit.
- B. EHUs shall not be leased for a period less than thirty (30) consecutive days.
- C. An EHU may be sold or transferred as a separate unit on the site.
- D. An EHU shall be continuously occupied by an employee and shall not remain vacant for a period in excess of three (3) consecutive months unless, despite reasonable and documented efforts to occupy the EHU, efforts are unsuccessful.
- E. No later than February 1 of each year, the owner of each EHU shall submit a sworn affidavit on a form provided by the town with the following information:
  1. Evidence to establish that the EHU has been rented or owner occupied throughout the year;
  2. The rental rate (unless owner occupied);
  3. The employee's employer; and

4. Evidence to demonstrate that at least one person residing in the EHU is an employee at a business located in Eagle County. (Ord. 1(2008) § 25)

**12-24-10: TIMING:**

All EHUs required by this chapter shall be ready for occupancy prior to the issuance of a temporary certificate of occupancy for the affected residential development. (Ord. 1(2008) § 25)

**12-24-11: VARIANCES:**

Variations from the requirements of this chapter may be granted pursuant to the procedures and standards set forth in chapter 17 of this title. (Ord. 1(2008) § 25)

**12-24-12: REVIEW:**

A. Purpose: The town council intends that the application of this chapter not result in an unlawful taking of private property without the payment of just compensation, and therefore, the town council adopts the review procedures set forth in this section.

B. Planning And Environmental Commission Review: Any applicant for residential development who feels that the application of this chapter would effect an unlawful taking may apply to the planning and environmental commission for an adjustment of the requirements imposed by this chapter. If the planning and environmental commission determines that the application of this chapter would result in an unlawful taking of private property without just compensation, the planning and environmental commission may alter, lessen, or adjust employee housing requirements as applied to the particular project under consideration to ensure that there is no unlawful uncompensated taking.

C. Town Council Review: If the planning and environmental commission denies the relief sought by an applicant, the applicant may request a hearing before the town council. Such hearing shall be a quasi-judicial hearing and conducted according to the town's rules and regulations regarding quasi-judicial hearings. At such hearing, the burden of proof shall be on the applicant to establish that the fulfillment of the requirements of this chapter would effect an unconstitutional taking without just compensation pursuant to applicable law. If the town council determines that the application of this chapter would effect an illegal taking without just compensation, the town council may alter, lessen, or adjust the employee housing requirements as applied to the particular project under consideration to ensure that no illegal uncompensated taking occurs. The decision of the town council shall be final, subject only to judicial review. (Ord. 1(2008) § 25)

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