

**TITLE 26
LAND USE REGULATIONS**

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Chapter 26.610 IMPACT FEES

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26.610.010. Purpose and intent.

For residents and visitors, parks and recreation facilities make up a significant part of the community character of the City. As a result of growth, increased pressure is placed on existing parks and recreation facilities necessitating acquisition of new park lands and development of additional recreation facilities in order to maintain the current level of service. In order to maintain the current community standards for acquisition of open space and development of parks and recreation facilities, the City finds it necessary to impose a Park Development impact fee on new development.

Transportation demand management and air quality capital facilities ensure the mobility of residents, workers and visitors through multi-modal solutions, as well as clean air for the community. The Aspen Area Community Plan directs the City to maintain traffic levels at or below 1993 levels in order to protect our environment and quality of life, and the City has invested in capital facilities to do so. As new development and growth occur, increased pressure is placed upon our existing facilities, necessitating expansion of these capital facilities to maintain the current level of service. In order to maintain the current community standards for transportation demand management and air quality, the City finds it necessary to impose a Transportation Demand Management/Air Quality impact fee on new development.

This Chapter is enacted for the purpose of implementing the City's plans for capital facilities by requiring that new development pay for its fair share of such facilities through the imposition of impact fees that will be used to finance, defray or reimburse all or a portion of the costs incurred by the City to serve new development.

(Ord. No. 33, 2006, §1)

26.610.020. Applicability.

Unless expressly exempted, the Park Development impact fee and the Transportation Demand Management (TDM)/Air Quality impact fee shall be assessed upon all development within the City which contains residential floor area or net leasable commercial space.

(Ord. No. 33, 2006, §1; Ord. No. 27, 2011, §1)

26.610.030. Exemptions.

This Chapter does not apply to:

A. Development involving a property listed on the Aspen Inventory of Historic Landmark Sites and Structures. This exemption is solely for an historic structure and its accessory structures. Development on an historic landmark property involving a non-historic or new building shall not be exempt.

B. Alteration, expansion or replacement of a structure which does not create additional floor area or net leasable commercial space.

(Ord. No. 33, 2006, §1; Ord. No. 27, 2011, §1)

26.610.040. Definitions.

When used in this Chapter, the following words, terms and phrases, and their derivations, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning. Other words and terms shall be defined under the Definition section of this Title:

A. Building permit means any City permit that involves increases in floor area, net leasable square footage and/or changes to land use.

B. Capital facilities means land, structures or equipment for purposes of parks and recreation, transportation demand management and air quality. *Capital facilities* also includes design, engineering, inspection, testing, planning, legal review, land acquisition and all other costs associated with the construction or purchase of land, structures or equipment.

C. Collection means the point at which the impact fee/charge is actually paid to the City.

D. Impact fee means a monetary exaction imposed by the City pursuant to this Chapter as a condition of or in connection with approval of a development project for the purpose of defraying all or some of the City's cost for capital facilities associated with that development project.

E. Impose means to determine that a particular development project is subject to the collection of impact fees as a condition of development approval.

F. New development or development project means any project undertaken for the purpose of development, including without limitation a project involving the issuance of a permit for construction, reconstruction or change of use but not a project involving the issuance of a permit to operate or to remodel, rehabilitate, reconstruct or improve an existing structure, which does not change the amount of floor area, amount of net leasable commercial space, density or intensity of use.

G. Nonresidential development project means all development other than residential development projects.

H. Residential development project means any development, inclusive of hotel development, undertaken to create a new dwelling/lodge unit or add additional floor area to an existing dwelling/lodge unit.

I. Floor Area and Net Leasable Commercial Space shall be as defined and calculated according to the City of Aspen Land Use Code.

(Ord. No. 33, 2006, §1; Ord. No. 27, 2011, §1)

26.610.050. Imposition, calculation and collection of fees/charges.

A. Imposition. Except as provided in this Chapter and any amendment to this Chapter, the City may impose impact fees as a condition of approval of all new development projects.

B. Updated annually. The base amount of each impact fee for each type of development project may be calculated annually and adopted by City Council ordinance. The City may choose to update its fee schedule based on the change in the *Engineering News Record* inflation index that occurs between annual updates.

C. Collection. Impact fees shall be collected by the Building Department at the time and as a condition for issuance of a building permit.

(Ord. No. 33, 2006, §1)

26.610.060. Impact fee accounts.

A. Individual accounts. The City shall establish an impact fee account for each type of capital facility for which an impact fee is imposed. The impact fees collected shall be deposited in each such account according to type of improvement. The funds of the account shall not be commingled with other funds of the City.

B. Interest-bearing. Each impact fee account shall be interest-bearing, and the accumulated interest shall become part of the account.

(Ord. No. 33, 2006, §1)

26.610.070. Use of impact fee proceeds.

Impact fees may be expended only for the type of capital facilities for which they were imposed, calculated and collected and according to procedures established in this Chapter. Impact fees may be used to pay the principal, interest and other costs of bonds, notes and other obligations issued or undertaken by or on behalf of the City to finance such improvements.

(Ord. No. 33, 2006, §1)

26.610.080. Credits.

A. A property owner who dedicates land or improvements, agrees to participate in an improvement district or otherwise contributes funds for capital facilities as defined in this Chapter may be eligible for a credit for such contribution against the impact fee paid.

1. The City Council shall determine:

- a) The value of the developer contribution;
- b) Whether the contribution meets capital facilities' needs for which the particular impact fee has been imposed; and
- c) Whether the contribution will substitute or otherwise reduce the need for capital facilities anticipated to be provided with impact fee funds.

In no event, however, shall the credit exceed the amount of the applicable impact fee.

B. When additional residential floor area, hotel floor area or net leasable commercial space are proposed after the demolition of a dwelling unit, lodge unit, or net leasable space, either individually or in combination, a credit for the existing floor area or net leasable space shall be credited towards the replacement development. A credit may only be allocated towards the development on the same individual lot or an adjacent lot within the same redevelopment, and cannot be assigned towards unrelated development on a separate lot.

C. Any application for credit must be submitted on forms provided by the City before development project approval. The application shall contain a declaration under oath of those facts which qualify the property owner for the credit, accompanied by the relevant documentary evidence.

D. Total credits may not exceed the Impact Fee and a developer shall not be reimbursed by the City for new development which is smaller than the previous development.

(Ord. No. 33, 2006, §1; Ord. No. 27, 2011, §1)

26.610.090. Impact fees.

The following impact fees are the result of the "City of Aspen Impact Fee Study and Update of School Lands Dedication" study, which was sponsored by the City of Aspen and completed by BBC Research and Consulting on August 7, 2006. This study is available at the Community Development Department. On September 26, 2011, the Impact Fees were amended by the City of Aspen in order to make floor area the calculation variable instead of bedrooms. RRC Associates assisted with this effort. Impact fees are hereby established as follows:

Table 610.1, Impact Fee Schedule

Parks Development Fee	
Residential and Hotel	\$5.45 per square foot of Floor Area
Nonresidential	\$4.10 per square foot of Net Leasable Commercial Space
TDM/Air Quality Fee	
Residential and Hotel	\$0.61 per square foot of Floor Area
Nonresidential	\$0.46 per square foot of Net Leasable Commercial Space
Notes:	
<ul style="list-style-type: none"> - An Accessory Dwelling Unit or Carriage House, as defined by and meeting the requirements of this Title, shall be calculated as additional floor area of the primary residence. - The calculation for hotel units shall include only the floor area associated with the individual lodging units. The calculation of Parks Development and TDM/Air Quality fees shall not include non-unit space. 	

(Ord. No. 33, 2006, §1; Ord. No. 27, 2011, §1)

26.610.100. Waiver of fees.

Whenever the City Council determines that any part of a proposed development constitutes an affordable housing development or an essential public facility, as defined by this Title, and wishes to subsidize the construction, the City Council may exempt that part of the development from the application of the impact fees or may reduce by any amount the fees imposed by this Chapter. As an economic development incentive, a lodging development may apply for a waiver of the impact fees. An application for a waiver must be made and acted upon by the City Council prior to the submission of a building permit application. Retroactive waivers are not permitted.

(Ord. No. 33, 2006, §1)

26.610.110. Appeals.

Prior to issuance of a building permit, the applicant may challenge the imposition of a fee imposed pursuant to this Chapter by filing with the Community Development Director a written notice of appeal as provided in Section 26.316.030, Appeals procedures, with a full statement of the grounds and an appeal fee as may be fixed from time to time by ordinance by the City Council. The City may continue processing the building permit application. If the building permit is available for issuance by the City and the appeal has not been heard, the building permit may be issued if a bond or other security in an amount equal to the challenged/unpaid portion of the impact fee/charge is provided to the City. The appeal shall be heard by the City Council.

(Ord. No. 33, 2006, §1)

Chapter 26.620
SCHOOL LAND DEDICATION

Sections:

- 26.620.010 Purpose and intent
- 26.620.020 Applicability
- 26.620.030 Exemptions
- 26.620.040 Definitions
- 26.620.050 Imposition, calculation and collection of dedications
- 26.620.060 Procedures for land dedication and/or cash payment
- 26.620.070 Land dedication and cash-in-lieu fees
- 26.620.080 Appeals

26.620.010. Purpose and intent.

The Aspen School District requires land for necessary school functions which may include, but are not limited to, school buildings, support facilities, open space and recreation areas and housing for employees and their immediate families. The purpose of this provision is to ensure that, as development occurs and enrollment in the schools grows, the current level of service provided to students can be maintained. This is accomplished by the adoption of standards for new development to provide land, or cash in lieu thereof, to the City, for use by the Aspen School District. The standards are based on the number of students the development generates and the current level of service standard within the Aspen School District for land area provided per student.

(Ord. No. 33, 2006, §2)

26.620.020. Applicability.

Unless expressly exempted, the school land dedication standard shall be assessed upon all development within the City which contains residential dwelling units.

(Ord. No. 33, 2006, §2; Ord. No. 27, 2011, §2)

26.620.030. Exemptions.

Any development considered nonresidential development, as defined by this Chapter, is exempt from the school land dedication.

(Ord. No. 33, 2006, §2)

26.620.040. Definitions.

When used in this Chapter, the following words, terms and phrases, and their derivations, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

A. Building permit means any City permit that increases residential floor area and/or changes of land use.

B. Collection means the point at which land or a cash payment in lieu is actually transferred or paid to the City.

C. Impose means to determine that a particular development project is subject to the collection of a land dedication as a condition of development approval.

D. Land dedication means a land exaction imposed by the City pursuant to this Chapter as a condition of or in connection with approval of a development project for the purpose of defraying all or some of the Aspen School District's cost for capital facilities associated with that development project.

E. New development or development project means any project undertaken for the purpose of development, including without limitation, a project involving the issuance of a permit for construction, reconstruction or change of use but not a project involving the issuance of a permit to operate or to remodel, rehabilitate, reconstruct or improve an existing structure, which does not change the amount of floor area.

F. Nonresidential development project means all development other than residential development.

G. Residential development project means any development undertaken to create a new dwelling unit or to add additional floor area to an existing dwelling unit, excluding hotel units.

H. Floor Area shall be defined and calculated according the City of Aspen Land Use Code.

(Ord. No. 33, 2006, §2; Ord. No. 27, 2011, §2)

26.620.050. Imposition, calculation and collection of dedications.

A. Imposition. Except as provided in this Chapter and any amendment to this Chapter, the City may impose a school land dedication as a condition of approval of all new development projects. All lands dedicated to the City pursuant to this Section shall be held by the City for the Aspen School District, until such time as they shall be requested by the School District for school purposes. The Aspen School District shall be responsible for maintenance of said lands in a reasonable manner while they are being held by the City.

B. Collection. Land dedications shall be finalized and completed prior to building permit application. A cash payment in lieu, however, shall be collected by the Building Department at the time and as a condition for issuance of a building permit.

1. Funds. All funds collected pursuant to this Chapter shall be transferred by the Community Development Director to the Finance Director. All funds so collected shall be properly identified and promptly deposited in a designated account. Funds withdrawn from this fund shall be used exclusively for the purposes specified herein.
2. City shall transfer funds to School District. Funds collected pursuant to this Chapter shall be remitted monthly to the Aspen School District. The Aspen School District shall deposit said funds into an interest-bearing account authorized by law. The Aspen School District shall be the owner of the funds in the account, but the signature of the chief financial officer of the Aspen School District, or his or her designee, and the signature of the Finance Director of the City shall be required for the withdrawal of monies from the account.

3. Administrative Fee. The City shall be entitled to retain two percent (2%) of the funds collected to compensate it for its administrative expenses of collecting the fees. Said fees shall be deposited in the City's general revenue fund to be expended as the City shall determine in its sole discretion.

C. Updated Annually. The land dedication standard imposed may be updated annually and adopted by City Council ordinance.

(Ord. No. 33, 2006, §2)

26.620.060. Procedures for land dedication and/or cash payment.

A. Land Dedication/Cash-in-lieu Acceptance. Acceptance of the lands to be dedicated shall be at the discretion of the City Council.

1. Form. A land dedication requirement of 3,000 square feet of land may automatically be met through a cash-in-lieu of dedication payment. A land dedication requirement of 3,000 square feet or more may be met through dedication of land or through a cash-in-lieu of land dedication payment at the discretion of City Council.
2. Criteria for Land Acceptance. Prior to acceptance of land, the City shall consider the comments of the Aspen School District to determine whether the lands proposed to be dedicated are of adequate size and can be suitably developed for school purposes or whether the lands have the capability of being sold, with the proceeds being used for school purposes. The City shall also consider the probable impacts on neighboring properties of the development of the lands for school purposes. When the lands proposed to be dedicated are not adequate or suitable for school purposes and cannot feasibly be sold, the City shall require a cash payment in lieu of the land dedication.
3. Timing. Payment of cash-in-lieu of a land dedication shall be made to the City prior to and on a proportional basis to the issuance of any building permits for the residential dwelling units. Lands to be dedicated to the City to fulfill the standards of this Chapter shall be identified on a subdivision plat and shall be dedicated to the City prior to and on a proportional basis to the issuance of any building permits for the residential dwelling units.

(Ord. No. 33, 2006, §2; Ord. No. 27, 2011, §2)

26.620.070. Land dedication and cash-in-lieu fees.

A. The following land dedication is the result of the "City of Aspen Impact Fee Study and Update of School Lands Dedication" study, which was sponsored by the City and completed by BBC Research and Consulting on August 7, 2006. This study is available at the Community Development Department. The land dedication was amended on September 26, 2011 to implement a change that began using floor area as a basis of calculation instead of bedrooms. RRC Associates assisted with the change.

The current land area required per student equals 896 square feet. Table 620.1 provides the student generation rates as follows:

Table 620.1, Student Generation Rates

Floor area (square feet) per dwelling unit	Student Generation Rate
First 1,200	.000064 students per square foot of Floor Area.
1,200 – 2,100	.000404 students per square foot of Floor Area.
2,100 – 3,500	.000031 students per square foot of Floor Area.
Above 3,500	0
<p>Notes:</p> <ul style="list-style-type: none"> - The calculation of the School Land Dedication shall be assessed per dwelling unit. For example, duplex dwelling units do not combine their floor area for one calculation. - An Accessory Dwelling Unit or Carriage House, as defined by and meeting the requirements of this Title, shall be calculated as additional floor area of the primary dwelling it is associated with. - When redevelopment of a property adds floor area, the difference between the generation rates of the existing floor area and the proposed floor area shall be the basis for determining the number of students generated. No refunds shall be provided if Floor Area is reduced. - When demolition is proposed, the redevelopment shall be credited the floor area from the demolished residential dwelling unit. Credit from a demolished dwelling unit cannot be allocated to more than one replacement dwelling unit or to development on a different lot. 	

Figure 620.1, School Land Dedication Calculation

<p>896 square feet – Land Area per Student Standard <i>multiplied by</i> Total Students Generated – Provided in Table 620.1, Student Generation Rates <i>equals</i> Total Square Feet to be Dedicated</p>
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B. Cash payment in lieu. An applicant may make a cash payment in lieu of dedicating land to the City, or may make a cash payment in combination with a land dedication, to comply with the standards of this Chapter. Because of the extraordinary cost of land within the City, the School District and the City agreed to require payment of a cash-in-lieu amount which is less than the full market value of the land area. The formula to determine the amount of cash-in-lieu payment for each residential dwelling unit is as follows:

Figure 620.2, Cash-in-Lieu Formula

Total Square Feet to be Dedicated
<i>multiplied by</i>
Per-Square-Foot Value of Land Being Developed (see below for value substantiation)
<i>multiplied by</i>
Percentage of Fee to be Charged – 33% (.33)
<i>equals</i>
Cash-in-Lieu Payment

Figure 620.3, Cash Payment in Lieu Example

The following example provides a development scenario to display how the fee is calculated. The scenario includes a new 3,200 sq. ft. (floor area) single-family residential home on a 6,000 sq. ft. lot with an actual lot value of \$2,400,000. The per square foot lot value is \$400.

Floor Area	<u>Students Generated</u>
3,200	
(first 1,200 sq. ft. x .000064)	.077
(next 900 sq. ft. x .000404)	.364
(remainin 1,100 sq. ft. x .000031)	.034
Total Student Generation Rate	.475
<u>Land Dedication Calculation</u>	
Land Area per Student Standard (sq. ft.)	896
<i>multiplied by</i>	
Total Students Generated (from above calculation)	.475
<i>equals</i>	
Total Square Feet to be Dedicated	425.6

When calculating a cash payment in lieu of a land dedication (assuming a total land value of \$2,400,000 for a 6,000-square-foot lot containing the dwelling unit), the following calculation would be used to determine the cash payment in lieu:

Market Value of Land per sq. ft.	\$400 per sq. ft.
<i>multiplied by</i>	
Total Square Feet to be Dedicated	425.6
<i>multiplied by</i>	
Percentage of Fee to be Charged – 33%	0.33
<i>equals</i>	
Cash Payment in Lieu	\$56,179.20

1. Current market value. *Current market value* means the value of the land at the time of the cash-in-lieu payment, including site improvements such as streets and utilities, but excluding the value of residential dwelling units and other structures on the property.
2. Substantiation. Market value may be substantiated by a documented purchase price (if an arms-length transaction no more than two [2] years old) or other mutually agreed-upon recognized means. Such means may include information from the Pitkin County Assessor for the specific parcel or for similar parcels on an aggregate basis or an estimate of value prepared by a qualified appraiser for the specific parcel or for similar parcels on an aggregate basis.
3. Appraisal. In the event the developer and the City fail to agree on market value, such value shall be established by a qualified real estate appraiser acceptable to both parties. The developer shall pay for the appraisal.

C. Mixed Use Development. Properties containing mixed use development shall only pay the School Land Dedication fee-in-lieu for the floor area associated with the residential component of the development. Non-unit space shall not contribute to the payment of School Land Dedication.

(Ord. No. 33, 2006, §2; Ord. No. 27, 2011, §2)

26.620.080. Appeals.

A. Prior to issuance of a building permit, the applicant may challenge the imposition of a land dedication imposed pursuant to this Chapter by filing with the Community Development Director a written notice of appeal as provided in Section 26.316.030, Appeals procedures, with a full statement of the grounds and an appeal fee as may be fixed from time to time by ordinance by the City Council. The City may continue processing the building permit application. If the building permit is available for issuance by the City and the appeal has not been heard, the building permit may be issued if a bond or other security in an amount equal to the challenged/unpaid portion of the land dedication is provided to the City. The appeal shall be heard by the City Council.

(Ord. No. 33, 2006, §2)

Chapter 26.630
TRANSPORTATION IMPACT ANALYSIS GUIDELINES

Sections:

- 26.630.010 Purpose and intent
- 26.630.020 Adoption of Transportation Impact Analysis Guidelines
- 26.630.030 Applicability
- 26.630.040 Review Procedure
- 26.630.050 Appeals

26.630.010. Purpose and intent.

The Aspen Area Community Plan directs the City to maintain traffic levels at or below 1993 levels in order to protect Aspen’s environment and quality of life. As new development and growth occur, there are increased impacts to the transportation system, making it more difficult for the City to meet its transportation and air quality goals. In order to maintain the current community standards and meet the goals of the Aspen Area Community Plan, the City has adopted Transportation Impact Analysis Guidelines to ensure new development results in minimal adverse impacts on our transportation system and air quality.

(Ord. No. 8, 2014, §2)

26.630.020 Adoption of Transportation Impact Analysis Guidelines.

Pursuant to the powers and authority conferred by the Charter of the City, there is hereby adopted and incorporated herein by reference as if fully set forth those standards contained in the City of Aspen’s Transportation Impact Analysis Guidelines, as may be amended, updated and expanded from time to time by City Council Resolution. At least one (1) copy of the Transportation Impact Analysis Guidelines shall be available for public inspection at the Community Development, Engineering, and Transportation Departments.

(Ord. No. 8, 2014, §2)

26.630.030. Applicability.

This Chapter shall apply to all development, unless expressly exempted in the Transportation Impact Analysis Guidelines. All Single-Family and Duplex development shall be exempt from this Chapter.

(Ord. No. 8, 2014, §2)

26.630.040 Review Procedure

A. Review Process. Development meeting the thresholds established in the Transportation Impact Analysis Guidelines shall be required to conduct a Transportation Impact Analysis (TIA) meeting the requirements of said Guidelines.

Review for compliance with this Chapter and the Guidelines shall take place in conjunction with a project’s land use application. In all circumstances, the final land use review body shall approve the TIA, after considering a recommendation from the Engineering and Transportation Departments.

For development only subject to administrative level land use reviews, or development meeting a threshold established in the Guidelines but not subject to a land use review, the City Engineering and Transportation Departments shall have the authority on behalf of the City of Aspen to determine the project meets or exceeds the requirements set forth in this Chapter and the Transportation Impact Analysis Guidelines. When development meets an established threshold but does not require a land use review, review for compliance with this Chapter and the Guidelines shall be completed as part of the building permit application.

B. Approved Trip Reduction Measures. Trip reduction measures, also known as Transportation Demand Management (TDM) and Multi-Modal Level of Service (MMLOS) measures, which are approved and implemented for a development pursuant to the Transportation Impact Analysis Guidelines shall be maintained for the ongoing for the life of the development. All requirements shall be incorporated in the project's Development Agreement, pursuant to Chapter 26.490, *Development Documents*.

C. Amendments to Trip Reduction Measures. Off-site MMLOS infrastructure measures that have been implemented may not be amended at any time. Off-site MMLOS infrastructure measures that have not been implemented, and any on-site TDM and MMLOS measures, may be amended as outlined below. Changes shall be reviewed by the Engineering and Transportation Departments to ensure the proposed change is appropriate given the site's context.

1. Insubstantial Amendment. Any amendment to TDM or MMLOS measures resulting in the same or more number of trips mitigated as the original approval may be approved administratively by the Community Development Department, after considering a recommendation from the Engineering and Transportation Departments. A land use application is required, pursuant to Chapter 26.304, *Common Development Review Procedures*. The applicant shall demonstrate how the new measure(s) is appropriate given current site conditions.
2. Substantial Amendment. Any amendment to TDM or MMLOS measures that reduce the number of trips mitigated shall be reviewed by City Council, after considering a recommendation from the Community Development, Engineering, and Transportation Departments. A land use application is required, pursuant to Chapter 26.304, *Common Development Review Procedures*, and the review shall be conducted in a duly noticed public hearing, pursuant to Section 26.304.060(E), *Public Notice*. City Council shall find the following standards are met:
 - a) The proposed change responds to changed site conditions or circumstances, including but not limited to changes to land uses, site topography, or site plan.
 - b) The proposed changes will not adversely impact the immediate vicinity.
 - c) The proposed change meets the original intent of the approved measures.

(Ord. No. 8, 2014, §2)

26.630.050. Appeals.

An applicant may challenge a determination made by the City in their enforcement of the requirements of this Chapter by filing with the Community Development Director a written notice of appeal as provided in Section 26.316.030, Appeals procedures, with a full statement of the grounds for appeal. Appeals shall be reviewed by City Council, pursuant to Chapter 26.316, Appeals.

(Ord. No. 8, 2014, §2)

Updated 4/13/2016