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**LAND USE REGULATIONS**  
**PART 400 — DEVELOPMENT REVIEW STANDARDS AND PROCEDURES**

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**Chapter 26.404**  
**DEVELOPMENT PERMITTED AS OF RIGHT**

Sections:

26.404.010 Development permitted as of right.

**26.404.010 Development Permitted as of Right**

**A. Purpose.** Permitted uses are those land uses which are consistent with other land uses in the same zone district in which they are located and which have been designated as permitted uses for the applicable zone district established in Chapter 26.710.

**B. Authority.** The Chief Building Official, in accordance with the procedures, standards and limitations of this Chapter, shall approve, approve with conditions or disapprove a development application for a permitted use.

**C. Application.** A development application for a permitted use shall consist of an application for a building permit pursuant to Section 26.304.075, together with a description of the proposed development.

**D. Action on the application.** Upon receipt of a development application for a permitted use, the Chief Building Official shall follow the procedures set forth at Section 26.304.075.



**Chapter 26.410**  
**RESIDENTIAL DESIGN STANDARDS**

Sections:

Sec. 26.410.010	General
Sec. 26.410.020	Procedures for review
Sec. 26.410.030	Administrative checklist
Sec. 26.410.040	Residential design standards

**26.410.010. General.**

**A. Purpose.** The purpose of the following design standards is to preserve established neighborhood scale and character and to ensure that Aspen's streets and neighborhoods are public places conducive to walking. The standards do not prescribe architectural style, but do require that each home, while serving the needs of its owner, contribute to the streetscape.

Neighborhood character is largely established by the relationship between front facades of buildings and the streets they face. By orienting buildings parallel to the street and maintaining a certain consistency in front setback patterns, there is interaction between residents and passersby and the built environment.

The area between the street and the front door of the home is a transition between the public realm of the neighborhood and the private life of a dwelling. Low fences and hedges may be used to delineate the edge of a property, but it is important not to close off views of the front lawn and house. Certain elements of the front façade of a house are particularly important components of neighborhood character. Front porches provide outdoor living space and animation to the streetscape, and one-story entryways provide an appropriate domestic scale for a private residence. Street-facing windows can establish a hierarchy of spaces with larger, formal windows denoting public areas and smaller ones suggesting private rooms.

Acknowledgement of the context that has been established by the existing built environment is important to protecting the uniqueness of the City. Avoiding building materials which have no relevance to Aspen's history or climate helps to meet this goal, as does avoiding a significant overshadowing of small homes by larger structures.

Finally, along with creating homes which are architecturally interesting and lively, the pedestrian nature of a neighborhood can be further enhanced by reducing conflicts between people and automobiles and by making alleys an attractive place to walk. Parking areas are to be concentrated to the rear or side of each residence. Secondary structures and accessory dwelling units, located along the alleys and inspired by the tradition of outbuildings in Aspen, are encouraged.

**B. Applicability.** Except as outline below, this Section applies to all residential development in the City requiring a building permit, except for residential development within the R-15B Zone District:

1. Only the following standards shall apply to multi-family housing: Subsection 26.410.040.A.1, Building orientation, Paragraph 26.410.040.C.1.a, Access or, if not

applicable, Paragraph 26.410.040.C.2.b, Garage setback and Subsection 26.410.040D, Building elements, as outlined in said Section for multi-family buildings.

2. Parcels located within and partially within the Aspen infill area (see Chapter 26.104, Definitions) shall be required to comply with **all** of the standards.
3. Parcels **not** located in the Aspen infill area are required to comply with all the standards except the following: Subsection 26.410.040.B.1, Secondary mass, Subsection 26.410.040.D.3.b, Nonorthogonal windows and Subsection 26.410.040.E.2, Inflection, in its entirety.
4. Parcels with no street frontage and parcels with front yard setbacks at least ten (10) feet vertical above street grade shall be exempt from the following requirements: Subsection 26.410.040.A.1, Building orientation, and Subsection 26.410.040.D, Building elements, in its entirety.
5. Residential units within mixed-use buildings shall be exempt from the requirement of this Chapter 26.410 in its entirety.

**C. Application.** An application for residential development shall consist of an application for a development order as may be required by the Community Development Director, Historic Preservation Commission, Planning and Zoning Commission or City Council, pursuant to Section 26.304.030 and an application for "Residential Design Standards" review, pursuant to Section 26.410.020.

**D. Exemptions.** No application for a residential development order shall be exempt from the provisions of this Section unless the Planning Director determines that the proposed development:

1. Is an addition or remodel of an existing structure that does not change the exterior of the building; or
2. Is a remodel of a structure where alterations proposed change the exterior of the building, but are not addressed by any of the residential design standards; or
3. Is an application only for the erection of a fence and the application meets Subsection 26.410.040.A.3.

**E. Definitions.** Unless otherwise indicated, the definitions of words used in these regulations shall be the same as the definitions used in Chapter 26.104 of this Land Use Code. In addition, the following definitions shall apply:

**Street.** A way or thoroughfare, other than an alley, containing a public access easement and used or intended for vehicular, bicycle or pedestrian traffic. The term *street* shall include the entire area within a right-of-way. For the purpose of Chapter 26.410, *street* shall also include private roads, streets and access easements serving more than one (1) parcel.

**26.410.020. Procedures for review.**

**A. Determination of applicability.** Applicability shall be determined at the time of building permit submittal. The applicant may request a pre-application conference to determine as to whether the proposed project is exempt from the requirements of this Chapter.

**B. Determination of consistency.** Consistency with the residential design standards shall be determined at the time of building permit review. The applicant may request a pre-application conference to determine consistency with the requirements of this Chapter.

**C. Appeal of adverse determination.** If an application is found to be inconsistent with any item of the residential design standards, the applicant may either amend the application or seek a variance as set forth below.

**D. Variances.**

1. Administrative variances. The applicant may seek an administrative variance for not more than three (3) of the individual requirements. An applicant who desires a variance from the residential design standards shall demonstrate, and the Community Development Director shall find that the variances, if granted, would:
  - a).. Provide an appropriate design or pattern of development considering the context in which the development is proposed and the purpose of the particular standard. In evaluating the context as it is used in the criteria, the director may consider the relationship of the proposed development with adjacent structures, the immediate neighborhood setting or a broader vicinity as the director feels is necessary to determine if the exception is warranted; or
  - b). Be clearly necessary for reasons of fairness related to unusual site-specific constraints.

The Community Development Director shall provide the Planning and Zoning Commission an annual report of approved administrative variances.

2. Variances from the Residential Design Standards, Section 26.410.040, which do not meet this Section may be granted by the Planning and Zoning Commission, the Board of Adjustment or the Historic Preservation Commission, if the project is subject to the requirements of Chapter 26.415. An applicant who desires to consolidate other requisite land use review by the Historic Preservation Commission, the Board of Adjustment or the Planning and Zoning Commission may elect to have the variance application decided by the board or commission reviewing the other land use application. An applicant who desires a variance from the Residential Design Standards shall demonstrate and the deciding board shall find that the variance, if granted would:
  - a) Provide an appropriate design or pattern of development considering the context in which the development is proposed and the purpose of the particular standard. In evaluating the context as it is used in the criteria, the reviewing board may consider the relationship of the proposed development with adjacent structures, the immediate neighborhood setting or a broader vicinity as the board feels is necessary to determine if the exception is warranted; or

b) Be clearly necessary for reasons of fairness related to unusual site-specific constraints.

(Ord. No. 52-2003, § 5; Ord. No. 20-2005, § 1)

**26.410.030. Administrative checklist.**

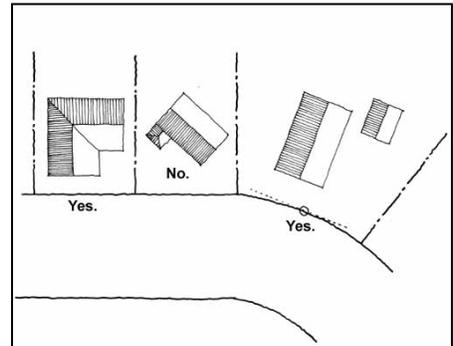
The Director of Community Development shall create a checklist for use by applicants and Community Development staff in identifying the approvals and reviews necessary for issuance of a development order for an application that is consistent with the residential design standards.

(Ord. No. 20-2005, § 1)

**26.410.040. Residential design standards.**

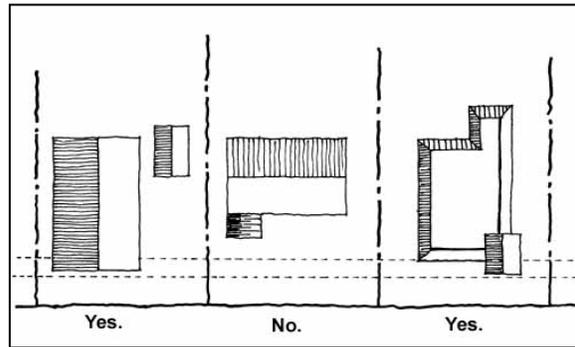
**A. Site design.** The intent of these design standards is to encourage residential buildings that address the street in a manner which creates a consistent "façade line" and defines the public and semi-public realms. In addition, where fences or dense landscaping exist or are proposed, it is intended that they be used to define the boundaries of private property without eliminating the visibility of the house and front yard from the street.

1. Building orientation. The front facades of all principal structures shall be parallel to the street. On corner lots, both street-facing facades must be parallel to the intersecting streets. On curvilinear streets, the front facade of all structures shall be parallel to the tangent of the midpoint of the arc of the street. Parcels as outlined in Subsection 26.410.010.B.4 shall be exempt from this requirement.

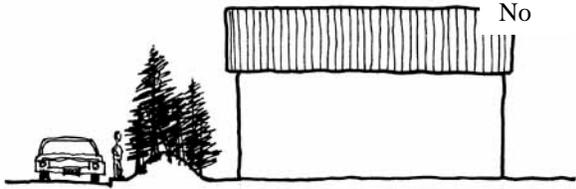
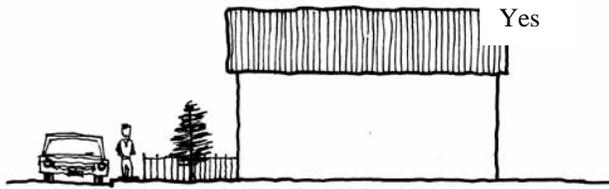


One (1) element, such as a bay window or dormer, placed at a front corner of the building may be on a diagonal from the street if desired.

2. Build-to lines. On parcels or lots of less than fifteen thousand (15,000) square feet, at least sixty percent (60%) of the front façade shall be within five (5) feet of the minimum front yard setback line. On corner sites, this standard shall be met on the frontage with the longest block length. Porches may be used to meet the sixty percent (60%) standard.

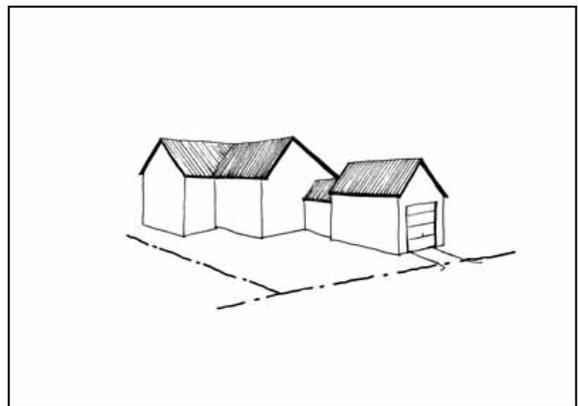


3. Fences. Fences, hedgerows and planter boxes shall not be more than forty-two (42) inches high, measured from natural grade, in all areas forward of the front facade of the house. Man-made berms are prohibited in the front yard setback.



**B. Building form.** The intent of the following building form standards is to respect the scale of Aspen's historical homes by creating new homes which are more similar in their massing, by promoting the development of accessory units off of the City alleys and by preserving solar access.

1. Secondary mass. All new single-family and duplex structures shall locate at least ten percent (10%) of their total square footage above grade in a mass which is completely detached from the principal building or linked to it by a subordinate linking element. This standard shall only apply to parcels within the Aspen infill area pursuant to Subsection 26.410.010.B.2. Accessory buildings such as garages, sheds and accessory dwelling units are examples of appropriate uses for the secondary mass.

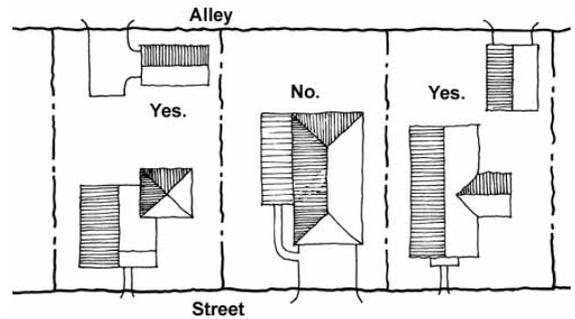


A *subordinate linking element* for the purposes of linking a primary and secondary mass shall be at least ten (10) feet in length, not more than ten (10) feet in width, and with a plate height of not more than nine (9) feet. Accessible outdoor space over the linking element (e.g. a deck) is permitted but may not be covered or enclosed. Any railing for an accessible outdoor space over a linking element must be the minimum reasonably necessary to provide adequate safety and building code compliance and the railing must be 50% or more transparent.

**C. Parking, garages and carports.** The intent of the following parking, garages and carport standards is to minimize the potential for conflicts between pedestrian and automobile traffic by placing parking, garages and carports on alleys or to minimize the presence of garages and carports as a lifeless part of the streetscape where alleys do not exist.

1. For all residential uses that have access from an alley or private road, the following standards shall apply:

- a) Parking, garages and carports shall be accessed from an alley or private road.
- b) If the garage doors are visible from a street or alley, then they shall be single-stall doors or double-stall doors designed to appear like single-stall doors.
- c) If the garage doors are not visible from a street or alley, the garage doors may be either single-stall or normal double-stall garage doors.

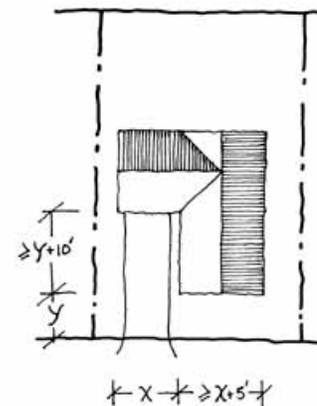


2. For all residential uses that have access only from a public street, the following standards shall be apply:

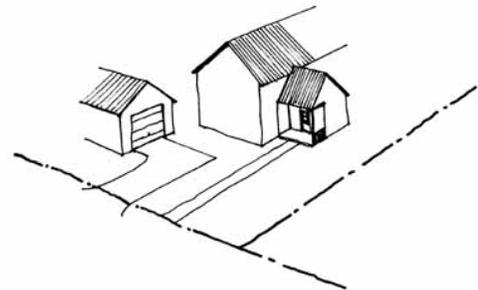
- a) On the street facing facade(s), the width of the living area on the first floor shall be at least five (5) feet greater than the width of the garage or carport.



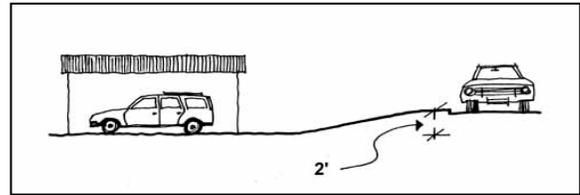
- b) The front facade of the garage or the front-most supporting column of a carport shall be set back at least ten (10) feet further from the street than the front-most wall of the house.



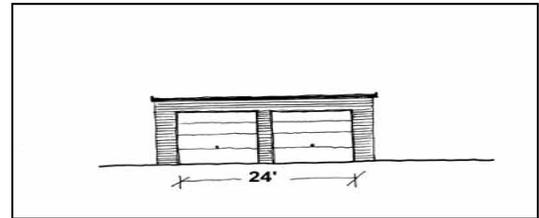
- c) On lots of at least fifteen thousand (15,000) square feet in size, the garage or carport may be forward of the front facade of the house only if the garage doors or carport entry are perpendicular to the street (side-loaded).



d) When the floor of a garage or carport is above or below the street level, the driveway cut within the front yard setback shall not exceed two (2) feet in depth, measured from natural grade.



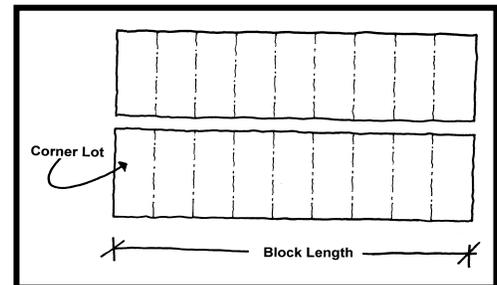
e) The vehicular entrance width of a garage or carport shall not be greater than twenty-four (24) feet.



f) If the garage doors are visible from a public street or alley, then they shall be single-stall doors or double-stall doors designed to appear like single-stall doors.

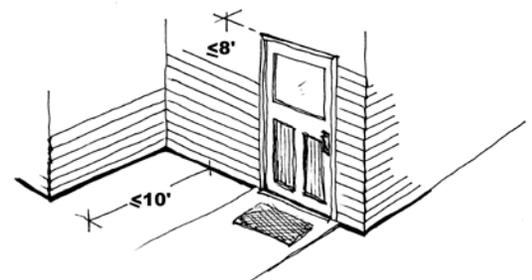
**D. Building elements.** The intent of the following building element standards is to ensure that each residential building has street-facing architectural details and elements, which provide human scale to the facade, enhance the walking experience and reinforce local building traditions.

1. Street oriented entrance and principal window. All single-family homes and duplexes, except as outlined in Subsection 26.410.010.B.4 shall have a street-oriented entrance and a street facing principal window. Multi-family units shall have at least one (1) street-oriented entrance for every four (4) units and front units must have a street facing a principal window.



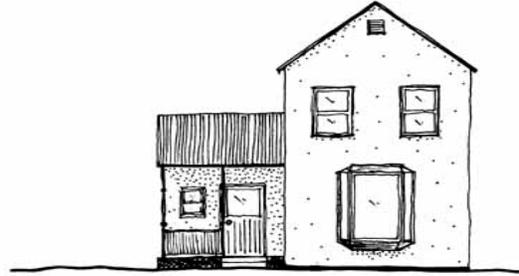
On corner lots, entries and principal windows should face whichever street has a greater block length. This standard shall be satisfied if all of the following conditions are met:

- a) The entry door shall face the street and be no more than ten (10) feet back from the front-most wall of the building. Entry doors shall not be taller than eight (8) feet.



- b) A covered entry porch of fifty (50) or more square feet, with a minimum depth of six (6') feet, shall be part of the front facade. Entry porches and canopies shall not be more than one (1) story in height.

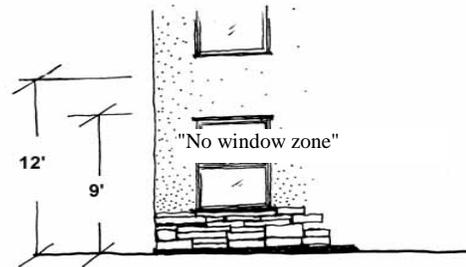
- c) A street-facing principal window requires that a significant window or group of windows face street.



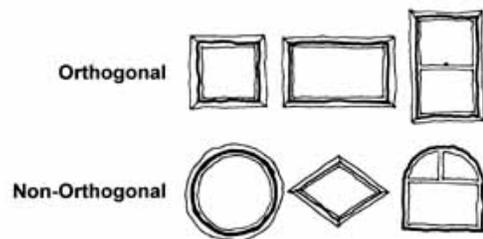
- 2. First story element. All residential buildings shall have a first story street-facing element the width of which comprises at least twenty percent (20%) of the building's overall width and the depth of which is at least six (6) feet from the wall the first story element is projecting from. Assuming that the first story element includes interior living space, the height of the first story element shall not exceed ten (10) feet, as measured to the plate height. A first story element may be a porch or living space. Accessible space (whether it is a deck, porch or enclosed area) shall not be allowed over the first story element; however, accessible space over the remaining first story elements on the front façade shall not be precluded.

3. Windows.

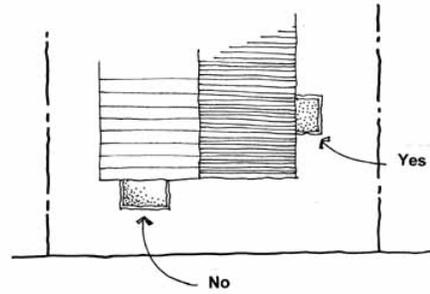
- a) Street-facing windows shall not span through the area where a second floor level would typically exist, which is between nine (9) and twelve feet (12) above the finished first floor. For interior staircases, this measurement will be made from the first landing if one exists. A transom window above the main entry is exempt from this standard.



- b) No more than one (1) nonorthogonal window shall be allowed on each facade of the building. A single nonorthogonal window in a gable end may be divided with mullions and still be considered one (1) nonorthogonal window. The requirement shall only apply to Subsection 26.410.010.B.2.



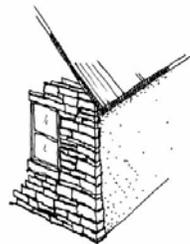
4. Lightwells. All areaways, lightwells and/or stairwells on the street-facing facade(s) of a building shall be entirely recessed behind the front-most wall of the building.



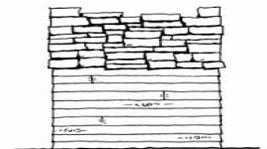
**E. Context.** The intent of the following standards is to reinforce the unique character of Aspen and the region by drawing upon Aspen's vernacular architecture and neighborhood characteristics in designing new structures.

1. Materials. The following standards must be met:

- a) The quality of the exterior materials and details and their application shall be consistent on all sides of the building.



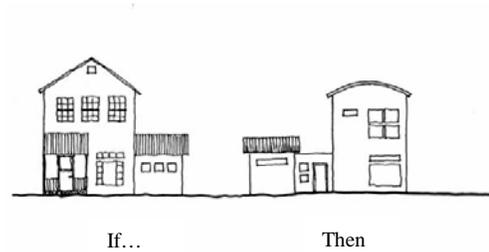
- b) Materials shall be used in ways that are true to their characteristics. For instance stucco, which is a light or nonbearing material, shall not be used below a heavy material, such as stone.



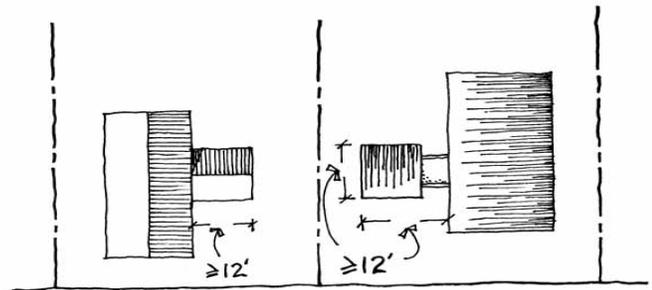
- c) Highly reflective surfaces shall not be used as exterior materials.

2. Inflection. The following standard must be met for parcels which are six thousand (6,000) square feet or over and as outlined in Subsection 26.410.010.B.2:

- a) If a one-story building exists directly adjacent to the subject site, then the new construction must step down to one-story in height along their common lot line. If there are one-story buildings on both sides of the subject site, the applicant may choose the side toward which to inflect.



A one-story building shall be defined as follows: A *one-story building* shall mean a structure or portion of a structure, where there is only one (1) floor of fully usable living space, at least twelve (12) feet wide across the street frontage. This standard shall be met by providing a one-story element which is also at least twelve (12) feet wide across the street frontage and one (1) story tall as far back along the common lot line as the adjacent building is one (1) story.



(Ord. No. 52-2003, §§6—8; Ord. No. 20-2005, §1; Ord. No. 27-2010, §3)

**Chapter 26.412**  
**COMMERCIAL DESIGN REVIEW**

Sections:

Sec. 26.412.010	Purpose
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**26.412.010. Purpose.**

The purpose of commercial design review is to preserve and foster proper commercial district scale and character and to ensure that the City's commercial areas and streetscapes are public places conducive to walking. The review standards do not prescribe architectural style, but do require that certain building elements contribute to the streetscape.

The character of the City's commercial district is largely established by the variety of uses and the relationship between front facades of buildings and the streets they face. By requiring certain building elements to be incorporated in the design of new and remodeled buildings, storefronts are more appealing and can contribute to a well-designed, exciting commercial district.

Accommodation of the automobile within commercial districts is important to the consistency and quality of pedestrian streetscapes. The standards prescribe certain methods of accommodating on-site parking to achieve environments conducive to walking.

Acknowledgement of the context that has been established by the existing built environment is important to protecting the uniqueness of the City. To achieve compatibility, certain standards require building elements to be influenced by adjoining development, views, pedestrian malls or sun angles.

Finally, along with creating architecturally interesting and lively primary streets, the pedestrian nature of downtown can be further enhanced by making alleys an attractive place to walk. Store entrances and display windows along alleyways are encouraged to augment, while not detracting from, the pedestrian interest of primary streets.

(Ord. No. 13, 2007, §1)

**26.412.015. Adoption of commercial design 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 Commercial, Lodging and Historic District Design Objectives and Guidelines, as amended by ordinance from time

to time by the City Council. At least one (1) copy of the aforementioned Guidelines shall be available for public inspection at the Community Development Department during regular business hours.

(Ord. No. 13, 2007, §1)

**26.412.020. Applicability.**

This Chapter applies to all commercial, lodging and mixed-used development with a commercial component within the City requiring a building permit.

Applications for commercial development may be exempted from the provisions of this Chapter by the Community Development Director if the development is:

**A.** An addition or remodel of an existing structure that either does not change the exterior of the building or, as determined by the Community Development Director, changes the exterior in such a minimal manner as to not justify this review.

**B.** A remodel of a structure where proposed alterations affect aspects of the exterior of the building not addressed by the Commercial Design Standards of Section 26.412.060 below

(Ord. No. 13, 2007, §1)

**26.412.030. Review authority.**

The Planning and Zoning Commission, in accordance with the procedures, standards and limitations of this Chapter and of Common Development Review Procedures in Chapter 26.304, shall approve, approve with conditions or disapprove a land use application for commercial design review pursuant to Section 26.412.050 below, with the exception of development that is located within the Commercial Core Historic District, the Main Street Historic District or on a property that is listed on the Inventory of Historic Landmark Sites and Structures.

When development or a portion thereof is located or proposed to be located within the Commercial Core Historic District, the Main Street Historic District or on a property that is or is under consideration, by application of the applicant, to be listed on the Inventory of Historic Landmark Sites and Structures, the commercial design review shall be subject to review by the Historic Preservation Commission. The Historic Preservation Commission shall approve, approve with conditions or disapprove the land use application for commercial design review, pursuant to Section 26.412.050 below.

When a proposed development, in the opinion of the Community Development Director and in consultation with the applicant, has potential for significant community interest due to its location, magnitude or complexity, the Community Development Director shall require a joint review by the Planning and Zoning Commission and the Historic Preservation Commission concurrently. In such situations, the two (2) Commissions shall function as one (1) joint review board pursuant to the procedures of the Commission with primary jurisdiction.

Both the Planning and Zoning Commission and the Historic Preservation Commission may from time to time provide referral comments to each other on a specific application. The reviewing Commission shall take the comments into consideration but shall not be required to adhere to the comments in its review of an application.

(Ord. No. 13, 2007, §1)

**26.412.040. Review procedure.**

**A. Review Process.** Commercial design review is divided into a two-step process known as conceptual design and final design. Pursuant to Section 26.304.020 of this Title, Pre-application conference, applicants are encouraged, although not required, to meet with a City Planner of the Community Development Department to clarify the requirements of this Section and to determine if a project may be exempted from the provisions of this Section.

Consolidation of applications and combining of reviews. The procedures for commercial design review include a two-step process requiring approval by a Commission of a conceptual design and then a final design. If a development project involves additional City land use approvals, the Community Development Director may consolidate or modify the review process accordingly, pursuant to Subsection 26.304.060.B of this Title.

If a proposed development, in the opinion of the Community Development Director and in consultation with the applicant, does not require growth management review and is of limited scope, the Director may authorize the application to bypass conceptual design review and be reviewed only for final design. In this circumstance, the City Council shall be promptly notified of the Director's decision and afforded the opportunity to call-up the decision pursuant to Subsection 26.410.040.B, Appeals, notice to City Council and call-up.

When the Historic Preservation Commission has purview over commercial design review, an application for commercial design review shall be consolidated with the appropriate review process as required by Section 26.415.070, Development Involving Designated Property. When an application is considered consolidated and a conflict between this Chapter and Chapter 26.415, Development Involving the Aspen Inventory of Historic Landmark Sites and Structures or Development in an "H," Historic Overlay District, arises, the regulations of Chapter 26.415 shall supersede.

1. Conceptual design application. An application for a conceptual design shall include the following:
  - a) The general application information required in Section 26.304.030.
  - b) A site plan and survey showing property boundaries, the location and orientation of existing and proposed improvements and predominant site characteristics.
  - c) Scaled drawings of all proposed structures or additions depicting their form, including their height, massing, scale, proportions and roof plan; and the primary features of all elevations.

- d) Preliminary selection of primary building materials to be used in construction represented by samples and/or photographs.
  - e) Supplemental materials to provide a visual description of the context surrounding the property, including at least one (1) of the following: diagrams, maps, photographs, models or streetscape elevations. Staff may request specific additional materials, including 3-D computer modeling.
  - f) Verification that the proposal complies with applicable sections of the Land Use Code and Commercial and Lodging Design Objectives and Guidelines.
2. Conceptual design review. The procedures for the review of conceptual design are as follows:
- a) The Community Development Director shall review the application materials submitted for Conceptual Design approval. If they are determined to be complete, the applicant will be notified in writing of this, and a public hearing before the Planning and Zoning Commission or Historic Preservation Commission shall be scheduled. Notice of the hearing shall be provided pursuant to Subparagraphs 26.304.060.E.3.a., b. and c.
  - b) Staff shall review the submittal material and prepare a report that analyzes the project's conformance with the applicable Commercial, Lodging and Historic District Design Objectives and Guidelines and other applicable Land Use Code sections. This report will be transmitted to the reviewing Commission with relevant information on the proposed project and a recommendation to approve, disapprove or approve with conditions and the reasons for the recommendation. The Commission will review the application, the staff analysis report and the evidence presented at the hearing to determine the project's conformance with the City's Commercial, Lodging and Historic District Design Objectives and Guidelines.
  - c) The Commission may approve, disapprove, approve with conditions or continue the application to obtain additional information necessary to make a decision to approve or deny.
  - d) A resolution of the Commission action will be forwarded to the City Council in accordance with Subsection 26.412.040.E, (Appeals, notice to City Council and call-up), and no hearing for final design application will be conducted until the thirty-day "call-up" period by City Council has expired.
3. Conceptual design approval. The effect of approval of a conceptual design is as follows:
- a) Approval of a conceptual design shall not constitute final approval of commercial design review. Such authorization shall only constitute authorization to proceed with the preparation of an application for a final design.
  - b) Approval of a conceptual design shall be binding upon the Commission in regards to the location and form of the envelope of the structures and/or additions as depicted in the conceptual design application, including its height, scale, massing and proportions. No changes will be made to this aspect of the proposed development by the Commission as part of its review of the final design unless agreed to by the applicant. If the applicant

chooses to make substantial amendments to the conceptual design after it has been approved, a new conceptual design hearing shall be required.

- c) Unless otherwise specified in the resolution granting conceptual design approval, a development application for a final design shall be submitted within one (1) year of the date of approval of a conceptual design. Failure to file such an application within this time period shall render null and void the approval of the conceptual development plan. The Community Development Director may, at his or her sole discretion and for good cause shown, grant a one-time extension of the expiration date for a conceptual design approval for up to twelve (12) months, provided that a written request for extension is received no less than thirty (30) days prior to the expiration date.
4. Final design application. An application for a final development plan shall include:
    - a) The general application information required in Section 26.304.030 of this Title.
    - b) Final drawings of all proposed structures and/or additions included as part of the development at 1/4" = 1.0' scale.
    - c) An accurate representation of all major building materials to be used in the development, depicted through samples or photographs.
    - d) A statement, including narrative text or graphics, indicating how the final design conforms to representations made or stipulations placed as a condition of the approval of the conceptual design. Staff may request specific additional materials, including 3-D computer modeling.
  5. The procedures for the review of final design are as follows:
    - a) The Community Development Director shall review the application materials submitted for final development plan approval. If they are determined to be complete, the applicant will be notified in writing of this, and a public hearing before the Planning and Zoning Commission or Historic Preservation Commission shall be scheduled. Notice of the hearing shall be provided pursuant to subparagraphs 26.304.060.E.3.a., b. and c.
    - b) Staff shall review the submittal material and prepare a report that analyzes the project's conformance with the applicable Commercial, Lodging and Historic District Design Objectives and Guidelines and other applicable Land Use Code sections. This report will be transmitted to the Commission with relevant information on the proposed project and a recommendation to approve, disapprove or approve with conditions and the reasons for the recommendation. The Commission will review the application, the staff analysis report and the evidence presented at the hearing to determine the project's conformance with the City's Commercial, Lodging and Historic District Design Objectives and Guidelines.
    - c) The Commission may approve, disapprove, approve with conditions or continue the application to obtain additional information necessary to make a decision to approve or deny.

- d) Before an application for a building permit can be submitted, a final set of plans reflecting any or all required changes by the Commission must be on file with the City. Any conditions of approval or outstanding issues which must be addressed in the field or at a later time shall be noted on the plans.

## **B. Appeals, notice to City Council and call-up.**

1. Appeals. An applicant aggrieved by a determination made by the Community Development Director, the Planning and Zoning Commission or the Historic Preservation Commission, as applicable, pursuant to this Chapter, may appeal the decision to the City Council, pursuant to the procedures and standards of Chapter 26.316, Appeals.
2. Notice to City Council. Following the adoption of a resolution approving or approving with conditions a development application for Conceptual Design, the City Council shall be promptly notified of the action to allow the City Council an opportunity to avail itself of the call-up procedure set forth below. Notification shall consist of a description in written and graphic form of the project with a copy of the approving document. The notification shall be placed on the agenda of a regular City Council meeting within 30 days of the approval, or as soon thereafter as is practical under the circumstances.
3. Call-up. Following the adoption of a resolution approving or approving with conditions a development application for Commercial Design Review, the City Council may order call-up of the action within fifteen (15) days of notification, as outlined in 26.412.040(B)(2). Consequently, applications for Final Design shall not be accepted by the City and no associated permits shall be issued during the notice and call-up period. If City Council exercises this call-up provision, no applications for Final Design shall be accepted by the City and no associated permits shall be issued until the City Council takes action as described in subsection 26.412.040.B.4. If the City Council does not call up the action within the call-up period, the resolution shall be the final decision on the matter.
4. City Council action on call-up. The City Council shall, at a public meeting, consider the application *de novo*. The City Council may, at its discretion, consider evidence included in the record established by the Historic Preservation Commission or Planning and Zoning Commission, as applicable, or supplement the record with additional evidence or testimony as necessary. The City Council shall conduct its review of the application under the same criteria applicable to the reviewing body. The City Council's action shall be limited to:
  - a) Accepting the decision.
  - b) Remanding the application to the applicable Commission with direction from City Council for rehearing and reconsideration.
  - c) Continuing the meeting to request additional evidence, analysis, or testimony as necessary to conclude the call up review.
5. Additional Actions. The rehearing and reconsideration of the application by the applicable Commission shall be duly noticed pursuant to Section 26.304.060.E Public Notice and shall be limited to the topics listed in the direction from Council. The decision made by the applicable Commission is final and concludes the call up review. Substantive changes, as

defined in Section 26.412.080 Amendment of Commercial Design Review Approval, made to the application during the call up review and outside the topics listed in the remand from Council shall be reviewed pursuant to Section 26.412.080 and may require a new call up notice to City Council. The call up review shall be limited only to the changes approved in the Amendment application.

(Ord. No. 13, 2007, §1; Ord. No. 3-2012, §21)

**26.412.050. Review criteria.**

An application for commercial design review may be approved, approved with conditions or denied based on conformance with the following criteria:

**A.** The proposed development meets the requirements of Section 26.412.060, Commercial design standards, or any deviation from the standards provides a more appealing pattern of development considering the context in which the development is proposed and the purpose of the particular standard. Unique site constraints can justify a deviation from the standards. Compliance with Section 26.412.070, Suggested design elements, is not required but may be used to justify a deviation from the standards.

**B.** For proposed development converting an existing structure to commercial use, the proposed development meets the requirements of Section 26.412.060, Commercial design standards, to the greatest extent practical. Changes to the façade of the building may be required to comply with this Section.

**C.** The application shall comply with the guidelines within the Commercial, Lodging and Historic District Design Objectives and Guidelines as determined by the appropriate Commission. The guidelines set forth design review criteria, standards and guidelines that are to be used in making determinations of appropriateness. The City shall determine when a proposal is in compliance with the criteria, standards and guidelines. Although these criteria, standards and guidelines are relatively comprehensive, there may be circumstances where alternative ways of meeting the intent of the policy objectives might be identified. In such a case, the City must determine that the intent of the guideline is still met, albeit through alternative means.

(Ord. No. 13, 2007, §1)

**26.412.060. Commercial design standards.**

The following design standards, in addition to the commercial, lodging and historic district design objectives and guidelines, shall apply to commercial, lodging and mixed-use development:

**A. Public amenity space.** Creative, well-designed public places and settings contribute to an attractive, exciting and vital downtown retail district and a pleasant pedestrian shopping and entertainment atmosphere. Public amenity can take the form of physical or operational improvements to public rights-of-way or private property within commercial areas.

On parcels required to provide public amenity, pursuant to Section 26.575.030, Public amenity, the following standards shall apply to the provision of such amenity. Acceptance of the method or

combination of methods of providing the public amenity shall be at the option of the Planning and Zoning Commission or the Historic Preservation Commission, as applicable, according to the procedures herein and according to the following standards:

1. The dimensions of any proposed on-site public amenity sufficiently allow for a variety of uses and activities to occur, considering any expected tenant and future potential tenants and uses.
2. The public amenity contributes to an active street vitality. To accomplish this characteristic, public seating, outdoor restaurant seating or similar active uses, shade trees, solar access, view orientation and simple at-grade relationships with adjacent rights-of-way are encouraged.
3. The public amenity and the design and operating characteristics of adjacent structures, rights-of-way and uses contribute to an inviting pedestrian environment.
4. The proposed amenity does not duplicate existing pedestrian space created by malls, sidewalks or adjacent property, or such duplication does not detract from the pedestrian environment.
5. Any variation to the design and operational standards for public amenity, Subsection 26.575.030.F., promotes the purpose of the public amenity requirements.

**B. Utility, delivery and trash service provision.** When the necessary logistical elements of a commercial building are well designed, the building can better contribute to the overall success of the district. Poor logistics of one (1) building can detract from the quality of surrounding properties. Efficient delivery and trash areas are important to the function of alleyways. The following standards shall apply:

1. A trash and recycle service area shall be accommodated on all projects and shall meet the minimum size and location standards established by Title 12, *Solid Waste*, of the Municipal Code, unless otherwise established according to said Chapter.
2. A utility area shall be accommodated on all projects and shall meet the minimum standards established by Title 25, *Utilities*, of the Municipal Code, the City's Electric Distribution Standards, and the National Electric Code, unless otherwise established according to said Codes.
3. All utility, trash and recycle service areas shall be co-located and combined to the greatest extent practical.
4. If the property adjoins an alleyway, the utility, trash and recycle service areas shall be along and accessed from the alleyway, unless otherwise approved through Title 12, *Solid Waste*, of the Municipal Code, or through Chapter 26.430, *Special Review*.
5. All utility, trash and recycle service areas shall be fenced so as not to be visible from the street, unless they are entirely located on an alleyway or otherwise approved through Title 12, *Solid Waste*, of the Municipal Code, or through Chapter 26.430, *Special Review*. All fences shall be six (6) feet high from grade, shall be of sound construction, and shall be

no less than ninety percent (90%) opaque, unless otherwise varied through Chapter 26.430, *Special Review*.

6. Whenever utility, trash, and recycle service areas are required to be provided abutting an alley, other portions of a building may extend to the rear property line if otherwise allowed by this Title, provided that the utility, trash and recycle area is located at grade and accessible to the alley.
7. All utility service pedestals shall be located on private property. Easements shall allow for service provider access. Encroachments into the alleyway shall be minimized to the extent practical and should only be necessary when existing site conditions, such as an historic resource, dictate such encroachment. All encroachments shall be properly licensed.
8. All commercial and lodging buildings shall provide a delivery area. The delivery area shall be located along the alley if an alley adjoins the property. The delivery area shall be accessible to all tenant spaces of the building in a manner that meets the requirements of the International Building Code Chapters 10 and 11 as adopted and amended by the City of Aspen. All non-ground floor commercial spaces shall have access to an elevator or dumbwaiter for delivery access. Alleyways (vehicular rights-of-way) may not be utilized as pathways (pedestrian rights-of-way) to meet the requirements of the International Building Code. Any truck loading facility shall be an integral component of the building. Shared facilities are highly encouraged.
9. All commercial tenant spaces located on the ground floor in excess of 1,500 square feet shall contain a vestibule (double set of doors) developed internal to the structure to meet the requirements of the International Energy Conservation Code as adopted and amended by the City of Aspen, or an air curtain.
10. Mechanical exhaust, including parking garage ventilation, shall be vented through the roof. The exhaust equipment shall be located as far away from the street as practical.
11. Mechanical ventilation equipment and ducting shall be accommodated internally within the building and/or located on the roof, minimized to the extent practical and recessed behind a parapet wall or other screening device such that it shall not be visible from a public right-of-way at a pedestrian level. New buildings shall reserve adequate space for future ventilation and ducting needs.
12. The trash and recycling service area requirements may be varied pursuant to Title 12, *Solid Waste*, of the Municipal Code. All other requirements of this subsection may be varied by special review (see Chapter 26.430.040.E, *Utility and delivery service area provisions*).

(Ord. No. 13, 2007, §1; Ord. No. 13, 2013, §4)

**26.412.070. Suggested design elements.**

The following guidelines are building practices suggested by the City, but are not mandatory. In many circumstances, compliance with these practices may not produce the most desired development, and project designers should use their best judgment.

**A. Signage.** Signage should be integrated with the building to the extent possible. Integrated signage areas already meeting the City's requirements for size, etc., may minimize new tenant signage compliance issues. Common tenant listing areas also serves a public way-finding function, especially for office uses. Signs should not block design details of the building on which they are placed. Compliance with the City's sign code is mandatory

**B. Display windows.** Display windows provide pedestrian interest and can contribute to the success of the retail space. Providing windows that reveal inside activity of the store can provide this pedestrian interest.

**C. Lighting.** Well-lit (meaning quality, not quantity) display windows along the first floor create pedestrian interest after business hours. Dynamic lighting methods designed to catch attention can cheapen the quality of the downtown retail environment. Illuminating certain important building elements can provide an interesting effect. Significant light trespass should be avoided. Illuminating the entire building should be avoided. Compliance with the City's Outdoor lighting code, Section 26.575.150 of this Title, is mandatory.

(Ord. No. 13, 2007, §1)

**26.412.080. Amendment of commercial design review approval.**

**A. Insubstantial amendment.**

1. Planning and Zoning Commission approval. An insubstantial amendment to a commercial design review approval granted by the Planning and Zoning Commission may be authorized by the Community Development Director if:
  - a) The change is in conformance with the design standards, Section 26.412.060, the change represents a minimal effect on the aesthetics of the proposed development, or the change is consistent with representations made during the original review concerning potential changes of the development proposal considered appropriate by the decision-making body; and
  - b) The change requires no other land use action requiring review by the Planning and Zoning Commission.
2. Historic Preservation Commission approval. An insubstantial amendment to a commercial design review approval granted by the Historic Preservation Commission shall comply with the standards outlined in Paragraph 26.415.070.E.1., Insubstantial amendments.

**B. Substantial amendments.** A substantial amendment to a commercial design review approval granted shall be reviewed pursuant to the standards and procedures of this Section.

(Ord. No. 13, 2007, §1)

**Chapter 26.415**  
**HISTORIC PRESERVATION**

Sections:

26.415.010	Purpose and intent
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26.415.030	Designation of historic properties
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26.415.060	Effect of designation or inclusion within a historic district
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26.415.100	Demolition by neglect
26.415.110	Benefits
26.415.120	Appeals, notice to City Council and call up
26.415.130	Variances by other City review bodies
26.415.140	Penalties

**26.415.010. Purpose and intent.**

The purpose of this Chapter is to promote the public health, safety and welfare through the protection, enhancement and preservation of those properties, areas and sites, which represent the distinctive elements of Aspen's cultural, educational, social, economic, political and architectural history. Under the authority provided by the Home Rule Charter of the City and Section 29-20-104(c), C.R.S., to regulate land use and preserve areas of historical, architectural, archaeological, engineering and cultural importance, this Chapter sets forth the procedures to:

- A. Recognize, protect and promote the retention and continued utility of the historic buildings and districts in the City;
- B. Promote awareness and appreciation of Aspen's unique heritage;
- C. Ensure the preservation of Aspen's character as an historic mining town, early ski resort and cultural center;
- D. Retain the historic, architectural and cultural resource attractions that support tourism and the economic welfare of the community; and
- E. Encourage sustainable reuse of historic structures.
- F. Encourage voluntary efforts to increase public information, interaction or access to historic building interiors.

The City does not intend by the historic preservation program to preserve every old building, but instead to draw a reasonable balance between private property rights and the public interest in preserving the City's cultural, historic, and architectural heritage. This should be accomplished by ensuring that demolition of buildings and structures important to that heritage are carefully weighed with other alternatives. Alterations to historically significant buildings and new construction in historic areas shall respect the character of each such setting, not by imitating surrounding structures, but by being compatible with them as defined in historic preservation guidelines.

(Ord. No. 28 -2010, §1)

**26.415.015. Applicability.**

This Chapter applies to all properties listed on the Aspen Inventory of Historic Sites and Structures and to all properties located within the boundaries of a Historic District, including rights-of-way within Historic Districts as specified in Section 26.415.060.

(Ord. No. 33 -2012, §1)

**26.415.020. Definitions.**

The following definitions are specific to the terms as used in this Chapter and in the field of historic preservation:

**Alteration.** A change to an existing building, structure or feature that modifies its original appearance or construction.

**Certificate of appropriateness.** An official form issued by the City stating that the proposed work on a designated historic property is compatible with its historic and architectural character and, therefore, the work may be completed as specified in the certificate and the City may issue any permits needed to do the work specified in the certificate.

**Certificate of demolition approval.** An official form issued by the City authorizing the issuance of a demolition permit for a designated historic property or for a building or structure located in a designated Historic District.

**Certificate of economic hardship.** An official form issued by the City, in connection with a certificate of demolition approval, that allows the demolition of a designated historic property as the owner has demonstrated that maintaining it will impose an economic hardship.

**Certificate of no negative effect.** An official form issued by the City stating that the proposed work will have no detrimental effect on the character-defining features of a designated property and, therefore, the work may proceed as specified in the certificate without obtaining further approvals under this Chapter and the City may issue any permits needed to do the work in the specified certificate.

**Contributing resource.** A building, site, structure or object that adds to the historic associations, historic architectural qualities or archaeological values for which a property is considered significant.

**Designated property.** An individual property listed on the Aspen Inventory of Historic Landmark Sites and Structures.

**Historic District.** A collection, concentration, linkage or continuity of buildings, structures, sites or objects united historically or aesthetically by plan or physical development that is listed on the Aspen Inventory of Historic Landmark Sites and Structures including designated properties, contributing resources, and noncontributing resources located within the boundaries of a Historic District pursuant to the Official Zone District Map.

**Historic context paper.** Research papers that define Aspen’s architectural and cultural patterns in the context of local and national history. Historic context papers are used to guide staff, the Historic Preservation Commission and City Council in determining the historic significance of structures and properties in the City of Aspen.

**Integrity.** The ability of a property to convey its significance relative to the aspects of location, setting, design, materials, workmanship and association.

**Monitoring committee.** A subcommittee appointed by the Historic Preservation Commission of up to two (2) Commission members and the Historic Preservation Officer to provide oversight in the implementation of rehabilitation.

**Noncontributing resource.** A building, structure, site or object that does not add to the historic architectural qualities or historic associations for which a property is significant because it was not present during the period of significance or does not relate to the documented significance; or due to alterations, additions, disturbances or other changes, it no longer possesses historic integrity.

**Object.** A term used to distinguish buildings and structures from those constructions that are primarily artistic in nature or small in scale and simply constructed. It may be by nature or design movable, but it is associated with a specific setting and environment.

**Rehabilitation.** Making a building or structure sound and usable without attempting to restore it to a particular period appearance, while retaining the character-defining features.

**Relocation.** Moving a building or structure from its original, historically significant or existing location to another location.

**Repair.** To restore to a sound or good state after decay, dilapidation or partial destruction.

**Restore.** The repair or recreation of the original architectural elements or features of an historic property so that it resembles an appearance it had at some previous point in time.

**Significance.** The documented importance of a property for its contribution to or representation of broad patterns of national, regional or local history, architecture, engineering, archaeology and culture.

**Site.** The location of a significant event, a prehistoric or historic occupation or activity or a building or structure, whether standing, ruined or vanished, where the location itself possesses historic, cultural or archaeological value regardless of the value of any existing structure.

**Structure.** A term used to distinguish from buildings those functional constructions made for purposes other than creating human shelter.

(Ord. 1-2002, §7 [part]; Ord. No. 28 -2010, §1; Ord. No. 33 -2012, §2)

## **26.415.025 Identification of historic properties**

**A. Surveys, Maps and Historic Context Papers.** The Community Development Director shall conduct or cause to be conducted such preliminary surveys, studies or investigations as deemed necessary or advisable to adequately inform City Council and the Historic Preservation Commission of those properties located within the City which represent Aspen's 19<sup>th</sup> and 20<sup>th</sup> century history. The Community Development Director shall memorialize the results of surveys, studies and investigations in a series of historic inventory forms, maps and historic context papers. Said inventory forms, maps, and context papers shall be maintained by the Community Development Department and shall be made available for public inspection at all reasonable times. New inventory forms, maps and historic context papers shall not be adopted by City Council except for every tenth year, starting in January 2011.

These resources shall be referenced by the Historic Preservation Commission and City Council when reviewing applications for designation.

**B. Aspen Victorian Properties.** Properties associated with Aspen's 19<sup>th</sup> century history shall be called Aspen Victorian. The City of Aspen has comprehensively identified examples of Victorian era properties in Aspen since the 1970s. All such properties have been designated by ordinance to the Aspen Inventory of Historic Landmark Sites and Structures. Such properties are subject to the terms of this Chapter. Additional 19<sup>th</sup> century properties may be identified and designated in the future if they are determined to meet the criteria of Section 26.415.030.B.1.

**C. AspenModern Properties.** Properties associated with Aspen's 20<sup>th</sup> century history shall be called AspenModern. Properties identified on the AspenModern Map shall be eligible for certain preservation benefits without being designated by City Council and may be awarded preservation incentives above and beyond those identified at Section 26.415.110, as follows. Property owners are encouraged to meet proactively with the historic preservation commission before undertaking development plans to receive preliminary feedback on appropriate development and benefits.

1. Ninety-Day Negotiation Period. In the case that the owner of a property on the AspenModern Map submits a land use application which includes voluntary landmark designation, a negotiation period of up to 90 days shall be initiated.

A letter from the property owner indicating an understanding of this ninety-day negotiation period shall accompany the land use application. The ninety-day negotiation period may be extended an additional thirty (30) days upon a resolution adopted by the Council, or longer if mutually acceptable to both the Council and the property owner. Nothing herein shall prevent

the City from reviewing any land use application or building permit affecting the subject property during the ninety-day negotiation period.

Within the ninety-day negotiation period, the following shall occur:

- a) The Community Development Director shall offer to meet with the property owner to discuss the City's Historic Preservation Program and benefits that the property may be eligible to receive upon designation as a Historic Landmark.
- b) The Community Development Director shall confer with the Historic Preservation Commission, at a public meeting, regarding the proposed land use application or building permit and the nature of the property. The property owner shall be provided notice of this meeting.

The Historic Preservation Commission, using context papers and integrity scoring sheets for the property under consideration, shall provide Council with an assessment of the property's conformance with the designation criteria of Section 26.415.030.C.1. When any benefits that are not included in Section 26.415.110 are requested by the property owner, HPC shall also evaluate how the designation, and any development that is concurrently proposed, meets the policy objectives for the historic preservation program, as stated at Section 26.415.010, Purpose and Intent. As an additional measure of the appropriateness of designation and benefits, HPC shall determine whether the subject property is a "good, better, or best" example of Aspen's 20<sup>th</sup> century historic resources, referencing the scoring sheets and matrix adopted by City Council.

- c) The Community Development Director shall confer with the City Council regarding the proposed land use application or building permit, the nature of the property, and the staff and Historic Preservation Commission's assessment of its historic significance and the effects of the application or building permit. The property owner shall be provided notice of this meeting.
- d) The City Council may negotiate directly with the property owner or may choose to direct the Community Development Director, or other City staff as necessary, to negotiate with the property owner to reach a mutually acceptable agreement for the designation of the property. The City Council may choose to provide this direction in Executive Session, pursuant to State Statute. As part of the mutually acceptable agreement, the City Council may, at its sole discretion, approve any land use entitlement or fee waiver permitted by the Municipal Code and may award any approval that is assigned to another Board or Commission, including variations. Council shall consider the appropriateness of benefits in light of whether the property is identified as a "good, better, or best" example of Aspen's 20<sup>th</sup> century history and shall also seek to be equitable in the benefits awarded through the negotiation process. The monetary value of benefits being requested shall be defined, to the extent possible. Council shall seek compatibility with the neighborhood surrounding the subject property.

When benefits are awarded as part of the negotiation, Council shall require that the property be designated as a Historic Landmark, pursuant to the standards and limitations of Section 26.415.030, Designation of Historic Properties. As part of the mutually acceptable agreement, the City Council may choose to require the land use application or building permit that initiated the negotiation to be withdrawn by the property owner if said application or permit would have negatively affected the historic significance of the property.

Once a property identified on the AspenModern Map is designated to the Aspen Inventory of Historic Landmark Sites and Structures, additional negotiation under this section is not allowed.

- e) If, upon the passage of 90 days or any extension thereof, the City and the property owner have failed to reach a mutually acceptable agreement, affected land use applications shall be issued a Development Order upon compliance with all applicable provisions of the City of Aspen Land Use Code. The City Council, or the property owner, may choose to terminate negotiations at any time.
2. Voluntary review/Processing Advantages. Owners of properties included on the AspenModern Map who voluntarily comply with the provisions of this Chapter may proceed with approved work without making application for designation. The Community Development Director shall consider waiver or reduction of permit fees for the subject work. If this is not achievable within the City budget, the Community Development Director shall ensure that the land use application and building permit review proceed ahead of all other applications except those associated with affordable housing and Essential Public Facilities.
3. Transferable Development Rights. Properties which are included on the AspenModern Map shall be eligible to create and sell transferable development rights according to the provisions of Chapter 26.535 of this Code, even if they are not designated on the Aspen Inventory of Historic Landmark Sites and Structures.
4. Removal from AspenModern Map. Owners of properties included on the AspenModern Map may apply to the Community Development Director to be removed from the AspenModern Map. If the property owner indicates in writing that they have no interest in designation or negotiation, the property shall be removed from the AspenModern Map and the Community Development Director shall issue the owner a certificate documenting the removal from the map. Except upon the written request and consent of the owner(s) of the subject property at the time of the request, the subject property shall not be eligible for historic designation in the City of Aspen for a period of ten (10) years from the date of issuance of this certificate. The certificate shall run with the land and may be recorded in the Office of the Pitkin County Clerk and Recorder.
5. Addition to AspenModern Map. Owners of properties not included on the AspenModern Map may apply to the Community Development Director to be added to the map by submitting a written request. The Community Development Director shall determine if the property is eligible, based on the designation criteria.

(Ord. No. 28 -2010, §1)

**26.415.030. Designation of historic properties.**

The designation of properties to an official list, that is known as the Aspen Inventory of Historic Landmark Sites and Structures which is maintained by the City, is intended to provide a systematic public process to determine what buildings, areas and features of the historic built environment are of value to the community. Designation provides a means of deciding and communicating, in advance of specific issues or conflicts, what properties are in the public interest to protect.

(Ord. No. 28 -2010, §1)

**A. Establishment of the Aspen Inventory of Historic Landmark Site and Structures.** The Aspen Inventory of Historic Landmark Sites and Structures has been established by City Council to formally recognize those districts, buildings, structures, sites and objects located in Aspen that have special significance to the United States, Colorado or Aspen history, architecture, archaeology, engineering or culture. The location of properties listed on the inventory shall be indicated on maps on file in the Community Development Department.

**B. Aspen Victorian**

1. Criteria. To be eligible for designation on the Aspen Inventory of Historic Landmark Sites and Structures as an example of Aspen Victorian, an individual building, site, structure or object or a collection of buildings, sites, structures or objects must have a demonstrated quality of significance. The quality of significance of properties shall be evaluated according to the criteria described below. When designating a historic district, the majority of the contributing resources in the district shall meet the criteria described below:
  - a) The property or district is deemed significant for its antiquity, in that it contains structures which can be documented as built during the 19<sup>th</sup> century, and
  - b) The property or district possesses an appropriate degree of integrity of location, setting, design, materials, workmanship and association, given its age. The City Council shall adopt and make available to the public score sheets and other devices which shall be used by the Council and Historic Preservation Commission to apply this criterion.
2. Application. Property owners, the Community Development Director, the Historic Preservation Commission (HPC) or the City Council may file an application for designation of an Aspen Victorian building, district, site, structure or object on the Aspen Inventory of Historic Landmark Sites and Structures. The application for the designation of a property or collection of properties shall include the following:
  - a) The applicable information required in subsections 26.304.030.B.1., 2., 3. and 4.
  - b) Site or historic district boundary map.
  - c) Property or district description, including narrative text, photographs and/or other graphic materials that document its physical characteristics.
  - d) Written description of how the property meets the criteria for designation.

## C. AspenModern

1. Criteria. To be eligible for designation on the Aspen Inventory of Historic Landmark Sites and Structures as an example of AspenModern, an individual building, site, structure or object or a collection of buildings, sites, structures or objects must have a demonstrated quality of significance. The quality of significance of properties shall be evaluated according to criteria described below. When designating a historic district, the majority of the contributing resources in the district must meet at least two of the criteria a-d, and criterion e described below:
  - a) The property is related to an event, pattern, or trend that has made a contribution to local, state, regional or national history that is deemed important, and the specific event, pattern or trend is identified and documented in an adopted context paper;
  - b) The property is related to people who have made a contribution to local, state, regional or national history that is deemed important, and the specific people are identified and documented in an adopted context paper;
  - c) The property represents a physical design that embodies the distinctive characteristics of a type, period or method of construction, or represents the technical or aesthetic achievements of a recognized designer, craftsman, or design philosophy that is deemed important and the specific physical design, designer, or philosophy is documented in an adopted context paper;
  - d) The property possesses such singular significance to the City, as documented by the opinions of persons educated or experienced in the fields of history, architecture, landscape architecture, archaeology or a related field, that the property's potential demolition or major alteration would substantially diminish the character and sense of place in the city as perceived by members of the community, and
  - e) The property or district possesses an appropriate degree of integrity of location, setting, design, materials, workmanship and association, given its age. The City Council shall adopt and make available to the public score sheets and other devices which shall be used by the Council and Historic Preservation Commission to apply this criterion.
2. Application. Only the property owner(s) may file an application for designation of an AspenModern building, district, site, structure or object on the Aspen Inventory of Historic Landmark Sites and Structures. The application for the designation of a property or collection of properties shall include the following:
  - a) The applicable information required in subsections 26.304.030.B.1., 2., 3., and 4.
  - b) Site or historic district boundary map.
  - c) Property or district description, including narrative text, photographs and/or other graphic materials that document its physical characteristics.
  - d) Written description of how the property meets the criteria for designation.

- e) Written description of historic preservation benefits which the property owner requests be awarded at the time of designation and relationship to Section 26.415.010, Purpose and Intent of the historic preservation program.

**D. Review, public hearings and notice.**

1. An application for designation on the Aspen Inventory of Historic Landmark Sites and Structures shall be transmitted to the Community Development Director to determine if the application is complete. For applications filed with sufficient information, a report will be prepared by City staff for transmittal to the HPC with the relevant information on the proposed historic property or district with a recommendation to approve or disapprove and the reasons for the recommendation.
2. A date for a public hearing on a complete application will be scheduled before the HPC. Notice of the hearing shall be provided according to the provisions of Subsections 26.304.060.E.3.a., b. and c., except when the Community Development Director-, HPC or City Council is the applicant. When the Community Development Director, HPC or City Council is the applicant, notice of the hearing shall be mailed to the property owner(s) within three hundred (300) feet of the property and posted on the subject property for at least thirty (30) days prior to the hearing. Notice to the property owner shall be by registered mail. In the event that there is no evidence that the property owner received actual notice, the HPC may specify that additional measures be taken.
3. The HPC shall evaluate the application to determine if the property or district meets the criteria for designation. At the public hearing, the property owner, parties of interest and citizens shall have an opportunity to provide information about the property or district's eligibility for designation. The HPC may recommend approval, disapproval or continuance of the application to request additional information necessary to make a decision to approve or deny. Their recommendation shall be forwarded to City Council.
4. Upon receipt of the decision, report and recommendations of the HPC, the City Council shall schedule a hearing on the application in accordance with the notice requirements for adopting an ordinance. The City Council shall evaluate the application to determine if the property or district meets the criteria for designation. At the public hearing, the property owner, parties of interest and citizens shall have an opportunity to provide information about the property or district's eligibility for designation. The City Council may approve, disapprove or continue the application to request additional information necessary to make a decision to approve or deny.
5. If an application is denied, the Community Development Director, HPC or City Council may not file a reapplication for designation of the same property or district on the Aspen Inventory of Historic Landmark Sites and Structures for five (5) years from the date of the City Council disapproval.

(Ord. No. 1-2002, §7 [part]; Ord. No. 30, 2007, §1)

**26.415.040. Recordation of designation.**

Upon the effective date of an ordinance by City Council designating a property on the Aspen Inventory of Historic Landmark Sites and Structures, the City Clerk shall record with the real estate records of the Clerk and Recorder of the County, a certified copy of the ordinance including a legal description of the property. The location of properties designated by ordinance also shall be indicated on the official maps of the City that are maintained by the Community Development Department.

(Ord. No. 1-2002, §7 [part])

**26.415.050. Rescinding designation.**

**A. Application and review.** An application for the removal of a property from the Aspen Inventory of Historic Landmark Sites and Structures shall follow the same submission requirements and review procedures as for designation described in this Chapter except that with respect to Subsection 26.415.030.C.4 an explanation shall be provided describing why the property no longer meets the criteria for designation. The HPC and City Council shall determine if sufficient evidence exists that the property no longer meets the criteria for designation and, if so, shall remove the property from the inventory. A parcel created through an historic Landmark lot split cannot be de-listed unless there is a finding that the resource which originally caused the site to be landmarked meets the criteria for removal from the historic inventory.

**B. Reapplication.** If a request for rescinding designation is denied, an application cannot be filed again for a period of two (2) years from the date of the denial by the City Council. The time limitation of this Subsection may be waived by a majority vote of the City Council when such action is deemed necessary to prevent injustice or to facilitate the proper development of the City.

(Ord. No. 1-2002, §7 [part]; Ord. No. 43, 2004, §1; Ord. No. 28 -2010, §1)

**26.415.060. Effect of designation or inclusion within a historic district.**

**A. Approvals required.** Any development involving properties designated on the Aspen Inventory of Historic Landmark Sites and Structures, as an individual property or located within the boundaries of a Historic District, unless determined exempt, requires the approval of a development order and either a certificate of no negative effect or a certificate of appropriateness before a building permit or any other work authorization will be issued by the City. HPC shall provide referral comments for major projects to rights-of-way located within the boundaries of a Historic District.

**B. Design guidelines.**

1. The HPC has adopted design guidelines, hereinafter referred to as the City of Aspen Historic Preservation Design Guidelines, in accordance with the procedures for notice and public hearings set forth in Section 26.304.06(E)(3) Paragraph (a). These guidelines set forth the standards necessary to preserve and maintain the historic and architectural character of designated properties and districts. The standards apply to the exterior features and/or notable streetscape and landscape elements of the designated historic property and/or district. These guidelines are intended to offer assistance to property owners undertaking construction, rehabilitation, alterations, changes in exterior appearance or any other development involving

designated historic properties or districts. The guidelines will be periodically reviewed by the HPC and amended at a public hearing, as needed.

2. The "City of Aspen Historic Preservation Design Guidelines," as amended, which are on file with the Community Development Department, will be used in the review of requests of certificates of no negative effect or certificates of appropriateness. Conformance with the applicable guidelines and the common development review procedures set forth in Chapter 26.304 will be necessary for the approval of any proposed work.

### **C. Special consideration.**

1. To preserve and maintain the historic and architectural character of designated properties, the HPC or City Council may approve variations from the dimensional requirements set forth in the Land Use Code and may make recommendations to the Chief Building Official who has the authority to grant certain exceptions from the International Building Code (UBC) through the provisions of the International Existing Building Code (IEBC). These modifications may not change the applicable safety and permit requirements and must also follow the procedures provided for modifications set forth in the IEBC.
2. Designated historic properties are eligible for and have priority to participate in City programs related to financial, developmental or technical assistance that will serve to preserve, maintain or enhance their historic and architectural character.
3. All City authorities, including City Council, are authorized to grant economic and developmental benefits to designated historic properties or grant these benefits conditional upon the subsequent designation of the property.

(Ord. No. 1-2002, § 7 [part]; Ord. No. 43, 2004, § 2; Ord. No. 28 -2010, §1; Ord. No. 33-2012, §3)

### **26.415.070. Development involving designated historic property or property within a historic district.**

No building, structure or landscape shall be erected, constructed, enlarged, altered, repaired, relocated or improved involving a designated historic property or a property located within a Historic District until plans or sufficient information have been submitted to the Community Development Director and approved in accordance with the procedures established for their review. An application for a building permit cannot be submitted without a development order.

#### **A. Exempt development.**

1. Selected activities are exempted from the development review procedures including interior remodeling, paint color selection, exterior repainting or replastering similar to the existing finish or routine maintenance such as caulking, replacement of fasteners, repair of window glazing or other such minimally intrusive work.
2. If there is any question if a work activity qualifies as exempt, the Community Development Director shall make the determination as to its eligibility.

## **B. Certificate of no negative effect.**

1. An application for a certificate of no negative effect may be made to the Community Development Director for approval of work that has no adverse effect on the physical appearance or character-defining features of a designated property. An application for a certificate of no effect may be approved by the Community Development Director with no further review if it meets the requirements set forth in the following Subsection 26.415.070.B.2:
2. The Community Development Director shall issue a development order based upon a certificate of no negative effect within fourteen (14) days after receipt of a complete application if:
  - a) It is determined that the activity is an eligible work item and meets the City Historic Preservation Design Guidelines and
  - b) Any modifications to the proposed work requested by the Community Development Director are agreed to by the owner/applicant and
  - c) The proposed work will not diminish, eliminate or adversely affect the significant historic and/or architectural character of the subject property or Historic District in which it is located.
3. An application for a certificate of no negative effect shall include the following:
  - a) The general application information required in Section 26.304.030.
  - b) Elevations or drawings of the proposed work.
  - c) Photographs, building material samples and other exhibits, as needed, to accurately depict location, extent and design of proposed work.
  - d) Verification that the proposal complies with Chapter 26.410, Residential design standards.
4. The following work shall be considered for a Certificate of No Negative Effect:
  - a) Replacement or repair of architectural features which creates no change to the exterior physical appearance of the building or structure.
  - b) Replacement or repair of architectural features that restores the building or structure to its historic appearance.
  - c) Installation of awnings or similar attachments provided no significant feature is damaged, removed or obscured by the installation.
  - d) Fencing that has no adverse effect on the historic or architectural character of the property.
  - e) Mechanical equipment or accessory features that have no impact on the character-defining features of the building or structure.
  - f) Signs which have no effect on the character-defining features of the historic property.
  - g) Alterations to noncontributing buildings within historic districts that have no adverse effect on its historic or architectural character.

- h) Alterations to no more than two (2) elements of nonprimary façades of a designated building.
  - i) Installation of site improvements, such as walkways, patios, pools or hot tubs, or similar significant features.
5. The development order and associated certificate of no negative effect shall expire and become null and void after three (3) years from the date of issuance by the Community Development Director unless a building permit is issued within that time.
6. In the event that the Community Development Director determines that the issuance of a certificate of no negative effect is not appropriate, the owner may apply for a certificate of appropriateness from the HPC.

**C. Certificate of appropriateness for a minor development.**

1. The review and decision on the issuance of a certificate of appropriateness for minor development shall begin with a determination by the Community Development Director that the proposed project constitutes a minor development. Minor development work includes:
- a) Expansion or erection of a structure wherein the increase of the floor area of the structure is two hundred and fifty (250) square feet or less or
  - b) Alterations to a building façade, windows, doors, roof planes or material, exterior wall materials, dormer porch, exterior staircase, balcony or ornamental trim when three (3) or fewer elements are affected and the work does not qualify for a certificate of no negative effect or
  - c) Erection or installation of a combination or multiples of awning, canopies, mechanical equipment, fencing, signs, accessory features and other attachments to designated properties such that the cumulative impact does not allow for the issuance of a certificate of no negative effect or
  - d) Alterations that are made to nonhistoric portions of a designated historic property that do not qualify for a certificate of no negative effect or
  - e) The erection of street furniture, signs, public art and other visible improvements within designated historic districts of a magnitude or in numbers such that the cumulative impact does not allow for the issuance of a certificate of no negative effect.

The Community Development Director may determine that an application for work on a designated historic property involving multiple categories of minor development may result in the cumulative impact such that it is considered a major development. In such cases, the applicant shall apply for a major development review in accordance with Subsection 26.415.07.D.

2. An application for minor development shall include the following:
- a) The general application information required in Section 26.304.030.
  - b) Scaled elevations and/or drawings of the proposed work and its relationship to the designated historic buildings, structures, sites and features within its vicinity.

- c) An accurate representation of all building materials and finishes to be used in the development.
  - d) Photographs and other exhibits, as needed, to accurately depict location, extent and design of proposed work.
  - e) Verification that the proposal complies with Chapter 26.410, Residential design standards or a written request for a variance from any standard that is not being met.
3. The procedures for the review of minor development projects are as follows:
- a) The Community Development Director will review the application materials and if they are determined to be complete, schedule a public hearing before the HPC. The subject property shall be posted pursuant to Paragraph 26.304.060.E.3.b.
  - b) Staff shall review the submittal material and prepare a report that analyzes the project's conformance with the design guidelines and other applicable Land Use Code sections. This report will be transmitted to the HPC with relevant information on the proposed project and a recommendation to approve, disapprove or approve with conditions and the reasons for the recommendation. The HPC will review the application, the report and the evidence presented at the hearing to determine the project's conformance with the City Historic Preservation Design Guidelines.
  - c) The HPC shall approve, disapprove, approve with conditions or continue the application to obtain additional information necessary to make a decision to approve or deny. If the application is approved, the HPC shall issue a certificate of appropriateness and the Community Development Director shall issue a development order.
  - d) The HPC decision shall be final unless appealed by the applicant or a landowner within three hundred (300) feet of the subject property in accordance with the procedures set forth in Chapter 26.316.

**D. Certificate of appropriateness for major development.**

- 1. The review and decision on the issuance of a certificate of appropriateness for major development shall begin with a determination by the Community Development Director that the proposed project constitutes a major development. A major development includes one or more of the following activities:
  - a) The construction of a new structure within a historic district; and/or
  - b) Alterations to more than three (3) elements of a building façade including its windows, doors, roof planes or materials, exterior wall material, dormers, porches, exterior staircase, balcony or ornamental trim; and/or
  - c) The expansion of a building increasing the floor area by more than two hundred and fifty (250) square feet; and/or
  - d) Any new development that has not been determined to be minor development.
- 2. The procedures for the review of major development projects include a two-step process requiring approval by the HPC of a conceptual development plan and then a final

development plan. If a major development project involves additional City Land Use approvals, the Community Development Director may consolidate or modify the review process accordingly, pursuant to Subsection 26.304.060.B.

3. Conceptual development plan review.

- a) An application for a conceptual development plan shall include the following:
  - (1) The general application information required in Section 26.304.030.
  - (2) A site plan and survey showing property boundaries, the location and orientation of existing and proposed improvements and predominant site characteristics.
  - (3) Scaled drawings of all proposed structure(s) or addition(s) depicting their form, including their height, massing, scale, proportions and roof plan; and the primary features of all elevations.
  - (4) Preliminary selection of primary building materials to be used in construction represented by samples and/or photographs.
  - (5) Supplemental materials to provide a visual description of the context surrounding the designated historic property or historic district including at least one (1) of the following: diagrams, maps, photographs, models or streetscape elevations.
  - (6) Verification that the proposal complies with Chapter 26.410, Residential design standards or a written request for a variance from any standard that is not being met.
- b) The procedures for the review of conceptual development plans for major development projects are as follows:
  - (1) The Community Development Director shall review the application materials submitted for conceptual or final development plan approval. If they are determined to be complete, the applicant will be notified in writing of this and a public hearing before the HPC shall be scheduled. Notice of the hearing shall be provided pursuant to Section 26.304.060.E.3 Paragraphs a, b and c.
  - (2) Staff shall review the submittal material and prepare a report that analyzes the project's conformance with the design guidelines and other applicable Land Use Code sections. This report will be transmitted to the HPC with relevant information on the proposed project and a recommendation to continue, approve, disapprove or approve with conditions and the reasons for the recommendation. The HPC will review the application, the staff analysis report and the evidence presented at the hearing to determine the project's conformance with the City Historic Preservation Design Guidelines.
  - (3) The HPC may approve, disapprove, approve with conditions or continue the application to obtain additional information necessary to make a decision to approve or deny.
  - (4) A resolution of the HPC action shall be forwarded to the City Council in accordance with Section 26.415.120 - Appeals, notice to City Council, and call-up. No applications for Final Development Plan shall be accepted by the City and no associated permits shall be issued until the City Council takes action as described in said section

- c) The effect of approval of a conceptual development plan is as follows:
- (1) Approval of a conceptual development plan shall not constitute final approval of a major development project or permission to proceed with the development. Such authorization shall only constitute authorization to proceed with the preparation of an application for a final development plan.
  - (2) Approval of a conceptual development plan shall be binding upon HPC in regards to the location and form of the envelope of the structure(s) and/or addition(s) as depicted in the conceptual plan application including its height, scale, massing and proportions. No changes will be made to this aspect of the proposed development by the HPC as part of their review of the final development plan unless agreed to by the applicant. If the applicant chooses to make substantial amendments to the conceptual design after it has been approved, a new conceptual development approval hearing shall be required, pursuant to Section 26.415.070.D.3.
  - (3) Unless otherwise specified in the resolution granting conceptual development plan approval, a development application for a final development plan shall be submitted within one (1) year of the date of approval of a conceptual development plan. Failure to file such an application within this time period shall render null and void the approval of the conceptual development plan. The Community Development Director may grant an extension of this limitation if the delay has been caused by the application requiring additional reviews or similar delays that could not have been reasonably predicted by the applicant. The Historic Preservation Commission may, at its sole discretion and for good cause shown, grant a one-time extension of the expiration date for a conceptual development plan approval for up to six (6) months provided a written request for extension is received no less than thirty (30) days prior to the expiration date.

4. Final development plan review.

- a) An application for a final development plan shall include:
- (1) The general application information required in Section 26.304.030.
  - (2) Final drawings of all proposed structures(s) and/or addition(s) included as part of the development at 1/4" = 1.0' scale.
  - (3) An accurate representation of all major building materials to be used in the development, depicted through samples or photographs.
  - (4) A statement, including narrative text or graphics, indicating how the final development plan conforms to representations made or stipulations placed as a condition of the approval of the conceptual development plan.
- b) The procedures for the review of final development plans for major development projects are as follows:
- (1) The Community Development Director shall review the application materials submitted for final development plan approval. If they are determined to be complete, the applicant will be notified in writing of this and a public hearing before the HPC shall be scheduled. Notice of the hearing shall be provided pursuant to Paragraphs 26.304.060.E.3.a, b and c.

- (2) Staff shall review the submittal material and prepare a report that analyzes the project's conformance with the design guidelines and other applicable Land Use Code sections. This report will be transmitted to the HPC with relevant information on the proposed project and a recommendation to continue, approve, disapprove or approve with conditions and the reasons for the recommendation. The HPC will review the application, the staff analysis report and the evidence presented at the hearing to determine the project's conformance with the City Historic Preservation Design Guidelines.
- (3) The HPC may approve, disapprove, approve with conditions or continue the application to obtain additional information necessary to make a decision to approve or deny. If the application is approved, the HPC shall issue a certificate of appropriateness and the Community Development Director shall issue a development order.
- (4) Before an application for a building permit can be submitted, a final set of plans reflecting any or all required changes by the HPC or City Council must be on file with the City. Any conditions of approval or outstanding issues which must be addressed in the field or at a later time shall be noted on the plans.

**E. Amendments, insubstantial and substantial.** There are two processes for amending plans approved pursuant to a development order and an associated certificate of appropriateness. All requests for amendments, insubstantial or substantial, must be in writing and accompanied by drawing(s) and elevations as specified below.

1. Insubstantial amendments.

- a) Insubstantial amendments are minor modifications to HPC approved plans that:
  - (1) Address circumstances discovered in the course of construction that could not have been reasonably anticipated during the approval process or
  - (2) Are necessary for conformance with building safety or accessibility codes and do not materially change the approved plans or
  - (3) Approve specific building materials, finishes, design of ornamental trim and other such detail not provided in the HPC approved plans or
  - (4) Change the shape, location or material of a building element or feature but maintains the same quality and approximate appearance of that found in the approved plans.
- b) The Community Development Director may authorize insubstantial amendments to approved plans.
- c) Monitoring committees established by the HPC, composed of up to two (2) members of the Commission and the Historic Preservation Officer or assign, may also authorize insubstantial amendments.
- d) Decisions of the Community Development Director or monitoring committee are binding. The Community Development Director or monitoring committee may determine that the proposed changes qualify as a substantial amendment and remand the matter to the HPC.
- e) Disapproval of a request for an insubstantial amendment may be appealed to the HPC to be considered in accordance with the procedures for substantial amendments.

- f) Approval of insubstantial amendments of plans will be reported to the HPC at their regularly scheduled meetings.

2. Substantial amendments.

- a) All changes to approved plans that materially modify the location, size, shape, materials, design, detailing or appearance of the building elements as originally depicted must be approved by the HPC as a substantial amendment.
- b) An application for a substantial amendment shall include the following materials, as determined appropriate by the Community Development Director:
  - (1) A revised site plan.
  - (2) Revised scaled elevations and drawings.
  - (3) Representations of building materials and finishes.
  - (4) Photographs and other exhibits to illustrate the proposed changes.
- c) The Community Development Director shall review the application materials submitted for approval of a substantial amendment and waive any submittals not considered necessary for consideration. If they are determined to be complete, the applicant will be notified in writing of this and a public hearing before the HPC shall be scheduled.
- d) Notice for the review of an application for a substantial amendment will include publication, posting and mailing pursuant to Section 26.304.060.E.3 Paragraphs a, b and c.
- e) Staff shall review the submittal material and prepare a report that analyzes the extent of the changes relative to the approved plans and how the proposed revisions affect the project's conformance with the design guidelines and other applicable Land Use Codes. This report will be transmitted to the HPC with relevant information on the proposed revisions and a recommendation to continue, approve, disapprove or approve with conditions and the reasons for the recommendation.
- f) The HPC will review the application, the staff analysis report and the evidence presented at the hearing to determine the project's conformance with the City Historic Preservation Design Guidelines. The HPC may approve, disapprove, approve with conditions or continue the application to obtain additional information necessary to make a decision to approve or deny.

(Ord. No. 1-2002, § 7 [part]; Ord. 43, 2004, § 3; Ord. No. 28 -2010, §1; Ord. No. 3-2012, §22 & 23; Ord. No. 33-2012, §4)

**26.415.080. Demolition of designated historic properties or properties within a historic district.**

It is the intent of this Chapter to preserve the historic and architectural resources that have demonstrated significance to the community. Consequently no demolition of properties designated on the Aspen Inventory of Historic Landmark Site and Structures or properties within a Historic District will be allowed unless approved by the HPC in accordance with the standards set forth in this Section.

**A. Procedures for considering requests for demolition of designated properties or properties within a Historic District.**

1. An application for a demolition permit for designated properties or properties within a Historic District will be filed with or referred to the Community Development Director by the Chief Building Official. The applicant will be provided a written response within fourteen (14) days of the request for a demolition permit describing the submittal materials needed for consideration.
2. An application for demolition approval shall include:
  - a) The general application information requested in Section 26.304.030 and written documentation that the Chief Building Official has determined the building an imminent hazard or
  - b) Narrative text, graphic illustrations or other exhibits that provide evidence that the building, structure or object is of no historic or architectural value or importance.
3. When complete application materials are on file, a public hearing before the HPC shall be scheduled. Notice for the hearing will include publication, mailing and posting pursuant to Section 26.304.060.E.3 Paragraphs a, b and c. The staff shall review the submittal material and prepare a staff report that analyzes the request relative to the criteria for approval.
4. The HPC shall review the application, the staff report and hear evidence presented by the property owners, parties of interest and members of the general public to determine if the standards for demolition approval have been met. Demolition shall be approved if it is demonstrated that the application meets any one of the following criteria:
  - a) The property has been determined by the City to be an imminent hazard to public safety and the owner/applicant is unable to make the needed repairs in a timely manner,
  - b) The structure is not structurally sound despite evidence of the owner's efforts to properly maintain the structure,
  - c) The structure cannot practically be moved to another appropriate location in Aspen or
  - d) No documentation exists to support or demonstrate that the property has historic, architectural, archaeological, engineering or cultural significance and

Additionally, for approval to demolish, all of the following criteria must be met:

- a) The structure does not contribute to the significance of the parcel or Historic District in which it is located and
- b) The loss of the building, structure or object would not adversely affect the integrity of the Historic District or its historic, architectural or aesthetic relationship to adjacent designated properties and
- c) Demolition of the structure will be inconsequential to the historic preservation needs of the area.

5. The HPC shall approve, disapprove, approve with conditions or continue the application to obtain additional information necessary to consider the demolition request.
6. If the HPC approves the demolition request then a resolution of the HPC action will be forwarded to the City Council in accordance with Section 26.415.120 and no demolition permit will be issued until the thirty (30) day "call up" period by City Council has expired.
7. If the demolition request is denied because it does not meet the aforementioned standards, the applicant may request demolition approval based upon a finding of "economic hardship," as set forth below.
8. Before a demolition permit will be issued, a certificate of appropriateness for the redevelopment or reuse plan, as provided for in Subsection 26.415.070.D, must be approved. When a demolition permit must be issued because the building, structure or object is an imminent hazard or because of the issuance of a certificate of economic hardship, the permit may be received prior to the approval of an acceptable reuse plan.

**B. Procedures for obtaining a certificate of economic hardship.**

1. Purpose: It is the policy of the City to respect private property rights. The City recognizes, therefore, that there may be some circumstances in which the operation of this Chapter could create an undue economic hardship. This provision is created to provide property owners with a means of demonstrating that such a hardship may exist and that they should be allowed to demolish a designated historic property because of that hardship. It is the intent of this provision to insure that no private property is taken without just compensation.
2. Standard of review: The standard of review for a determination of economic hardship will be whether refusing to allow the property owner to demolish the property would result in a violation of the prohibitions of the U.S. and Colorado Constitutions against taking of private property for public use without just compensation as those prohibitions are interpreted by the courts of Colorado and the United States. In applying the standards, the economic benefits of financial, developmental and technical assistance from the City and the utilization of any federal and state rehabilitation tax credit programs may be considered.
3. Application:
  - a) Upon receiving a request for a certificate of economic hardship, the Community Development Director shall provide a written response within fourteen (14) days as to the submittal materials required.
  - b) Within five (5) days after receipt of an application for a certificate of economic hardship, the Community Development Director shall determine whether the application is complete. If he or she determines that the application is not complete, the Director shall notify the applicant in writing of the deficiencies. The Director shall take no further steps to process the application until the deficiencies have been remedied.
  - c) The application fee shall be set to defray all costs of the review process, including the fees of an independent hearing officer.

4. Administrative process:

- a) When the application is complete, the Community Development Director will refer the application to the Historic Preservation Officer and the City Attorney for review. The Historic Preservation Officer and City Attorney shall jointly prepare a report setting forth the City's response.
- b) In the event the City response concludes that the application does not demonstrate a case of economic hardship, the application will be set for a public hearing before a hearing officer.
- c) The hearing officer will be contracted by the City to conduct an impartial quasi-judicial hearing on the question of economic hardship. The Officer shall have sufficient legal and technical experience to conduct a fair hearing in accordance with appropriate standards of due process. The application, all support materials and the City's report shall be provided to the hearing officer in advance of the hearing. At the hearing, the applicant will be provided with an opportunity to present his application and may be represented by counsel. The City position will be presented by the City Attorney.

5. Appeal: An applicant may appeal the decision of the hearing officer to District Court pursuant to Rule 106 of the Colorado Rules of Civil Procedure.

(Ord. No. 1-2002, §7 [part]; Ord. No. 30, 2007, §4; Ord. No. 28 -2010, §1; Ord. No. 33 -2012, §5)

**26.415.090. Relocation of designated historic properties.**

The intent of this Chapter is to preserve designated historic properties in their original locations as much of their significance is embodied in their setting and physical relationship to their surroundings as well as their association with events and people with ties to particular site. However, it is recognized that occasionally the relocation of a property may be appropriate as it provides an alternative to demolition or because it only has a limited impact on the attributes that make it significant.

**A. Application.** An application for relocation shall include:

1. The general application information required in Section 26.304.030.
2. A written description and/or graphic illustrations of the building, structure or object proposed for relocation.
3. A written explanation of the type of relocation requested (temporary, on-site or off-site) and justification for the need for relocation.
4. A written report from a licensed engineer or architect regarding the soundness of the building, structure or object, its ability to withstand the physical move and its rehabilitation needs, once relocated.
5. A conceptual plan for the receiving site providing preliminary information on the property boundaries, existing improvements and site characteristics and the associated planned improvements.

6. If the applicant does not own the receiving site, proof from the site's property owner of the willingness to accept the relocated building, structure or object.
7. Evidence that the applicant has or is seeking the necessary approvals to place the building on the identified receiving site. If the site is outside of the city limits, verification that the building will be preserved on its new site through a formal action of the other jurisdiction or a preservation easement.
8. Evidence of the financial ability to undertake the safe relocation, preservation and repair of the building, structure or object; site preparation and construction of necessary infrastructure through the posting of bonds or other financial measures deemed appropriate.
9. Supplementary materials to provide an understanding of the larger context for the relocated property and its impact on adjacent properties, the neighborhood or streetscape.

**B. Procedures for the review of relocation request.**

1. The Community Development Director shall review the application materials submitted for relocation approval. If they are determined to be complete, the applicant will be notified in writing of this and a public hearing before the HPC shall be scheduled.
2. Notice for the review of the relocation request shall include publication, posting and mailing pursuant to Section 26.304.060.E.3 Paragraphs a, b and c.
3. If the relocation request is part of a major development project, the Community Development Director may consolidate or modify the review process accordingly pursuant to Section 26.304.060.B.
4. Staff shall review the submittal material and prepare a report that analyzes the project's conformance with the standards for relocation approval set forth below, the City Historic Preservation Design Guidelines and other applicable Land Use Code sections. This report will be transmitted to the HPC with relevant information on the proposed project and a recommendation to continue, approve, disapprove or approve with conditions and the reasons for the recommendation. The HPC will review the application, the report and the evidence presented at the hearing to determine if the standards for relocation have been met.
5. The HPC shall approve, disapprove, approve with conditions or continue the application to obtain additional information necessary to make a decision to approve or deny.
6. A resolution of the HPC action will be forwarded to the City Council in accordance with Section 26.415.120 and no relocation will occur until after the thirty (30) day "call up" period of the City Council has expired.

**C. Standards for the relocation of designated properties.** Relocation for a building, structure or object will be approved if it is determined that it meets any one of the following standards:

1. It is considered a noncontributing element of a historic district and its relocation will not affect the character of the historic district; or

2. It does not contribute to the overall character of the historic district or parcel on which it is located and its relocation will not have an adverse impact on the Historic District or property; or
3. The owner has obtained a certificate of economic hardship; or
4. The relocation activity is demonstrated to be an acceptable preservation method given the character and integrity of the building, structure or object and its move will not adversely affect the integrity of the Historic District in which it was originally located or diminish the historic, architectural or aesthetic relationships of adjacent designated properties; and

Additionally, for approval to relocate all of the following criteria must be met:

1. It has been determined that the building, structure or object is capable of withstanding the physical impacts of relocation;
2. An appropriate receiving site has been identified; and
3. An acceptable plan has been submitted providing for the safe relocation, repair and preservation of the building, structure or object including the provision of the necessary financial security.

**D. Procedures for considering request for relocation of properties under consideration for designation.** While it is the intent of this Chapter to preserve properties of demonstrated significance, it is also recognized that all buildings and areas of importance to the general welfare, prosperity and civic pride of its citizenry cannot be identified, evaluated, documented and designated at one time. However, it is important to protect properties which potentially qualify for designation against needless loss until review and hearings can be completed.

1. No relocation will be permitted for properties under consideration for designation to the Aspen Inventory of Historic Landmark Site and Structures unless relocation approval is issued by the Historic Preservation Commission or City Council.
2. All properties under consideration for designation and, therefore, subject to the temporary stay of relocation will be identified on a list maintained by the Chief Building Official. Property owners will be notified by registered mail that their property is under consideration for designation and have an opportunity to review all materials compiled at that time to verify accuracy.
3. These procedures shall apply to any building located within an area under preliminary application for designation from the time the application is filed until the time action is taken on the application by the City Council.
4. If a public hearing to consider the application for designation is not held by the City Council within six (6) months of the initiation of the stay, the stay will expire. An additional six-month stay period may be approved by City Council in the form of a resolution, at a public hearing, with a showing of good cause.

(Ord. No. 1-2002, § 7 [part]; Ord. No. 28 -2010, §1)

**26.415.100. Demolition by neglect.**

It is the intent of this Chapter to address the range of circumstances that affect the preservation of the community's significant historic and architectural resources. It is further recognized that many historic buildings and structures are lost because of deterioration from lack of maintenance. Whether this occurs unintentionally or through deliberate decisions, the result is the same: the loss of community assets. Consequently, it is declared that the exterior features of any designated building or structure shall be preserved against decay and deterioration and kept free from structural defects. The designated structures shall receive reasonable care, maintenance and upkeep appropriate for their preservation, protection, perpetuation and use.

**A. Standards for reasonable care and upkeep.**

1. The owner or such other person who may have legal possession, custody and control thereof of a designated property shall, upon written request by the City, repair the following exterior features if they are found to be deteriorating or if their condition is contributing to deterioration such that it is likely to compromise the building's structural integrity or as to create or permit the creation of any hazardous or unsafe condition to life, health or other property. These features include, but are not limited to:
  - a) Deterioration of exterior walls, foundations or other vertical supports that causes leaning, sagging, splitting, listing or buckling.
  - b) Deterioration of flooring or floor supports or other horizontal members that causes leaning, sagging, splitting, listing or buckling.
  - c) Deterioration of external chimneys that cause leaning, sagging, splitting, listing or buckling.
  - d) Deterioration or crumbling of exterior plasters or mortars.
  - e) Ineffective waterproofing of exterior walls, roofs and foundations, including broken windows or doors.
  - f) Defective protection or lack of weather protection for exterior wall and roof coverings, including lack of paint or weathering due to lack of paint or other protective covering.
  - g) Rotting, holes and other forms of decay.
  - h) Deterioration of exterior stairs, porches, handrails, window and door frames, cornices, entablatures, wall facings ornamental trim and other architectural details that cause delamination, instability, loss of shape and form or crumbling.

**B. Enforcement procedures.**

1. The HPC may file a petition listing specific defects, in accordance with Subsection 26.415.110.A, with the Chief Building Official, requesting that the official act under the following procedures to require the correction of the defects or repairs to designated properties.
2. Whenever a petition is filed, the Chief Building Official shall attempt to make direct personal contact with the owner or other such persons having legal possession or custody and/or his

representative. If personal contact cannot reasonably be accomplished, then written notification of the specific defects purported by the HPC and a request to inspect the property within ten (10) days will be mailed to the owner and other such persons having legal possession, custody and control and will be posted at a conspicuous location appropriate to the identified defects. In the written notification the Chief Building Official shall document the nature of the specific defects and the corrective action ordered.

3. After receiving agreement from the owner, his representatives or other such persons having legal possession, custody and control of the property for an inspection, the Chief Building Official and the HPC Officer shall within ten (10) working days conduct an investigation and prepare a written report determining whether the property requires work to address conditions set, forth in Subsection 26.415.100.A.1.
4. If the property is found to contain conditions needing correction, the owner, his representative or other such persons having legal possession, custody and control of the property will be served within fourteen (14) days with a complaint identifying the property deficiencies and providing notice that a hearing will be held before a Hearing Officer of the City within forty-five (45) days. The purpose of the hearing is to:
  - a) Receive evidence concerning the charge of deterioration and
  - b) Develop a plan and schedule for making the needed repairs in a timely fashion, such that the building is stabilized and the deterioration is arrested and
  - c) Ascertain whether the owner or other parties intend to make application for financial assistance from the City to correct the building defects.
5. Following such notice and hearing, the Hearing Officer will make a determination if there are any corrections required pursuant to Subsection 26.415.110.A.1 and shall state in writing the findings of fact in support of that determination. If it is determined that the building or structure is undergoing deterioration or if its condition is contributing to deterioration, the owner or other parties of interest will be served an order to repair those defective elements of the structure within a reasonable specified time frame.
6. If the owner fails to make the necessary repairs within the identified time frame, the City may undertake the work to correct the deficiencies that create any hazardous and unsafe conditions to life, health and property. The expense of this work will be recorded as a lien on the property.

**C. Appeal.** Within thirty (30) days, the owner may appeal the decision of the Hearing Officer to the Board of Appeals and Examiners pursuant to the process established in Chapter 8.08 of this Municipal Code.

(Ord. No. 1-2002 § 7 [part]; Ord. No. 28 -2010, §1)

**26.415.110. Benefits.**

The City is committed to providing support to property owners to assist their efforts to maintain, preserve and enhance their historic properties. Recognizing that these properties are valuable

community assets is the basic premise underlying the provision of special procedures and programs for designated historic properties and districts.

Benefits to encourage good historic preservation practices by the owners of historic properties are an important aspect of Aspen's historic preservation program. Historic resources are a valuable community asset and their continued protection is the basic premise supporting the creation of an innovative package of preservation tools that are unlike any other in the country.

Aspen's preservation benefits are in response to tight historic preservation controls that have been legislated by the City since 1972. The Community Development Department and Historic Preservation Commission (HPC) are dedicated to assisting property owners in renovating and maintaining their property.

Aspen is unique. Its historic resources and spirit of community have not been duplicated anywhere else in the world. It is this basic character that has helped make the City both economically vital and cherished by many.

Only designated properties may be eligible for the following benefits.

**A. Historic landmark lot split.** Properties listed on the Aspen Inventory of Historic Landmark Sites and Structures may receive an exemption from the subdivision and growth management quota system, pursuant to Sections 26.480 and 26.470, allowing owners of designated historic properties to create a second unit in addition to the historic building on their lot through the subdivision of the property. Refer to specific zone district information in Chapter 26.710 for further information. All parcels created through a Historic Landmark lot split shall retain designation on the Aspen Inventory of Historic Sites and Structures.

**B. Increased density.** Two detached single-family dwelling units or a duplex may be allowed on a smaller sized lot than is required for a non-designated property. Refer to specific zone district information in Chapter 26.710 for further information.

**C. Variances.** Dimensional variations are allowed for projects involving designated properties to create development that is more consistent with the character of the historic property or district than what would be required by the underlying zoning's dimensional standards.

1. The HPC may grant variances of the Land Use Code for designated properties to allow:
  - a) Development in the side, rear and front setbacks;
  - b) Development that does not meet the minimum distance requirements between buildings;
  - c) Up to five percent (5%) additional site coverage;
  - d) Less public amenity than required for the on-site relocation of commercial historic properties.
2. In granting a variance, the HPC must make a finding that such a variance:
  - a) Is similar to the pattern, features and character of the historic property or district; and/or

- b) Enhances or mitigates an adverse impact to the historic significance or architectural character of the historic property, an adjoining designated historic property or historic district.

**D. Parking.** Parking reductions are permitted for designated historic properties on sites unable to contain the number of on-site parking spaces required by the underlying zoning. Commercial designated historic properties may receive waivers of payment-in-lieu fees for parking reductions.

In addition to the review criteria listed in Chapter 26.515, the parking reduction and waiver of payment-in-lieu fees may be approved upon a finding by the HPC that it will enhance or mitigate an adverse impact on the historic significance or architectural character of a designated historic property, an adjoining designated property or a historic district.

**E. Conditional uses.** A variety of conditional uses are allowed for designated historic properties. These uses are identified in Chapter 26.710.

**F. Floor area bonus.**

1. In selected circumstances, the HPC may grant up to five hundred (500) additional square feet of allowable floor area for projects involving designated historic properties. To be considered for the bonus, it must be demonstrated that:
  - a) The design of the project meets all applicable design guidelines;
  - b) The historic building is the key element of the property and the addition is incorporated in a manner that maintains the visual integrity of the historic building;
  - c) The work restores the existing portion of the building to its historic appearance;
  - d) The new construction is reflective of the proportional patterns found in the historic building's form, materials or openings;
  - e) The construction materials are of the highest quality;
  - f) An appropriate transition defines the old and new portions of the building;
  - g) The project retains a historic outbuilding; and/or
  - h) Notable historic site and landscape features are retained.
2. Granting of additional allowable floor area is not a matter of right but is contingent upon the sole discretion of the HPC and the Commission's assessments of the merits of the proposed project and its ability to demonstrate exemplary historic preservation practices. Projects that demonstrate multiple elements described above will have a greater likelihood of being awarded additional floor area.
3. The decision to grant a floor area bonus for major development projects will occur as part of the approval of a Conceptual Development Plan, pursuant to Subsection 26.415.070.D. The floor area bonus may also be approved as part of a Historic Landmark Lot Split Review. No development application that includes a request for a floor area bonus may be submitted until after the applicant has met with the HPC in a work session to discuss how the proposal might meet the bonus considerations.

4. Floor area bonuses are cumulative. A property shall receive no more than 500 square feet total.

**G. Exemption from growth management quota system requirements.** Certain types of development on designated historic properties are exempt from the growth management quota system and have reduced impact mitigation requirements. Refer to Chapter 26.470 for further information.

**H. Waiver of impact fees.** Designated historic properties may be eligible for waiver of Impact Fees. Refer to Chapter 26.610 for further information.

**I. Rehabilitation loan fund.** City Council may approve a zero interest loan in an amount up to twenty-five thousand dollars (\$25,000.00) for any property that is in violation of Section 26.415.100 of the Land Use Code, Demolition by Neglect, or to fund other rehabilitation work which is considered necessary for the preservation or restoration of a designated structure. To be eligible for this benefit, a property owner shall show evidence of financial need. These one-time loans shall be repaid at the time of transfer-of-title or by the end of ten (10) years, whichever comes first.

**J. Conservation easement program.** The City may accept a "Conservation Easement" from a property owner who wishes to forgo any of the allowed square footage on their property in exchange for a federal tax deduction. A deed restriction shall be filed on the site to show that future development is limited. The five hundred (500) square foot floor area bonus provided in Subsection 26.415.110 of the Land Use Code cannot be donated as a conservation easement.

**K. City-owned building rehabilitation fund.** The City shall give priority in the asset management plan to budgeting the funds necessary to adequately maintain, rehabilitate or restore City-owned designated properties.

**L. Transferable Development Right (TDR).** Pursuant to Chapter 26.535 of this Code, owners of properties listed on the Aspen Inventory of Historic Landmark Sites and Structures may sever and convey, as a separate development right, undeveloped floor area to be developed on a different property within the City. Refer to Section 26.710, Zone Districts for further information on landing sites for TDRs.

**M. Tax credit applications.** Community Development staff shall assist property owners in participating in State and Federal Rehabilitation Tax Credit programs by helping with the preparation of application materials, undertaking the necessary reviews to assist in obtaining certification. A twenty percent (20%) state rehabilitation income tax credit may be available for locally designated properties and may be combined with a twenty percent (20%) Federal Income Tax Credit which may be available for income producing properties listed on the National Register of Historic Places.

**N. Community-initiated development.** The City shall consider opportunities to be involved in public-privately funded rehabilitation efforts, building expansion, or infill projects that demonstrate good historic preservation practices.

**O. Building codes.** The International Building Code (IBC) provides for flexibility in its application to historic structures. In addition to the IBC, the City has adopted the International Existing Building Code (IEBC) to assist owners in making repairs in a manner that minimizes intrusion into the historic structure.

**P. Contractor training.** The Community Development Department shall provide periodic workshops for contractors on proper preservation techniques, using grants or other sources of funding.

**Q. Cultural heritage tourism.** Through grants or other sources of funding, the City may facilitate collaborative partnerships among tourist industry sectors, historic property owners and cultural heritage attractions to create a marketing strategy and marketing products to attract visitors interested in the distinctive historic character of Aspen.

**R. Preservation honor awards.** The Aspen Historic Preservation Commission shall present annual awards to recognize exemplary historic preservation efforts in the City.

**S. Historic markers.** Through grants or other sources of funding, the City may provide a historic marker of a standard design for any owner of a designated historic property who desires a marker to install on their building. The City may also develop a marker or signage program to recognize designated historic districts.

(Ord. No. 28 -2010, §1; Ord. No. 33 -2012, §6 & 7)

**26.415.120. Appeals, notice to City Council and call up.**

**A. Appeal.** Any action by the HPC in approving, approving with conditions or disapproving a development order and an associated certificate of appropriateness for major development, demolition approval or relocation approval may be appealed to the City Council by the applicant or a property owner within three hundred (300) feet of the subject property in accordance with the procedures set forth in Chapter 26.316.

**B. Notice to City Council.** Following the adoption of a resolution approving, approving with conditions or disapproving a Conceptual Development Plan application for a certificate of appropriateness for major development, demolition approval or relocation approval of a designated property, the HPC shall promptly notify the City Council of its action to allow the City Council an opportunity to avail itself of the call-up procedure set forth in Subsection 26.415.120.C and D. Notification shall consist of a description in written and graphic form of the project with a copy of the approving document. The notification shall be placed on the agenda of a regular City Council meeting within 30 days of the approval, or as soon thereafter as is practical under the circumstances.

**C. Call-up.** The City Council may order call up of any action taken by the HPC as described in Section 26.415.070 within fifteen (15) days of notification, as outlined in 26.415.120(B). . Consequently, applications for Final Development Plan Review shall not be accepted by the City and no associated permits shall be issued during the notice and call-up period. If City Council exercises this call-up provision, no applications for Final Development Plan Review shall be accepted by the City and no associated permits shall be issued until the City Council takes action as described in subsection 26.415.120.D. If the City Council does not call up the action, the resolution of HPC shall be the final decision on the matter.

**D. City Council action on call-up.** The City Council shall, at a public meeting, consider the application *de novo*. The City Council may, at its discretion, consider evidence included in the record established by the Historic Preservation Commission or supplement the record with additional

evidence or testimony as necessary. The City Council shall conduct its review of the application under the same criteria applicable to the reviewing body. The City Council's action shall be limited to:

1. Accepting the decision.
2. Remanding the application to the HPC with direction from Council for rehearing and reconsideration.
3. Continuing the meeting to request additional evidence, analysis, or testimony as necessary to conclude the call-up review.

**E. Additional Actions.** The rehearing and reconsideration of the application by the HPC shall be duly noticed pursuant to Section 26.304.060.E Public Notice and shall be limited to the topics listed in the direction from Council. The HPC decision is final and concludes the call up review. Substantive changes, as defined in Section 26.415.070.E. 2 Substantial Amendments, made to the application during the call up review and outside the topics listed in the remand from Council shall be reviewed pursuant to Section 26.415.070.E and shall require a new call up notice to City Council. The call up review shall be limited only to the changes approved in the Substantial Amendment application.

(Ord. No. 1-2002, § 7 [part]; Ord. No. 52-2003, § 10; Ord. No. 28 -2010, §1; Ord. No. 3, §20)

**26.415.130. Variances by other City review bodies.**

If an application for a variance involving a designated property is before the Board of Adjustment or the Planning and Zoning Commission, the HPC will be given the opportunity to make a written recommendation as to its approval. The Board of Adjustment or the Planning and Zoning Commission will not take action on said development application for a variance pursuant to Chapter 26.314, without receiving the written recommendation from the HPC.

(Ord. No. 1-2002 § 7 [part]; Ord. No. 28 -2010, §1)

**26.415.140. Penalties.**

Any person violating the provisions of Sections 26.415.070 through 26.415.100 will be subject to the general penalty provisions of this Title.

**A. Additional penalties.** Additional penalties for the violation of Sections 26.415.070 through 26.415.100 include:

1. Any person who constructs, alters, relocates, changes the appearance or demolishes a designated property in violation of any section may be required to restore the building, structure or setting to its appearance prior to the violation.
2. Following notice and public hearing, the HPC shall prohibit the owner, successor or assigns from obtaining a building permit for the subject property for a period of up to ten (10) years from the date of the violation. The City shall initiate proceedings to place a deed restriction on the property to ensure enforcement of this penalty. The property owner shall be required

to maintain the property during that period of time in conformance with the Standards for reasonable care and upkeep set forth in Subsection 26.415.100A.

3. Any variances or historic preservation benefits previously granted to the property may be subject to revocation.

(Ord. No. 1-2002, § 7 [part]; Ord. No. 28 -2010, §1)



**Chapter 26.425**  
**CONDITIONAL USES**

Sections:

- Sec. 26.425.010. Purpose.
- Sec. 26.425.020. Authority.
- Sec. 26.425.030. Authorized conditional uses.
- Sec. 26.425.040. Standards applicable to all conditional uses.
- Sec. 26.425.050. Procedure for review.
- Sec. 26.425.060. Application.
- Sec. 26.425.080. Amendment of development order.

**26.425.010. Purpose.**

Conditional uses are those land uses which are generally compatible with the other permitted uses in a Zone District, but which require individual review of their location, design, configuration, intensity and density in order to ensure the appropriateness of the land use in the Zone District.

**26.425.020. Authority.**

The Planning and Zoning Commission, in accordance with the procedures, standards and limitations of this Chapter, shall by resolution approve, approve with conditions or disapprove a development application for a conditional use, after recommendation by the Community Development Director.

**26.425.030. Authorized conditional uses.**

Only those uses which are authorized as a conditional use for each zone district in Chapter 26.710, may be approved as a conditional use. The designation of a land use as a conditional use in a Zone District does not constitute an authorization of such land use or act as an assurance that such land use will be approved as a conditional use; rather, each proposed conditional use shall be evaluated by the Planning and Zoning Commission for compliance with the standards and conditions set forth in this Chapter.

**26.425.040. Standards applicable to all conditional uses.**

When considering a development application for a conditional use, the Planning and Zoning Commission shall consider whether all of the following standards are met, as applicable.

- A.** The conditional use is consistent with the intent of the Zone District in which it is proposed to be located and complies with all other applicable requirements of this Title; and
- B.** The conditional use is compatible with the mix of development in the immediate vicinity of the parcel in terms of density, height, bulk, architecture, landscaping, and open space, as well as with any applicable adopted regulatory master plan.
- C.** The conditional use is consistent and compatible with the character of the immediate vicinity of the parcel proposed for development and surrounding land uses and enhances the mixture of complimentary uses and activities in the immediate vicinity of the parcel proposed for development; and

**D.** The location, size, design and operating characteristics of the proposed conditional use minimizes adverse effects, including visual impacts, impacts on pedestrian and vehicular circulation, parking, trash, service delivery, noise, vibrations and odor on surrounding properties; and

**E.** There are adequate public facilities and services to serve the conditional use including but not limited to roads, potable water, sewer, solid waste, parks, police, fire protection, emergency medical services, hospital and medical services, drainage systems and schools; and

**F.** The applicant commits to supply affordable housing to meet the incremental need for increased employees generated by the conditional use; and

**G.** The Community Development Director may recommend and the Planning and Zoning Commission may impose such conditions on a conditional use that are necessary to maintain the integrity of the City's Zone Districts and to ensure the conditional use complies this Chapter and this Title; is compatible with surrounding land uses; and is served by adequate public facilities. This includes, but is not limited to, imposing conditions on size, bulk, location, open space, landscaping, buffering, lighting, signage, off-street parking and other similar design features, the construction of public facilities to serve the conditional use and limitations on the operating characteristics, hours of operation and duration of the conditional use.

(Ord. No. 3-2012§7)

**26.425.050. Procedure for review.**

**A. General.** An application for review of a conditional use shall be processed in accordance with the common development review procedures set forth at Chapter 26.304.

**B. Steps required:** One — A public hearing before the Planning and Zoning Commission. Following the public hearing, the Planning and Zoning Commission shall by resolution (with appropriate findings of fact) approve, approve with conditions or deny the application.

**C. Notice requirements:** Publication, mailing and posting.

(See Section 26.304.060[E][3] Paragraphs [a], [b] and [c]). (Ord. No. 27-2002 §9)

**26.425.060. Application.**

The development application for a conditional use shall include the following.

**A.** The general application information required in Section 26.304.030;

**B.** A sketch plan of the site showing existing and proposed features which are relevant to the review of the conditional use application; and

**C.** A written description of the operational characteristics of the proposed conditional use; and

**D.** If the application involves development of a new structure or expansion or exterior remodeling of an existing structure, proposed elevations of the structure.

**26.425.080. Amendment of development order.**

**A. Insubstantial amendment.** An insubstantial amendment to an approved development order for a conditional use may be authorized by the Community Development Director. An insubstantial amendment shall be limited to changes in the operation of a conditional use which meet all of the following standards:

1. The change will not cause negative impacts on pedestrian and vehicular traffic circulation, parking or noise; and
2. The change will not substantially affect the tourist or local orientation of the conditional use; and
3. The change will not affect the character of the neighborhood in which the use is located; and
4. The change will not increase the use's employee base or the retail square footage in the structure; and
5. The change will not substantially alter the external visual appearance of the building or its site.

**C. Other amendments.** All other amendments shall be approved by the Planning and Zoning Commission in accordance with the provisions of this Chapter.



## Chapter 26.430

### SPECIAL REVIEW

Sections:

Sec. 26.430.010.	Purpose.
Sec. 26.430.020.	Authority.
Sec. 26.430.030.	Applicability.
Sec. 26.430.040.	Review standards for special review.
Sec. 26.430.050.	Procedure for special review approval.
Sec. 26.430.060.	Application.
Sec. 26.430.070.	Conditions.
Sec. 26.430.080.	Modification of requirements.
Sec. 26.430.090.	Amendment of development order.

**26.430.010. Purpose.**

The purpose of special review is to ensure site-specific review of certain dimensional requirements, mitigation requirements, encroachments, lighting or subdivision standards, which are specifically authorized to be altered or amended by specific provisions of this Title in order to maintain the integrity of the City's Zone Districts and the compatibility of the proposed development with surrounding land uses.

**26.430.020. Authority.**

The Planning and Zoning Commission, in accordance with the procedures, standards and limitations of this Chapter, shall by resolution approve, approve with conditions or disapprove a development application for special review, after recommendation by the Community Development Department.

**26.430.030. Applicability.**

Special review shall apply to all development in the City designated for special review by the following chapters or sections of this Title:

- Dimensional requirements (Chapter 26.710 — Zone Districts)
- Replacement of nonconforming structures (Chapter 26.312)
- Reduction of open space requirements in CC Zone District (Subsection 26.575.030.B)
- Off-street parking requirements (Section 26.515.040)
- Reductions in the dimensions of utility and delivery service area provisions (Section 26.575.060.B)
- Subdivision standards (Section 26.480.050)
- Accessory Dwelling Unit Design Standards (Chapter 26.520)

- Wireless telecommunications facilities and/or equipment (Section 26.575.130)
- Affordable housing unit standards (Section 26.470.070.4)

(Ord. No. 44-1999, §3; Ord. No. 47-1999, §4; Ord. No. 5-2000, §3; Ord. No. 52-2003, §11; Ord. No.14-2011, §1; No.13-2013, §5)

**26.430.040. Review standards for special review.**

No development subject to special review shall be permitted unless the Planning and Zoning Commission makes a determination that the proposed development complies with all standards and requirements set forth below.

**A. Dimensional requirements.** Whenever the dimensional requirements of a proposed development are subject to special review, the development application shall only be approved if the following conditions are met.

1. The mass, height, density, configuration, amount of open space, landscaping and setbacks of the proposed development are designed in a manner which is compatible with or enhances the character of surrounding land uses and is consistent with the purposes of the underlying zone district.
2. The applicant demonstrates that the proposed development will not have adverse impacts on surrounding uses or will mitigate those impacts, including but not limited to the effects of shading, excess traffic, availability of parking in the neighborhood or blocking of a designated view plane.

**B. Replacement of nonconforming structures.** Whenever a structure or portion thereof, which does not conform to the dimensional requirements of the zone district in which the property is located is proposed to be replaced after demolition, the following criteria shall be met:

1. The proposed development shall comply with the conditions of Subsection 26.430.040.A above;
2. There exist special characteristics unique to the property which differentiate the property from other properties located in the same zone district;
3. No dimensional variations are increased, and the replacement structure represents the minimum variance that will make possible the reasonable use of the property; and
4. Literal enforcement of the dimensional provisions of the zone district would cause unnecessary hardship upon the owner by prohibiting reasonable use of the property.

**C. Reduction of public amenity.** Whenever a special review is conducted to determine whether a reduction of the public amenity requirement is to be granted, it shall be reviewed in accordance with the standards set forth at Section 26.575.030.

**D. Off-street parking requirements.** Whenever a special review is conducted to determine a change in the off-street parking requirements, it shall be considered in accordance with the standards set forth at Chapter 26.515.

**E. Utility and delivery service area provisions.** Whenever a special review is conducted to determine a change in any utility and delivery service area requirements, the following criteria shall be met:

1. There is a demonstration that, given the nature of the potential uses of the building and its total square footage, the utility service area and delivery area proposed will be adequate.
2. Access to the utility and delivery service area is adequate to accommodate all necessary users.
3. The area for public utility placement and maintenance is adequate and safe for the placement of utilities.

**F. Subdivision design standards.** Whenever a special review is for development which does not meet the subdivision design standards of Section 26.480.050, the development shall be approved only when the conditions set forth at Section 26.480.050 have been met.

**G. Accessory dwelling unit design standards.** Whenever a special review is conducted to determine a change in the design standards required for accessory dwelling units, it shall be considered in accordance with the standards set forth at Subsection 26.520.080.D.

**H. Wireless telecommunications facilities and/or equipment.** Whenever a special review is conducted to appeal the decision of the Community Development Director regarding a proposed wireless telecommunications service facility or equipment or to determine a proposed increase in the allowed height of a wireless telecommunications facility and/or equipment, it shall be considered in accordance with the standards set forth in Paragraph 26.575.130.C.6, Wireless telecommunication services facilities and equipment.

**I. Affordable housing unit standards.** Whenever a Special Review is conducted to reduce the required percentage that the finished floor level of the unit's net livable area is at or above natural or finished grade, whichever is higher, a recommendation from the Housing Board shall be obtained and all of the following criteria shall be met. The criteria below address only the affordable housing units that require a variation from the standard.

1. The proposed affordable housing units are designed in a manner that is compatible with the character of the neighborhood.
2. The proposed amount that the affordable housing units are below natural or finished grade, whichever is more restrictive, is an appropriate response to unique site constraints, such as topography.
3. The proposed affordable housing units are designed in such a manner which exceeds the expectations of the Aspen Pitkin County Housing Authority Guidelines, and promotes the unit's general livability by demonstrating compliance with as many of the following conditions as possible:
  - a) Significant storage, such as additional storage outside a unit.
  - b) Above average natural light, such as adding more window area than the Building Code requires.
  - c) Net livable unit sizes exceed minimum requirement.

d) Unit amenities, such as access to outdoor space or private patios.

(Ord. No. 44-1999, §4; Ord. No. 5-2000, §4; Ord. No. 1-2002, §9; Ord. No. 52-2003, §12; Ord. No. 12, 2007, §§20, 21; Ord. No. 14 – 2011, §2; Ord. No. 13 – 2013, §6)

**26.430.050. Procedure for special review approval.**

**A. General.** An application for review of a special review shall be processed in accordance with the common development review procedures set forth at Chapter 26.304.

**B. Steps required:** One — Public hearing before Planning and Zoning Commission.

**C. Notice requirements:** Publication, mailing and posting. (See Section 26.304.060[E][3] Paragraphs [a], [b] and [c]). (Ord. No. 27-2002, §10)

**26.430.060. Application.**

The development application for special review shall include the following:

**A.** The general application information required under Section 26.304.030.

**B.** A sketch plan showing the configuration of the development on the lot and those features of the site which are relevant to the special review application.

**C.** An analysis of the characteristics of similarly situated properties in the same Zone District and of neighboring parcels with respect to whether these properties comply with the dimensional, off-street parking or utility and delivery service area requirement which is subject to special review.

(Ord. No. 13 – 2013, §7)

**26.430.070. Conditions.**

The Community Development Department Director may recommend and the Planning and Zoning Commission may impose, such conditions that are necessary to ensure a proposed development subject to special review complies with the purposes of the Aspen Area Community Plan, this Title, including conditions to ensure the integrity of the City's Zone Districts are maintained and the proposed use is compatible with surrounding land uses. This includes but is not limited to imposing conditions on size, bulk, location, open space, landscaping, lighting, signage, off-street parking and other design features.

**26.430.080. Modification of requirements.**

If the dimensional requirements, off-street parking, signage or reduction in access to utility/trash service areas for a proposed development are expressly modified by a valid conditional use or other valid development permit or approval, the proposed development must comply with such modified requirements.

(Ord. No. 13 – 2013, §7)

**26.430.090. Amendment of development order.**

**A. Insubstantial amendment.** An insubstantial amendment to an approved development order for special review may be authorized by the Community Development Department Director. An insubstantial amendment shall be limited to technical or engineering considerations first discovered during actual development which could not reasonably be anticipated during the approval process. An insubstantial amendment shall include a change to the design of approved off-street parking or to the configuration of a utility or delivery service area. An insubstantial amendment shall not include:

1. Any increase in a dimensional requirement established by special review.
2. Any decrease in the number of off-street parking spaces established by special review.
3. Any decrease in the size of a utility or delivery service area established by special review.

**B. Other amendment.** Any other amendment shall be approved pursuant to the terms and procedures of this Chapter.

(Ord. No. 13 – 2013, §9)



**Chapter 26.435**  
**DEVELOPMENT IN ENVIRONMENTALLY SENSITIVE AREAS (ESA)**

Sections:

Sec. 26.435.010.	Purpose.
Sec. 26.435.020.	Authority.
Sec. 26.435.030.	8040 Greenline review.
Sec. 26.435.040.	Stream margin review.
Sec. 26.435.050.	Mountain view plane review.
Sec. 26.440.060.	Application.
Sec. 26.435.070.	Procedure for approval of development in ESA.
Sec. 26.435.080.	Application.
Sec. 26.435.090.	Conditions.
Sec. 26.435.100.	Amendment of an ESA development order.

**26.435.010. Purpose.**

Certain land areas within the City are of particular ecological, environmental, architectural or scenic significance and all development within such areas shall be subject to heightened review procedures and standards as set forth in this Chapter. These areas shall be known as Environmentally Sensitive Areas (ESA) and shall include the following:

**A. 8040 Greenline.** Areas located at or above 8040 feet mean sea level (the 8040 Greenline) and including that area extending one hundred fifty (150) feet below, measured horizontally, the 8040 Greenline. Development in these areas shall be subject to heightened review so as to reduce impacts on the natural watershed and surface runoff, minimize air pollution, reduce the potential for avalanche, unstable slope, rockfall and mudslide and aid in the transition of agricultural and forestry land uses to urban uses. Review shall further ensure the availability of utilities and access to any development and that disturbance to existing terrain and natural land features be kept to a minimum.

**B. Stream margins.** Areas located within one hundred (100) feet, measured horizontally, from the high water line of the Roaring Fork River and its tributary streams or within the one-hundred-year floodplain where it extends one hundred (100) feet from the high water line of the Roaring Fork River and its tributary streams or within a Flood Hazard Area (stream margin). Development in these areas shall be subject to heightened review so as to reduce and prevent property loss by flood while ensuring the natural and unimpeded flow of watercourses. Review shall encourage development and land uses that preserve and protect existing watercourses as important natural features.

**C. Mountain view planes.** Development within designated mountain view planes as set forth in Section 26.435.050 shall be subject to heightened review so as to protect mountain views from obstruction, strengthen the environmental and aesthetic character of the City, maintain property values and enhance the City's tourist industry by maintaining the City's heritage as a mountain community.

**D. Hallam Lake Bluff.** That bluff area running approximately on a north-south axis bordering and/or overlooking the Aspen Center for Environmental Studies Nature Preserve and bounded on the

east by the 7850-foot mean sea level elevation line and extending one hundred (100) feet, measured horizontally, up slope and there terminating and bounded on the north by the southeast lot line of Lot 7A of the Aspen Company Subdivision and on the south by the centerline of West Francis Street. Development in this area shall be subject to heightened review so as to reduce noise and visual impacts on the nature preserve, protect against slope erosion and landslide, minimize impacts on surface runoff, maintain views to and from the nature preserve and ensure the aesthetic and historical integrity of Hallam Lake and the nature preserve.

Note: All elevations used in this Section are based on the U.S. Coast and Geologic Survey (USC & GS) benchmark located in the southwesterly corner of the county courthouse foundation at an elevation of 7,906.80 feet above mean sea level.

(Ord. No. 55-2000, § 6)

**26.435.020. Authority.**

Following the receipt of a recommendation from the Community Development Department, the Planning and Zoning Commission, in accordance with the procedures, standards and limitations of this Chapter, shall by resolution approve, approve with conditions or disapprove a development application for development in an environmentally sensitive area (ESA), with the exception of development within a stream margin of the Roaring Fork River. Development within this stream margin of the Roaring Fork River shall be reviewed by the community development director. The Community Development Director, in accordance with the procedures, standards and limitations of this Chapter, shall approve, approve with conditions or disapprove an application for development in the stream margin.

The Community Development Director, in accordance with the procedures, standards and limitations of this Chapter, shall approve, approve with conditions or disapprove a development application for exempt development in an environmentally sensitive area (ESA).

(Ord. No. 45-2001, § 1)

**26.435.030. 8040 Greenline review.**

**A. Applicability.** The provisions of 8040 Greenline review shall apply to all development located at or above 8040 feet above mean sea level (the 8040 Greenline) in the City and all development within one hundred fifty (150) feet below, as measured horizontally, the 8040 Greenline, unless exempted pursuant to Subsection 26.435.030.B.. Development on land located in the R-15B Zone District is not subject to the 8040 Greenline review.

**B. Exemption.** The Community Development Director may exempt the expansion, remodeling or reconstruction of an existing 8040 Greenline development if the following standards are met:

1. The development does not add more than ten percent (10%) to the floor area of the existing structure or increase the total amount of square footage of areas of the structure which are exempt from floor area calculations by more than twenty-five percent (25%); and

2. The development does not require the removal of any tree for which a permit would be required pursuant to Section 15.04.450 or the applicant receives a permit pursuant to said Section; and
3. The development is located such that it is not affected by any geologic hazard and will not result in increased erosion and sedimentation.
4. All exemptions are cumulative. Once a development reaches the totals specified in Subsection 26.435.030.B.1, an 8040 Greenline review must be obtained pursuant to Subsection 26.435.030.C.

**C. 8040 Greenline review standards.** No development shall be permitted at, above or one hundred fifty (150) feet below the 8040 Greenline unless the Planning and Zoning Commission makes a determination that the proposed development complies with all requirements set forth below.

1. The parcel on which the proposed development is to be located is suitable for development considering its slope, ground stability characteristics, including mine subsidence and the possibility of mudflow, rock falls and avalanche dangers. If the parcel is found to contain hazardous or toxic soils, the applicant shall stabilize and revegetate the soils or, where necessary, cause them to be removed from the site to a location acceptable to the City.
2. The proposed development does not have a significant adverse affect on the natural watershed, runoff, drainage, soil erosion or have consequent effects of water pollution.
3. The proposed development does not have a significant adverse affect on the air quality in the City.
4. The design and location of any proposed development, road or trail is compatible with the terrain on the parcel on which the proposed development is to be located.
5. Any grading will minimize, to the extent practicable, disturbance to the terrain, vegetation and natural land features.
6. The placement and clustering of structures will minimize the need for roads, limit cutting and grading, maintain open space and preserve the mountain as a scenic resource.
7. Building height and bulk will be minimized and the structure will be designed to blend into the open character of the mountain.
8. Sufficient water pressure and other utilities are available to service the proposed development.
9. Adequate roads are available to serve the proposed development and said roads can be properly maintained.
10. Adequate ingress and egress is available to the proposed development so as to ensure adequate access for fire protection and snow removal equipment.
11. The adopted regulatory plans of the Open Space and Trails Board are implemented in the proposed development, to the greatest extent practical.

(Ord. No. 55-2000, §7; Ord. No. 3-2012, §8)

**26.435.040. Stream margin review.**

**A. Applicability.** The provisions of the stream margin review shall apply to all development within one hundred (100) feet, measured horizontally, from the high water line of the Roaring Fork River and its tributary streams and to all development within the Flood Hazard Area, also known as the 100-year flood plain.

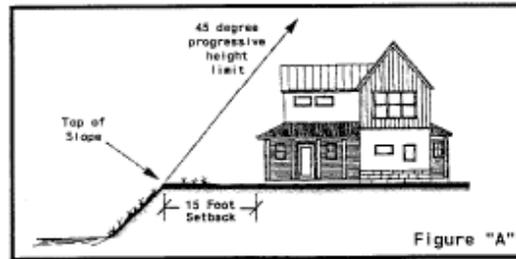
**B. Exemptions.** The Community Development Director may exempt the following types of development within the stream margin review area:

1. Construction of pedestrian or automobile bridges, public trails or structures for irrigation, drainage, flood control or water diversion, bank stabilization, provided plans and specifications are submitted to the City engineer demonstrating that the structure is engineered to prevent blockage of drainage channels during peak flows and the Community Development Director determines the proposed structure complies, to the extent practical, with the stream margin review standards.
2. Construction of improvements essential for public health and safety which cannot be reasonably accommodated outside of the "no development area" prescribed by this Section including, but not limited to, potable water systems, sanitary sewer, utilities and fire suppression systems provided the Community Development Director determines the development complies, to the extent practical, with the stream margin review standards.
3. The expansion, remodeling or reconstruction of an existing development provided the following standards are met:
  - a) The development does not add more than ten percent (10%) to the floor area of the existing structure or increase the amount of building area exempt from floor area calculations by more than twenty-five percent (25%). All stream margin exemptions are cumulative. Once a development reaches these totals, a stream margin review by the Planning and Zoning Commission is required; and
  - b) The development does not require the removal of any tree for which a permit would be required pursuant to Chapter 13.20 of this Code.
  - c) The development is located such that no portion of the expansion, remodeling or reconstruction will be any closer to the high water line than is the existing development;
  - d) The development does not fall outside of an approved building envelope if one has been designated through a prior review; and
  - e) The expansion, remodeling or reconstruction will cause no increase to the amount of ground coverage of structures within the 100-year flood plan.

**C. Stream margin review standards.** No development shall be permitted within the stream margin of the Roaring Fork River unless the Community Development Director makes a determination that the proposed development complies with all requirements set forth below:

1. It can be demonstrated that any proposed development which is in the Special Flood Hazard Area will not increase the base flood elevation on the parcel proposed for development. This shall be demonstrated by an engineering study prepared by a professional engineer registered to practice in the State which shows that the base flood elevation will not be raised, including, but not limited to, proposing mitigation techniques on or off-site which compensate for any base flood elevation increase caused by the development; and
2. The adopted regulatory plans of the Open Space and Trails Board and the Roaring Fork River Greenway Plan are implemented in the proposed plan for development, to the greatest extent practicable. Areas of historic public use or access shall be dedicated via a recorded easement for public use. A fisherman's easement granting public fishing access within the high water boundaries of the river course shall be granted via a recorded "Fisherman's Easement;" and
3. There is no vegetation removed or damaged or slope grade changes (cut or fill) made outside of a specifically defined building envelope. A building envelope shall be designated by this review and said envelope shall be designated by this review and said envelope shall be recorded on a plat pursuant to Subsection 26.435.040.F.1; and
4. The proposed development does not pollute or interfere with the natural changes of the river, stream or other tributary, including erosion and/or sedimentation during construction. Increased on-site drainage shall be accommodated within the parcel to prevent entry into the river or onto its banks. Pools or hot tubs cannot be drained outside of the designated building envelope; and
5. Written notice is given to the Colorado Water Conservation Board prior to any alteration or relocation of a water course and a copy of said notice is submitted to the Federal Emergency Management Agency; and
6. A guarantee is provided in the event a water course is altered or relocated, that applies to the developer and his heirs, successors and assigns that ensures that the flood carrying capacity on the parcel is not diminished; and
7. Copies are provided of all necessary federal and state permits relating to work within the 100-year flood plain; and
8. There is no development other than approved native vegetation planting taking place below the top of slope or within fifteen (15) feet of the top of slope or the high waterline, whichever is most restrictive. This is an effort to protect the existing riparian vegetation and bank stability. New plantings (including trees, shrubs, flowers and grasses) outside of the designated building envelope on the river side shall be native riparian vegetation as approved by the City. A landscape plan will be submitted with all development applications. The top of slope and 100-year flood plain elevation of the Roaring Fork River shall be determined by the Stream Margin Map located in the Community Development Department and filed at the City Engineering Department; and
9. All development outside the fifteen (15) foot setback from the top of slope does not exceed a height delineated by a line drawn at a forty-five (45) degree angle from ground level at the top of slope. Height shall be measured and determined by the Community Development Director

using the definition for height set forth at Section 26.04.100 and method of calculating height set forth at Section 26.575.020 as shown in Figure "A"; and



10. All exterior lighting is low and downcast with no light(s) directed toward the river or located down the slope and shall be in compliance with Section 26.575.150. A lighting plan will be submitted with all development applications; and

11. There has been accurate identification of wetlands and riparian zones.

**D. Appeal of Director's determination.** An appeal of a determination in regards to a stream margin application or in regards to the top of slope determination made by the Community Development Director, shall be reviewed as a special review pursuant to Section E, below. In this case, the Community Development Director's finding shall be forwarded as a recommendation and a new application need not be filed.

**E. Special review.** An application requesting a variance from the stream margin review standards or an appeal of the Stream Margin Map's top of slope determination, shall be processed as a special review in accordance with common development review procedure set forth in Chapter 26.304. The special review shall be considered at a public hearing for which notice has been published, posted and mailed, pursuant to Subsection 26.304.060.E.3 Paragraphs a, b and c. Review is by the Planning and Zoning Commission.

A special review from the stream margin review determination may be approved, approved with conditions or denied based on conformance with the following review criteria:

1. An authorized survey from a Colorado professionally licensed surveyor shows a different determination in regards to the top of slope and 100-year flood plain than the Stream Margin Map located in the Community Development Department and filed in the City Engineering Department; and
2. The proposed development meets the stream margin review standard(s) upon which the Community Development Director had based the finding of denial.

**F. Building permit submittal requirements.** Prior to receiving a building permit for a property within the stream margin review area, the following must be submitted:

1. The applicant shall record a site improvement plat with topography prepared by a Colorado licensed professional surveyor showing the building envelope determined by the Community Development Director based on the Stream Margin Review Map located in the Community Development Department.
2. Site sections drawn by a registered architect, landscape architect or engineer shall be submitted showing all existing and proposed site elements, the top of slope and pertinent elevations above sea level.
3. The building envelope shall be barricaded prior to issuance of any demolition, excavation or building permits. The barricades shall remain in place until the issuance of certificates of occupancy.

(Ord. No. 45-2001, § 3; Ord. No. 52-2003, § 13; Ord. No. 3-2012, §9)

**Editor's note**—Ord. No. 45-2001, § 2, repealed former § 26.435.040, pertaining to Stream Margin Review and Ord. No. 45-2001, § 3, enacted a new § 26.435.040 as herein setout. Former § 26.435.040 was derived from Ord. No. 47-1999, § 3; Ord. No. 52-2003, § 13.

**26.435.050. Mountain view plane review.**

**A. Applicability.** The provisions of mountain view plane review shall apply to all development located within the following established mountain view planes, unless exempted pursuant to Subsection 26.435.050.B.

1. Glory Hole Park view plane. There is hereby established a view plane originating from Glory Hole Park above which plane no land use or building shall project. The reference point bears N. 19° 06' 00" W. a distance of 919.85 feet from Corner 1 of the Aspen Town site, a 1954 BLM brass cap; the reference base line bears N. 55° 04' 05" E. a distance of 73.00 feet from the reference point. Elevation is 7,947.55 feet above sea level. The view plane consists of two (2) spatial components more particularly described as follows:
  - a) All that space which is within the projection of a sector of 9° 54' 00" described by two (2) radial lines which bears S. 44° 49' 55" E. and S. 34° 55' 55" E. respectively from the reference point and which is also above the view plane which passes through the reference base line at the inclination of 3° 30' above horizontal.
  - b) All that area within the projection of the following described perimeter and which is also above the view plane which passes through the reference base line at an inclination of 3° 30' above horizontal. The perimeter is more fully described as follows: Beginning at the reference point, thence N. 55° 04' 05" E. a distance of 73.00 feet along the reference base line; thence S. 34° 55' 55" E. a distance of 418.27 feet to a point on the northerly radial line of the view sector; thence N. 44° 49' 55" W. along said radial line a distance of 424.59 feet to the reference point.
2. Wagner Park view plane. There is hereby established a view plane originating in the north central part of Wagner Park above which plane no land use or building shall project. The reference point bears N. 58° 03' 11" E. 198.65 feet from the northwesterly corner of Block 83 original Aspen Town site; elevation of the reference point is 7,919.73 feet above mean

sea level. The view plane consists of a sector component more particularly described as follows: All that space which is within the projection of a sector of  $9^{\circ} 46' 18''$  described by two (2) radial lines which bear S.  $36^{\circ} 05' 49''$  E. and S.  $45^{\circ} 52' 07''$  E. respectively from the reference point and above a plane which passes through the reference point at an inclination of  $3^{\circ} 39' 10''$  above the horizontal.

3. Cooper Avenue view plane. There is hereby established a view plane originating on the northerly side of Cooper Avenue easterly of Galena Street above which plane no land use or building shall project. The reference point bears N.  $75^{\circ} 41' 52''$  E. 147.78 feet from the northwesterly property corner of Block 96 original Aspen Town site, an aluminum cap located in the sidewalk. Elevation of the reference point is 7,926.75 feet above mean sea level. The view plane consists of spatial components more particularly described as follows: All that space which is within the projection of a sector of  $48^{\circ} 00' 00''$  described by two (2) radial lines which bear S.  $11^{\circ} 41' 08''$  E. and S.  $36^{\circ} 18' 52''$  W. respectively from the reference point and above a plane which passes through the reference point at an inclination of  $6^{\circ} 20' 05''$  above the horizontal.
4. Courthouse view plane. There are hereby established two (2) view planes originating from the sidewalk on the northerly side of Main Street easterly of Galena Street above which planes no land use or building shall project.
  - a) *View plane number one.* The reference point bears S.  $79^{\circ} 43' 29''$  E. 69.00 feet from the southwesterly property corner of Block 92 original Aspen Town site; a plastic survey cap. Elevation of the reference point is 7,912.32 feet above mean sea level. The view plane consists of spatial components more particularly described as follows: All that space which is within the projection of a sector of  $27^{\circ} 58' 40''$  described by two (2) radial lines which bear S.  $16^{\circ} 59' 48''$  E. and S.  $10^{\circ} 58' 52''$  W. respectively from the reference point and above a plane which passes through the reference point at an inclination of  $4^{\circ} 25'$  above the horizontal.
  - b) *View plane number two.* The reference point bears S.  $74^{\circ} 14' 26''$  E. 131.46 feet from the southwesterly property corner of Block 92 original Aspen Town site. Elevation of the reference point is 7,913.02 feet above mean sea level. The view plane consists of spatial components more particularly described as follows: All that space which is within the projection of a sector of  $26^{\circ} 04' 38''$  described by two (2) radial lines which bear S.  $03^{\circ} 26'$  E. and S.  $22^{\circ} 28' 12''$  W. respectively from the reference point and above a plane which passes through the reference point at an inclination of  $4^{\circ} 58' 20''$  above the horizontal.
5. Wheeler Opera House view plane. There is hereby established a view plane originating from the Wheeler Opera House westerly of Mill Street above which plane no land use or building shall project. The easterly end point of the base line for the view plane bears S.  $37^{\circ} 32' 12''$  E. 8.06 feet from the southeasterly property corner of Block 81 original Aspen Town site. The reference base line bears N.  $74^{\circ} 30' 11''$  W. a distance of 140.45 feet from the easterly end point of the base line for the view plane at an elevation of 7,916.18 feet above mean sea level. The view plane consists of spatial components more particularly described as follows: All that space which is within the projection of radial lines from the easterly and westerly terminus of the base line which bear S.  $30^{\circ} 41' 11''$  E. and S.  $66^{\circ} 08' 59''$  W. respectively and

which is above a plane which passes through the reference point at an inclination of 2° 50' 38" above horizontal.

6. Main Street view plane. There is hereby established a view plane originating from Main Street above which plane no land use or building shall project. The reference point bears N. 78° 22' 29" W. 92.35 feet from the southeasterly property corner of Block 79 original Aspen Town site. The reference base line bears N. 75° 09' 11" W. 51.40 feet from the reference point. Elevation of the reference point and reference base line is 7,906.90 feet above mean sea level. The view plane is more particularly described as follows: All that space which is within the projection of two (2) radial lines which bear S. 29° 10' 06" E. from the reference point and S. 80° 29' 29" W. from the westerly terminus of the reference base line and which is also above a plane which passes through the reference base line at an angle of inclination of 6° 29' 20" above horizontal.

**B. Exemption.** The Community Development Director may exempt the addition of mechanical equipment to an existing development which protrudes into the view plane only if such development has an insignificant effect upon the designated view plane. The addition of a satellite dish, elevator shaft or any other piece of equipment whose height and mass have a significant effect upon the designated view plane shall be reviewed pursuant to the standards of Subsection 26.435.050.C.

**C. Mountain view plane review standards.** No development shall be permitted within a mountain view plane unless the Planning and Zoning Commission makes a determination that the proposed development complies with all requirements set forth below.

1. No mountain view plane is infringed upon, except as provided below.

When any mountain view plane projects at such an angle so as to reduce the maximum allowable building height otherwise provided for in this Title, development shall proceed according to the provisions of Chapter 26.445 as a Planned Development so as to provide for maximum flexibility in building design with special consideration to bulk and height, open space and pedestrian space and similarly to permit variations in lot area, lot width, yard and building height requirements and view plane height limitations.

The Planning and Zoning Commission, after considering a recommendation from the Community Development Department, may exempt a development from being processed as a Planned Development when the Planning and Zoning Commission determines that the proposed development has a minimal effect on the view plane.

When any proposed development infringes upon a designated view plane, but is located in front of another development which already blocks the same view plane, the Planning and Zoning Commission shall consider whether or not the proposed development will further infringe upon the view plane and the likelihood that redevelopment of the adjacent structure will occur to re-open the view plane. In the event the proposed development does not further infringe upon the view plane and re-redevelopment to reopen the view plane cannot be anticipated, the Planning and Zoning Commission shall exempt the development from the requirements of this Section.

(Ord. No. 12, 2007, §22)

**26.435.060. Hallam Lake Bluff review.**

**A. Applicability.** All development in that bluff area running approximately on a north-south axis bordering and/or overlooking the Aspen Center for Environmental Studies Nature Preserve and bounded on the east by the 7850-foot mean sea level elevation line and extending one hundred (100) feet, measured horizontally, up slope and there terminating and bounded on the north by the southeast lot line of Lot 7A of the Aspen Company Subdivision and on the south by the centerline of West Francis Street, shall be subject to the review standards as set forth in this Section.

**B. Exemption.** The Community Development Director may exempt the following types of development within the Hallam Lake Bluff review area:

1. Construction of public trails or improvements essential for public health and safety which cannot be reasonably accommodated outside of the "no development area" prescribed by this Section including, but not limited to, potable water systems, sanitary sewer, utilities and fire suppression systems provided the Community Development Director determines the development complies, to the extent practical, with the Hallam Lake Bluff review standards.
2. The expansion, remodeling or reconstruction of an existing development provided the following standards are met:

The proposed development is thirty (30) feet or further from the top-of-slope and not exceeding the progressive height limit delineated by a line drawn at a forty-five (45) degree angle from ground level at the top-of-slope; or, the development is obscured from the rear slope by other structures as determined by a site section provided pursuant to review standard (C)(7) below.

**C. Hallam Lake Bluff review standards.** No development shall be permitted within the Hallam Lake Bluff ESA unless the Planning and Zoning Commission makes a determination that the proposed development meets all of the following requirements:

1. No development, excavation or fill, other than native vegetation planting, shall take place below the top of slope.
2. All development within the fifteen-foot setback from the top of slope shall be at grade. Any proposed development not at grade within the fifteen-foot setback shall not be approved unless the Planning and Zoning Commission determines that the following conditions can be met:
  - a) A unique condition exists on the site where strict adherence to the top-of-slope setback will create an unworkable design problem.
  - b) Any intrusion into the top-of-slope setback or height limit is minimized to the greatest extent possible.
  - c) Other parts of the structure or development on the site are located outside the top-of-slope setback line or height limit to the greatest extent possible.

- d) Landscape treatment is increased to screen the structure or development in the setback from all adjoining properties.
- 3. All development outside the fifteen-foot setback from top of slope shall not exceed a height delineated by a line drawn at a forty-five-degree angle from ground level at the top of slope. Height shall be measured and determined by the Community Development Director using the definition for height set forth at Section 26.104.100 and the method of calculating height set forth at Section 26.575.020.
- 4. A landscape plan shall be submitted with all development applications. Such plan shall include native vegetative screening of no less than fifty percent (50%) of the development as viewed from the rear (slope) of the parcel. All vegetative screening shall be maintained in perpetuity and shall be replaced with the same or comparable material should it die.
- 5. All exterior lighting shall be low and downcast with no light(s) directed toward the nature preserve or located down the slope and shall be in compliance with Section 26.575.150.
- 6. No fill material or debris shall be placed on the face of the slope. Historic drainage patterns and rates must be maintained. Pools or hot tubs cannot be drained down the slope.
- 7. Site sections drawn by a registered architect, landscape architect or engineer shall be submitted showing all existing and proposed site elements, the top of slope and pertinent elevations above sea level.

(Ord. No. 47-1999, §3; Ord. No. 12, 2007, §23)

**26.435.070. Procedure for approval of development in ESA.**

**A. General.** An application for review of development in an environmentally sensitive area shall be processed in accordance with the common development review procedures set forth at Chapter 26.304.

**B. Steps required:** One — Public hearing before Planning and Zoning Commission.

**C. Notice requirements:** Publication, mailing and posting (See Section 26.304.060[E][3] Paragraphs [a, b and c]).

**26.435.080. Application.**

The development application for development in an environmentally sensitive area (ESA) shall include the following:

- A.** The general application information required in Section 26.304.030.
- B.** A plan of the proposed development, which shall depict at a minimum the following information:
  - 1. The boundary of the property for which development is requested.
  - 2. Existing and proposed improvements.
  - 3. Significant natural features, including natural hazards and trees.

C. In addition to these minimum plan contents, the development plan submitted for development in each type of ESA shall also include the following:

1. For development subject to 8040 greenline review, the plan shall depict:
  - a) Existing and proposed grades at two-foot contours, with five-foot intervals for grades over ten percent (10%) .
  - b) Proposed elevations of the development.
  - c) A description of proposed construction techniques to be used.
2. For development subject to stream margin review, the plan shall depict:
  - a) The 100-year floodplain line and the high water line.
  - b) Existing and proposed grades at two-foot contours, with five-foot intervals for grades over ten (10) percent.
  - c) When development is proposed in a special Flood Hazard Area: Accurate elevations (in relation to mean sea level) of the lowest floor, including basement, of all new or substantially improved structures; a verification and recordation of the actual elevation in relation to mean sea level to which any structure is constructed; a demonstration that all new construction or substantial improvements will be anchored to prevent flotation, collapse or lateral movement of any structure to be constructed or improved; a demonstration that the structure will have the lowest floor, including basement, elevated to at least two (2) feet above the base flood elevation, all as certified by a registered professional engineer or architect.
  - d) A description of proposed construction techniques to be used.
3. For development subject to mountain view plane, the plan shall depict:
  - a) Proposed elevations of the development, including any rooftop equipment and how it will be screened.
  - b) Photographs shall be submitted by the applicant which show the present improvements which protrude into or are in the vicinity of the view plane. The applicant shall graphically represent on the photographs how the proposed improvements will appear in relation to existing improvements and views.

(Ord. No. 27-2002, §11)

**26.435.090. Conditions.**

The Community Development Director may recommend and the Planning and Zoning Commission may impose conditions to its approval of development in an environmentally sensitive area (ESA), which includes but is not limited to means for:

A. Minimizing any adverse impact of the proposed development upon lands, including the use and operation and the type and intensity of activities which may be conducted;

- B.** Controlling the sequence or timing of proposed development, including when it must be commenced and completed;
- C.** Controlling the duration of use of development and the time within which any structures must be removed;
- D.** Assuring that development is maintained properly in the future; or
- E.** Establishing a more detailed record by submission of drawings, maps, plats or specifications.

**26.435.100. Amendment of an ESA development order.**

**A. Insubstantial Amendment.** An insubstantial amendment to an approved development order for development within an Environmentally Sensitive Area may be authorized by the Community.

1. The development order is valid and there is substantial compliance with the conditions of approval.
2. The development order is either remaining in conformance with the review criteria set forth for the specific ESA or it is demonstrated that the development order is in compliance with any amendments to the ESA criteria.
3. The change is in conformance with the exemption criteria for the specific ESA, as provided in this Section, considering the Development Order as a completed development for the purposes of evaluating the change.
4. The change is in compliance with all other provisions of this Title.

**B. Other amendments.** All other amendments to an approved development order for development within an Environmentally Sensitive Area shall be reviewed pursuant to the terms and procedures of this Section.



**Chapter 26.440**  
**Reserved\***

**\*Editor's note:** Ordinance No. 36 - 2013 repealed Chapter 26.440, Specially Planned Area, in its entirety. Former Chapter 26.440 was amended over time via Ord. No. 9-2002 § 7; Ord. No. 27-2002, §§ 12—15; Ord. No. 3-2012§10.



**Chapter 26.445**  
**PLANNED DEVELOPMENT**

Sections:

Sec. 26.445.010.	Purpose.
Sec. 26.445.020.	Applicability.
Sec. 26.445.030.	Scope and limitations.
Sec. 26.445.040.	Procedures for review.
Sec. 26.445.050.	Project review standards.
Sec. 26.445.060.	Use variations standards.
Sec. 26.445.070.	Detailed review standards.
Sec. 26.445.080.	Application contents.
Sec. 26.445.090.	Documents and deadlines.
Sec. 26.445.100.	Planned development designation on official zone district map.
Sec. 26.445.110.	Amendments.
Sec. 26.445.120.	Appeals.

**26.445.010. Purpose.**

The purpose of Planned Development review is to encourage flexibility and innovation in the development of land which:

- A. Promotes the purposes, goals and objectives of applicable adopted regulatory plans.
- B. Achieves a more desirable development pattern, a higher quality design and site planning, a greater variety in the type and character of development and a greater compatibility with existing and future surrounding land uses than would be possible through the strict application of the zone district provisions.
- C. Preserves natural and man-made site features of historic, cultural or scenic value.
- D. Promotes more efficient use of land, public facilities and governmental services.
- E. Incorporates an appropriate level of public input to the planning process to ensure sensitivity to neighborhood and community goals and objectives.
- F. Promotes safe and convenient transit, pedestrian, bicycle and vehicular access and circulation.
- G. Allows the development of mixed land uses through the encouragement of innovative design practices that warrant variations from the standard permitted zone district land uses and dimensional requirements.

(Ord. No. 36-2013, § 4)

**26.445.020. Applicability.**

An application for a Planned Development may be submitted on any parcel, or series of adjacent parcels, which is 27,000 square feet or greater in gross lot size or which requires the submission of a

Planned Development pursuant to the zoning for the parcel. (See Chapter 26.710. – Zone Districts.) An application for a Planned Development may be submitted on any parcel, or series of adjacent parcels, smaller than 27,000 square feet if the Community Development Director believes there exists an opportunity to advance a significant community goal through the Planned Development procedures.

An application to amend a Planned Development may be submitted for any land granted Planned Development approval, including all land granted approval for a Planned Unit Development or Specially Planned Area prior to the adoption of Ordinance 36, Series 2013, and all land designated Planned Development on the Official Zone District Map. All land within a Planned Development shall continue to be included in a zone district most appropriate for that land.

All development of land subject to an approved Planned Development, including all land subject to a Planned Unit Development or Specially Planned Area approval granted prior to the adoption of Ordinance 36, Series 2013, shall conform to the allowances and limitations of the applicable Development Order for a site specific development plan.

All development of land designated Planned Development on the official zone district map and which does not have an approved site specific development plan approval, must receive amendment approval as set forth in Section 26.445.110, Amendments. However, in the absence of an approved site specific development plan, a single detached, two (2) detached, or a duplex residential dwelling, if listed as a permitted use in the property's zoning, may be developed in conformance with the provisions of the Zone District. This shall not exempt a development from complying with any other applicable Land Use Code requirements.

(Ord. No. 10-1999, § 2 (part); Ord. No. 52-1999, § 1; Ord. No. 3-2012, § 11; Ord. No. 36-2013, § 4)

### **26.445.030. Scope and Limitations.**

**A. General.** Development on any land within a Planned Development may occur only after all land use approvals are received, a Development Order is issued, all requisite documents, agreements, plats, have been filed, and the applicant has received all necessary permits as required by the Municipal Code and any other county, state or federal authority with jurisdiction over the land.

**B. Scope and Limitations of Project Review.** Project Review shall set forth the overall concept and general parameters of a project. The allowed land uses, layout, mass and scale, and dimensions of the project, including all deviations from zone district allowances and limitations, shall be established during Project Review.

**C. Scope and Limitations of Detailed Review.** Detailed Review shall be used to perfect and finalize detail aspects of the project within the parameters established during Project Review. Issues resolved during Project Review shall not be revisited or reconsidered as part of Detailed Review. (Also see amendment procedures – Section 26.445.110.)

The approval of a Project Review and Detailed Review together constitute a Final Planned Development Approval. A Development Order shall be issued after Detailed Review approval and

the period of statutory vested rights shall begin, subject to requirements of the Development Order regarding the submission and recording of certain documents, plats, plans, or agreements.

(Ord. No. 27-2002 § 16, 2002; Ord. No. 36-2013, § 4)

**Sec. 26.445.040. Procedures for Review.**

**A. General.** Any development within a Planned Development or on land designated Planned Development on the Official Zone District Map shall be reviewed pursuant to the procedures and standards in this Chapter and the Common Development Review Procedures set forth at Chapter 26.304. Any land previously designated on the Official Zone District Map or granted Planned Unit Development (PUD) or Specially Planned Area (SPA) approval shall be subject to the terms of this Chapter.

**B. Planned Development Review.** All development proposed within a Planned Development shall be subject to a three-step review consisting of the following steps: Public hearings are required at each step.

1. Step One — Project Review before the Planning and Zoning Commission (or Historic Preservation Commission, as applicable).
  - a) *Purpose:* To determine if the application meets standards for Project Review Approval. Project Review shall focus on the overall concept and general parameters of a project. The allowed land uses, layout, mass and scale, and dimensions of the project, including all deviations from zone district allowances and limitations, shall be established during Project Review.
  - b) *Process:* The Community Development Director shall provide the Planning and Zoning Commission or Historic Preservation Commission, as applicable, with a recommendation to approve, approve with conditions, or deny and applicant's Project Review, based on the standards of review. The Planning and Zoning Commission or Historic Preservation Commission, as applicable, shall forward a recommendation of approval, approval with conditions or disapproval of an applicant's Project Review to City Council after considering the recommendation of the Community Development Director, and comments and testimony from the public at a duly noticed public hearing.
  - c) *Standards of review:* The proposed development shall comply with Section 26.445.050, Project Review Standards. If use variations are proposed, the proposed development shall also comply with Section 26.445.060, Use Variation Standards.
  - d) *Form of decision:* The recommendation shall be by resolution.
  - e) *Notice requirements:* Publication, mailing and posting pursuant to Section 26.304.060.E.3.a, b and c. If use variations are proposed as part of the project, Neighborhood Outreach, pursuant to Section 26.304.035, shall be required and all public notices shall indicate what land uses are proposed to be added by including the following language: "The applicant proposes the development include the following land uses not otherwise allowed in the zone district: [list and description of land uses]."

2. Step Two — Project Review before the City Council.

- a) *Purpose:* To determine if the application meets standards for Project Review Approval. Project Review shall focus on the overall concept and general parameters of a project. The allowed land uses, layout, mass and scale, and dimensions of the project, including all deviations from zone district allowances and limitations, shall be established during Project Review.
- b) *Process:* The Community Development Director shall provide City Council with a recommendation to approve, approve with conditions, or deny the Project Approval Review, based on the standards of review. City Council shall approve, approve with conditions, or deny the application after considering the recommendation of the Community Development Director, the recommendation from the Planning and Zoning Commission or Historic Preservation Commission, as applicable, and comments and testimony from the public at a duly noticed public hearing.
- c) *Standards of review:* The proposed development shall comply with Section 26.445.050 for Project Approval Review. If variations in land uses are proposed, the proposed development shall also comply with Section 26.445.060, Use Variation Standards.
- d) *Form of decision:* City Council action shall be by ordinance approving, approving with conditions or denying Project Review.
- e) *Notice requirements:* Requisite notice requirements for adoption of an ordinance by City Council and publication, posting and mailing pursuant to Section 26.304.060.E.3.a, b and c. In addition, all notices shall include the following language: “City Council’s Project Review addresses land uses, mass, scale, height, floor area, site planning and other major aspects of the proposal. City Council’s action is by ordinance and is binding.”

If use variations are proposed as part of the project, Neighborhood Outreach, pursuant to Section 26.304.035, shall be required and all public notices shall indicate what land uses are proposed to be added by including the following language: “The applicant proposes the development include the following land uses not otherwise allowed in the zone district: [list and description of land uses].”

If use variations are proposed as part of the project, City Council may, at its discretion, temporarily halt the review and require an applicant repeat Neighborhood Outreach, pursuant to Section 26.304.035. After one additional Neighborhood Outreach, City Council shall resume and complete its review.

3. Step Three — Detailed Review with Planning and Zoning Commission or Historic Preservation Commission, as applicable.

- a) *Purpose:* To determine if the application meets the standards for Detailed Review. Detailed Review shall focus on refining a project design and operational characteristics, including final architectural details and materials, landscape details, utility and other infrastructure details. The intent is to perfect and finalize all detail aspects of the project, but not to reconsider previously resolved issues. The Project Review approval shall not be revisited as part of the Detailed Review. Approval of Detailed Review together with the Project Review approval shall constitute approval of a Final Development Plan.

- b) *Process:* The Community Development Director shall provide the Planning and Zoning Commission or Historic Preservation Commission, as applicable, with a recommendation to approve, approve with conditions, or deny the Detailed Review, based on the standards of review. The Planning and Zoning Commission or Historic Preservation Commission, as applicable, shall approve, approve with conditions or disapprove an Detailed Review after considering the recommendation of the Community Development Director, and comments and testimony from the public at a duly noticed public hearing.
- c) *Standards of review:* The proposed development shall comply with Section 26.445.070, Detailed Review.
- d) *Form of decision:* The decision shall be by resolution.
- e) *Notice requirements:* Publication, posting and mailing pursuant to Section 26.304.060.E.3.a, b and c.)

**C. Associated Reviews.**

1. Project Review Combined with Associated Reviews. Unless waived by the Community Development Director, after consultation with the applicant, an application for Project Review shall be combined with development applications for all other associated land use reviews necessary for the project, including conditional use, special review, ESA review, subdivision review, rezoning, and growth management. All associated reviews shall be combined with Project Review and made part of one decision for the project as a whole, pursuant to Section 26.304.050.B.1 – Combined Reviews.

All approvals granted during Project Review shall be contingent upon the project receiving Detailed Review approval. Failure to gain Detailed Review approval shall nullify all associated review approvals. If a Combined Review has been permitted, all associated reviews shall be combined, as stated above, to enable one decision for the project as a whole.

The Community Development Director shall inform the applicant during the pre-application stage of a project whether associated reviews combination will be required and if any redundant submission requirements may be waived.

2. Project Review Combined with Conceptual Commercial Design Review. Unless waived by the Community Development Director, after consultation with the applicant, an application for Project Review shall be combined with conceptual commercial design review and made part of one decision for the project as a whole, pursuant to Section 26.304.050.B.1 – Combined Reviews.

Notwithstanding section 26.412.040.B, *Commercial Design Review Procedure, Appeals, notice to City Council and call-up*, when Project Review is combined with conceptual commercial design review, City Council’s Project Review shall constitute the required commercial design review call-up procedure, and no other action shall be required.

The Community Development Director shall inform the applicant during the pre-application stage of a project whether combination will be required and if any redundant submission requirements may be waived.

3. Detailed Review Combined with Final Commercial Design Review. Unless waived by the Community Development Director, after consultation with the applicant, an application for Detailed Review shall be combined with final commercial design review and made part of one decision for the project as a whole, pursuant to Section 26.304.050.B.1 – Combined Reviews.

The Community Development Director shall inform the applicant during the pre-application stage of a project whether combination will be required and if any redundant submission requirements may be waived.

4. Project Review or Detailed Review Combined with Historic Preservation Review. An applicant may request and the Community Development Director may determine that an application for Project Review or Detailed Review on a property that is historically designated or located within a Historic District may be combined with applicable Historic Preservation reviews outlined in Chapter 26.415, *Historic Preservation*, pursuant to Section 26.304.060(B)(1), *Combined Reviews*. When such combined review occurs, the Project Review, or Detailed Review as applicable, and any other associated reviews shall be completed by the Historic Preservation Commission.

A decision to combine Historic Preservation reviews during Project Review shall not preclude or require combination during Detailed Review. For example, a Detailed Review may be performed by the Historic Preservation Commission even if the HPC did not perform the Project Review.

Notwithstanding sections 26.415.120.B-D, *Historic Preservation, Appeals, notice to City Council and call-up*, when Project Review is combined with a Historic Preservation review that is subject to said sections, City Council’s Project Review shall constitute the required call-up procedure, and no other action shall be required.

(Ord. No. 25-2001, § 8; Ord. No. 36-2013, §4)

**26.445.050. Project Review Standards.**

The Project Review shall focus on the general concept for the development and shall outline any dimensional requirements that vary from those allowed in the underlying zone district. The burden shall rest upon an applicant to show the reasonableness of the development application and its conformity to the standards and procedures of this Chapter and this Title. The underlying zone district designation shall be used as a guide, but not an absolute limitation, to the dimensions which may be considered during the development review process. Any dimensional variations allowed shall be specified in the ordinance granting Project Approval. In the review of a development application for a Project Review, the Planning and Zoning Commission or the Historic Preservation Commission, as applicable, and City Council shall consider the following:

**A. Compliance with Adopted Regulatory Plans.** The proposed development complies with applicable adopted regulatory plans.

**B. Development Suitability.** The proposed Planned Development prohibits development on land unsuitable for development because of natural or man-made hazards affecting the property, including flooding, mudflow, debris flow, fault ruptures, landslides, rock or soil creep, rock falls, rock slides, mining activity including mine waste deposit, avalanche or snowslide areas, slopes in excess of 30%, and any other natural or man-made hazard or condition that could harm the health, safety, or welfare of the community. Affected areas may be accepted as suitable for development if adequate mitigation techniques acceptable to the City Engineer are proposed in compliance with Title 29 – Engineering Design Standards. Conceptual plans for mitigation techniques may be accepted for this standard. The City Engineer may require specific designs, mitigation techniques, and implementation timelines be defined as part of the Detailed Review and documented within a Development Agreement.

**C. Site Planning.** The site plan is compatible with the context and visual character of the area. In meeting this standard, the following criteria shall be used:

1. The site plan responds to the site’s natural characteristics and physical constraints such as steep slopes, vegetation, waterways, and any natural or man-made hazards and allows development to blend in with or enhance said features.
2. The project preserves important geologic features, mature vegetation, and structures or features of the site that have historic, cultural, visual, or ecological importance or contribute to the identity of the town.
3. Buildings are oriented to public streets and are sited to reflect the neighborhood context. Buildings and access ways are arranged to allow effective emergency, maintenance, and service vehicle access.

**D. Dimensions.** All dimensions, including density, mass, and height shall be established during the Project Review. A development application may request variations to any dimensional requirement of this Title. In meeting this standard, consideration shall be given to the following criteria:

1. There exists a significant community goal to be achieved through such variations.
2. The proposed dimensions represent a character suitable for and indicative of the primary uses of the project.
3. The project is compatible with or enhances the cohesiveness or distinctive identity of the neighborhood and surrounding development patterns, including the scale and massing of nearby historical or cultural resources.
4. The number of off-street parking spaces shall be established based on the probable number of cars to be operated by those using the proposed development and the nature of the proposed uses. The availability of public transit and other transportation facilities, including those for pedestrian access and/or the commitment to utilize automobile disincentive techniques in the

proposed development, and the potential for joint use of common parking may be considered when establishing a parking requirement.

5. The Project Review approval, at City Council's discretion, may include specific allowances for dimensional flexibility between Project Review and Detailed Review. Changes shall be subject to the amendment procedures of Section 26.445.110 – Amendments.

**E. Design Standards.** The design of the proposed development is compatible with the context and visual character of the area. In meeting this standard, the following criteria shall be used:

1. The design complies with applicable design standards, including those outlined in Chapter 26.410, *Residential Design Standards*, Chapter 26.412, *Commercial Design Standards*, and Chapter 26.415, *Historic Preservation*.
2. The proposed materials are compatible with those called for in any applicable design standards, as well as those typically seen in the immediate vicinity. Exterior materials are finalized during Detailed Review, but review boards may set forth certain expectations or conditions related to architectural character and exterior materials during Project Review.

**F. Pedestrian, bicycle & transit facilities.** The development improves pedestrian, bicycle, and transit facilities. These facilities and improvements shall be prioritized over vehicular facilities and improvements. Any vehicular access points, or curb cuts, minimize impacts on existing or proposed pedestrian, bicycle, and transit facilities. The City may require specific designs, mitigation techniques, and implementation timelines be defined as part of the Detailed Review and documented within a Development Agreement.

**G. Engineering Design Standards.** There has been accurate identification of engineering design and mitigation techniques necessary for development of the project to comply with the applicable requirements of Municipal Code Title 29 – Engineering Design Standards and the City of Aspen Urban Runoff Management Plan (URMP). The City Engineer may require specific designs, mitigation techniques, and implementation timelines be defined as part of the Detailed Review and documented within a Development Agreement.

**H. Public Infrastructure and Facilities.** The proposed Planned Development shall upgrade public infrastructure and facilities necessary to serve the project. Improvements shall be at the sole costs of the developer. The City Engineer may require specific designs, mitigation techniques, and implementation timelines be defined as part of the Detailed Review and documented within a Development Agreement.

**I. Access and Circulation.** The proposed development shall have perpetual unobstructed legal vehicular access to a public way. A proposed Planned Development shall not eliminate or obstruct legal access from a public way to an adjacent property. All streets in a Planned Development retained under private ownership shall be dedicated to public use to ensure adequate public and emergency access. Security/privacy gates across access points and driveways are prohibited.

(Ord. No. 12, 2007, §24; Ord. No. 3-2012, §12, 13, 14 & 15; Ord. No. 36-2013, §4)

**26.445.060. Use Variation Standards.**

A development application may request variations in the allowed uses permitted in the zone district. The burden shall rest upon an applicant to show the reasonableness of the request and its conformity to the standards and procedures of this Chapter and this Title. The permitted and conditional uses allowed on the property according to its zoning shall be used as a guide, but not an absolute limitation, to the land uses which may be considered during the review. Any use variation allowed shall be specified in the ordinance granting Project Review approval. In the review of a development application for a Project Review, the Planning and Zoning Commission or the Historic Preservation Commission, as applicable, and City Council shall consider the following standards related to Use Variations:

- A. The proposed use variation is compatible with the character of existing and planned land uses in the project and surrounding area. In meeting this standard, consideration shall be given to the existence of similar uses in the immediate vicinity, as well as how the proposed uses may enhance the project or immediate vicinity.
- B. The proposed use variation is effectively incorporated into the project’s overall mix of uses. In meeting this standard, consideration shall be given to how the proposed uses within a project will interact and support one another.
- C. The location, size, design, and operating characteristics of the proposed use variation minimizes adverse effects on the neighborhood and surrounding properties.
- D. The proposed use variation complies with applicable adopted regulatory plans.

(Ord. No. 36-2013, §4)

**26.445.070. Detailed Review Standards.**

Detailed Review shall focus on the comprehensive evaluation of the specific aspects of the development, including utility placement, and architectural materials. In the review of a development application for Detailed Review, the Planning and Zoning Commission, or the Historic Preservation Commission as applicable, shall consider the following:

- A. **Compliance with Project Review Approval.** The proposed development, including all dimensions and uses, is consistent with the Project Review approval and adequately addresses conditions on the approval and direction received during the Project Review.
- B. **Growth Management.** The proposed development has received all required GMQS allotments, or is concurrently seeking allotments.
- C. **Site Planning and Landscape Architecture.** The site plan is compatible with the context and visual character of the area. In meeting this standard, the following criteria shall be used:
  - 1. The landscape plan exhibits a well-designed treatment of exterior spaces, preserves existing significant vegetation, and provides an ample quantity and variety of ornamental plant species

suitable for the Aspen area climate. Vegetation removal, protection, and restoration plans shall be acceptable to the Director of Parks and Open Space.

2. Buildings and site grading provide simple, at-grade entrances and minimize extensive grade changes along building exteriors. The project meets or exceeds the requirements of the Americans with Disabilities Act and applicable requirements for emergency, maintenance, and service vehicle access. Adequate snow storage is accommodated.
3. Energy efficiency or production features are integrated into the landscape in a manner that enhances the site.
4. All site lighting is proposed so as to prevent direct glare or hazardous interference of any kind to adjoining streets or lands. All exterior lighting shall comply with the City's outdoor lighting standards.
5. Site drainage is accommodated for the proposed development in compliance with Title 29 – Engineering Design Standards and shall not negatively impact surrounding properties.

**D. Design Standards and Architecture.** The proposed architectural details emphasize quality construction and design characteristics. In meeting this standard, the following criteria shall be used:

1. The project architecture provides for visual interest and incorporates present-day details and use of materials respectful of the community's past without attempting to mimic history.
2. Exterior materials are of a high quality, durability, and comply with applicable design standards, including those outlined in Chapter 26.410, *Residential Design Standards*, Chapter 26.412, *Commercial Design Standards*, and Chapter 26.415, *Historic Preservation*.
3. Building entrances are sited or designed to minimize icing and snow shedding effects.
4. Energy efficiency or production features are integrated into structures in a manner that enhances the architecture.
5. All structure lighting is proposed so as to prevent direct glare or hazardous interference of any kind to adjoining streets or lands. All exterior lighting shall comply with the City's outdoor lighting standards.

**E. Common Parks, Open Space, Recreation Areas, or Facilities.** If the proposed development includes common parks, open space, recreation areas, or common facilities, a proportionate, undivided interest is deeded in perpetuity to each lot or dwelling unit owner within the Planned Development. An adequate assurance through a Development Agreement for the permanent care and maintenance of open spaces, recreation areas, and shared facilities together with a prohibition against future development is required.

**F. Pedestrian, bicycle & transit facilities.** The development improves pedestrian, bicycle, and transit facilities. These facilities and improvements shall be prioritized over vehicular facilities and improvements. Any new vehicular access points minimize impacts on existing pedestrian, bicycle and transit facilities.

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Any specific designs, mitigation techniques, and implementation timelines as required during Project Review comply with the applicable requirements of the Project Review and as otherwise required in the Land Use Code. These plans shall provide sufficient detail to determine if the design or mitigation concept complies with the intent of the requirements and to determine any required cost estimating for surety requirements, but do not need to be detailed construction documents.

**G. Engineering Design Standards.** There has been accurate identification of engineering design and mitigation techniques necessary for development of the proposed subdivision to comply with the applicable requirements of Municipal Code Title 29 – Engineering Design Standards and the City of Aspen Urban Runoff Management Plan (URMP).

Any specific designs, mitigation techniques, and implementation timelines as required during Project Review comply with the applicable requirements of Municipal Code Title 29 – Engineering Design Standards and the City of Aspen Urban Runoff Management Plan (URMP). These plans shall provide sufficient detail to determine if the design or mitigation concept complies with the intent of the requirements, but do not need to be detailed construction documents.

**H. Public Infrastructure and Facilities.** The proposed Planned Development shall upgrade public infrastructure and facilities necessary to serve the project. Improvements shall be at the sole costs of the developer.

Any specific designs, mitigation techniques, and implementation timelines as required during Project Review comply with the applicable requirements of Municipal Code Title 29 – Engineering Design Standards and the City of Aspen Urban Runoff Management Plan (URMP). These plans shall provide sufficient detail to determine if the design or mitigation concept complies with the intent of the requirements, but do not need to be detailed construction documents.

**I. Phasing of development plan.** If phasing of the development plan is proposed, each phase shall be designed to function as a complete development and shall not be reliant on subsequent phases. Phasing shall insulate, to the extent practical, occupants of initial phases from the construction of later phases. All necessary or proportionate improvements to public facilities, payment of impact fees and fees-in-lieu, construction of any facilities to be used jointly by residents of the Planned Development, construction of any required affordable housing, and any mitigation measures shall be completed concurrent or prior to the respective impacts associated with the phase.

(Ord. No. 9-2002, § 8, 2002; Ord. No. 36-2013, §4)

**26.445.080. Application Contents.**

**A. Project Review Application Contents.** The contents of a development application for a Project Review shall include the following:

1. The general application information required in Common Development Review Procedures set forth at Section 26.304.030.

2. A site improvement survey meeting the requirements of Title 29, Engineering Design Standards.
3. A description, and depiction as necessary, of the proposed development including a statement of the objectives to be achieved by the Planned Development and a description of the proposed land uses, densities, natural features, traffic and pedestrian circulation, parking, open space areas, landscaping, and infrastructure improvements. Also see Chapter 26.490 – Approval Documents.
4. An architectural character plan showing the use, massing, scale and orientation of the proposed buildings, and outlining the suitability of a building for its purposes, legibility of the building's use, the building's proposed massing, proportion, scale, orientation to public spaces and other buildings, and other attributes which may significantly represent the proposed development.
5. For Planned Development applications involving the addition of 10 or more residential units, 20 or more lodging units, or 20,000 square feet or more of commercial space (or any equivalent combination thereof), “ability-to-serve” letters from public and private utility providers that will service the proposed project with potable water, natural gas, electricity, sanitary sewer, storm sewer, and roads stating they can service the proposed subdivision. Ability-to-Serve letters shall be substantially in the following format:

*The [utility provider] has reviewed the proposed [planned development name and date of application] and has adequate capacity to serve proposed development, subject to compliance with the following adopted design standards [reference] and subject to the following adopted tap fee or impact mitigation requirements [reference].*

For Planned Development applications proposing the addition of 50 or more residences, or that proposes new water use in an amount equal to or exceeding that used by 50 residences, the application must demonstrate compliance with the State Adequate Water Supply Act. (Colo. Revised Statutes 29-20-301, et seq.)

6. A description, and depiction as needed, of the project’s dimensional and use allowances to be varied from the property’s zoning allowances. All dimensional and use variation requests shall be considered during Project Review.
7. A statement prepared by a Colorado registered Professional Engineer, and depiction or mapping as necessary, regarding the presence of natural or man-made hazards affecting the property, including flooding, mudflow, debris flow, fault ruptures, landslides, rock or soil creep, rock falls, rock slides, mining activity including mine waste deposit, avalanche or snowslide areas, slopes in excess of 30%, and any other natural or man-made hazard or condition that could harm the health, safety, or welfare of the community. Areas with slopes in excess of 30% shall require a slope stability study reviewed by the Colorado Geologic Survey. Also see Chapter 29 – Engineering Design Standards regarding identification and mitigation of natural hazards.
8. A statement prepared by a Colorado registered Professional Engineer, and depiction or mapping as necessary, describing the potential infrastructure upgrades, alignment, design, and

mitigation techniques that may be necessary for development of the site to be served by public infrastructure, achieve compliance with Municipal Code Title 29 – Engineering Design Standards, and achieve compliance with the City of Aspen Urban Runoff Management Plan (URMP).

The information shall be of sufficient detail to determine the acceptable location(s) and extent of development and to understand the necessary upgrades and the possible alignments, designs, or mitigation techniques that may be required. Specific engineered solutions and design details do not need to be submitted for Project Review.

9. A written response to each of the review criteria contained in Sections 26.445.050, and 26.445.060, as applicable.
10. The application contents, materials, and written responses as applicable for all associated reviews being combined with Project Review.

**B. Detailed Review Application Contents.** The contents of the development application for a Detailed Review shall include the following:

1. The general application information required in Common Procedures, Chapter 26.304.
2. A site improvement survey meeting the requirements of Title 29, Engineering Design Standards.
3. Description, and depiction as necessary, of how the project complies with the approved Project Review, including requested plans, reports, or other documentation.
4. Proposed Planned Development plans and Development Agreement containing the applicable information required by Chapter 26.490, Approval Documents.
5. A grading and drainage plan showing all grading and how drainage and stormwater is accommodated, and that meets the Conceptual Drainage Plan and Report requirements in the Urban Runoff Management Plan (URMP).
6. A description, and depiction as necessary, for specific pedestrian, bicycle, and transit facility designs, mitigation techniques, and implementation timelines as required during Project Review. These plans shall provide sufficient detail to determine if the design or mitigation concept complies with the intent of the requirements, but do not need to be detailed construction documents.
7. A description, and depiction as necessary, for specific engineering designs, hazard mitigation techniques, and implementation timelines as required during Project Review. These plans shall provide sufficient detail to determine if the design or mitigation concept complies with the applicable requirements of Municipal Code Title 29 – Engineering Design Standards and the City of Aspen Urban Runoff Management Plan (URMP), but do not need to be detailed construction documents.
8. A description, and depiction as necessary, for specific Public Infrastructure and Facility designs, mitigation techniques, and implementation timelines as required during Project

Review. These plans shall provide sufficient detail to determine if the design or mitigation concept complies with the applicable requirements of Municipal Code Title 29 – Engineering Design Standards and the City of Aspen Urban Runoff Management Plan (URMP), but do not need to be detailed construction documents.

9. A statement specifying the method of maintaining any proposed common areas on the site, including but not limited to common parking areas, walkways, landscaped areas and recreational facilities and what specific assurances will be made to ensure the continual maintenance of said areas.
10. A description of any proposed project phasing detailing the specific improvements within each phase.
11. A written response to each of the review criteria contained in Section 26.445.070.
12. The application contents, materials, and written responses as applicable for all associated reviews being combined with Detailed Review.

(Ord. No. 36-2013, §4)

#### **26.445.090. Documents and Deadlines.**

**A. Documenting Project Review Approval.** Unless otherwise specified in the ordinance granting Project Review approval, a Project Review approval shall be documented by filing an approved plan set with the Community Development Department, pursuant to Chapter 26.490 – Development Documents, within one hundred eighty (180) days following the date of Project Review approval. The approved plan set may be required to contain various plans, diagrams, or narrative to document unique characteristics of the approval. Failure to submit an approved plan set within the time period shall render null and void the Project Review approval. The Community Development Director may extend this deadline by ninety (90) days, pursuant to sub-section C below.

Unless otherwise specified in the ordinance granting Project Review approval, a development application for Detail Review shall be submitted within one (1) year of the date of Project Review approval. Failure to file such an application within this time period shall render the Project Review approval null and void. The Community Development Director may extend this deadline by one hundred eighty (180) days, pursuant to sub-section C below.

An application for Project Review amendment must be submitted within one (1) year of the previously approved Project Review. Applications for Project Review amendment submitted after this deadline shall be subject to a new Project Review and shall be subject to any changes in zoning and the Land Use Code. The Community Development Director may extend this deadline by one hundred eighty (180) days, pursuant to sub-section C below. When an application for a Project Review Amendment is submitted pursuant to Section 26.445.110(A), the requirement that a development application for Detailed Review be submitted within one (1) year shall be stayed for the period of pendency of the amendment. Amendment approval shall create a new one-year application deadline.

**B. Documenting Final Planned Development Approval.** The approval of a Project Review and Detailed Review together constitute a Final Planned Development Approval. A Development Order shall be issued after Detailed Review approval. A Final Planned Development approval shall be documented by filing an approved plan set and all required plats and Development Agreements, pursuant to Chapter 26.490 – Approval Documents. Unless otherwise specified in the Resolution granting Detailed Review approval, the approved plan set and all proposed plats and agreements shall be submitted within one hundred eighty (180) days following the date of issuance of the Development Order. The approved plan set may be required to contain various plans, diagrams, or narrative to document unique characteristics of the approval. Failure to submit an approved plan set within the time period shall render null and void the Project Review and Detailed Review approvals. The Community Development Director may extend this deadline by a time period not to exceed the period of statutory vested rights, pursuant to sub-section C below.

When an application for a Project Approval Amendment or Detailed Review Amendment is submitted pursuant to Section 26.445.090(A), the filing deadline shall be stayed for the period of pendency of the amendment. Amendment approval shall create a new filing deadline.

**C. Deadline Extensions.** Failure on the part of the applicant to submit required approval documents within the timeframe set forth herein shall render the land use approval invalid. The Community Development Director may extend the applicable submission deadline, by a time period as set forth herein, if the request is made within the statutory vesting period, the applicant demonstrates evidence of preparing the needed documents, and the applicant shows reasonable cause for the delay. A written request for extension must be received no less than thirty (30) days prior to the deadline. The Community Development Director may forward the extension request to the City Council and the City Council may, at its sole discretion and for good cause shown, grant an extension.

(Ord. No. 36-2013, §4)

**26.445.100. Planned Development designation on Official Zone District Map.**

Upon adoption of an Ordinance granting Project Review approval, the Community Development Director shall be authorized to amend the Official Zone District Map to reflect a Planned Development designation upon issuance of a Development Order and recordation of all required plats, plans, and agreements for the Planned Development.

The designation of a Planned Development on the Official Zone District Map shall not require a Rezoning application under Chapter, 26.310, *Amendments to the Land Use Code and Official Zone District Map*, as the act of adopting an Ordinance approving Project Review shall authorize the designation on the City’s Official Zone District Map.

(Ord. No. 36-2013, §4)

**26.445.110. Amendments.** Amendments to an approved Project Review or to an approved Detailed Review shall be reviewed according to the standards and procedures outline below. Amendments to Planned Unit Development and Specially Planned Area approvals (pre-Ordinance 36, 2013, approvals) shall also proceed according to the standards and procedures outline below and

the Community Development Director shall determine the type of procedure most-applicable to the requested amendment.

**A. Insubstantial Amendments.** An insubstantial amendment to an approved Project Review or an approved Detailed Review may be authorized by the Community Development Director. An insubstantial amendment shall meet the following criteria:

1. The request does not change the use or character of the development.
2. The request is consistent with the conditions and representations in the project's original approval, or otherwise represents an insubstantial change.
3. The request does not require granting a variation from the project's allowed use(s) and does not request an increase in the allowed height or floor area.
4. Any proposed changes to the approved dimensional requirements are limited to a technical nature, respond to a design parameter that could not have been foreseen during the Project Review approval, are within dimensional tolerances stated in the Project Review, or otherwise represents an insubstantial change.
5. An applicant may not apply for Detailed Review if an amendment is pending.

**B. Insubstantial Amendment to a Designated Area.** An amendment to the boundaries of a Planned Development designated area may be authorized by the Community Development Director. An insubstantial amendment shall meet the following criteria:

1. The request does not change the use or character of the development.
2. The request is due to a surveying or technical error that could not have been foreseen during the original approval, or otherwise represents an insubstantial change to the area of designation.
3. A boundary adjustment plat, as may be required by Chapter 26.480 – Subdivision, has been approved.

**C. Documenting or Restating Existing Conditions.** In the absence of a Final Development Plan for a property designated Planned Development, or in instances where the existing documentation is antiquated or does not adequately guide development, the Community Development Director may authorize the documentation or restatement of existing conditions. The amendment shall meet the following criteria:

1. The request does not change the use or character of the development.
2. The property was designated as a Planned Development, Planned Unit Development, or Specially Planned Area by ordinance of the City.
3. No or limited documentation exists describing the allowances and limitations of the Planned Development, and there exists a community interest in updating the documentation for administrative clarity.

4. The request is limited to clarifying existing conditions and modernizing documentation regarding the allowances and limitations of the project, which may include updating and restating antiquated, project-specific zoning measurement methods to conform with present-day methods for measuring dimensional allowances and limitations.
5. Any proposed changes to the approved dimensional allowances are limited to a surveying or technical nature, enable structures to come into conformance with current zoning, building, engineering, or fire code parameters, or otherwise represent an insubstantial change.

**D. Minor Amendment to a Project Review approval.** An amendment found by the Community Development Director to be generally consistent with the allowances and limitations of a Project Review approval or which otherwise represents an insubstantial change but which does not meet the established thresholds for an insubstantial amendment, may be approved, approved with conditions or denied by the City Council, pursuant to 26.445.040.B.2 – Step Two. An applicant may not apply for Detailed Review if an amendment is pending.

**E. Minor Amendment to a Detailed Review approval.** An amendment found by the Community Development Director consistent with a Project review approval and to be generally consistent with the allowances and limitations of a Detailed Review approval, or which otherwise represents an insubstantial change, but which does not meet the established thresholds for an insubstantial amendment, may be approved, approved with conditions or denied by the Planning and Zoning Commission of the Historic Preservation Commission as applicable, pursuant to 26.445.040.B.3 – Step Three.

**F. Major Amendment.** An amendment found by the Community Development Director to be inconsistent with the Project Review approval and inconsistent with the Detailed Review approval shall be subject to full review, pursuant to 26.445.040.B. steps one, two, and three.

**G. Amendment Conditions.** During the review of a proposed amendment, the Community Development Director, the Planning and Zoning Commission, and the City Council may require such conditions of approval as are necessary to insure that the development will be compatible with current community circumstances. Conditions may be applied to portions or aspects of the project which are the subject of the amendment request or other portions or aspects of the project. Conditions may include adherence to any new community policies or regulations which have been implemented since the original approval or that reflect changed or changing community circumstances as they affect the project's entitled allowances and limitations including material representations and commitments. The applicant may withdraw the proposed amendment at any time during the review process.

**H. Absence of approved final development plan.** In the absence of an approved Final Development Plan for a site designated Planned Development on the Official Zone District Map, an accurate improvements survey of existing conditions may be substituted to permit evaluation of whether the proposal is an insubstantial or other amendment. The Community Development Director may require additional documentation of existing conditions including dimensions of existing structures to make the determination.

**I. Rescinding a Planned Development Designation.** The removal of a Planned Development designation from a parcel for cause may be approved by City Council at a duly noticed public hearing. When no cause is shown, removal of a Planned Development designation shall follow the process for a complete review, as outlined in Section 26.445.030.B.1 – Three Step Review, but shall require demonstration of why the land no longer meets the standards of review.

(Ord No. 35-1999, §1; Ord. No. 36-2013, §4)

**26.445.120 Appeals.**

An applicant aggrieved by a decision made by the Community Development Director regarding administration of this Chapter may appeal the decision to the City Council, pursuant to Chapter 26.316.

An applicant aggrieved by a Detailed Review decision made a Planning and Zoning Commission or the Historic Preservation Commission as applicable, may appeal the decision to the City Council. In such circumstances, the Commission’s decision shall be considered a recommendation to City Council. The City Council shall follow the review process outlined in Section 26.445.040.B.3 – Step Three, and the decision shall be by City Council resolution.

(Ord. No. 36-2013, §4)

**Chapter 26.450**  
**TEMPORARY AND SEASONAL USES**

Sections:

Sec. 26.450.010	Purpose.
Sec. 26.450.020	Authorization for temporary uses.
Sec. 26.450.030	Criteria applicable to all temporary uses.
Sec. 26.450.040	Conditions of approval.
Sec. 26.450.050	Duration and expiration of a temporary use.
Sec. 26.450.060	Procedure for temporary use approval.
Sec. 26.450.070	Application.
Sec. 26.450.080	Amendment of development order.
Sec. 26.450.090	No vesting of temporary uses.

**26.450.010. Purpose.**

Temporary uses are those uses or structures that may or may not be permitted in a given zone district, but which may be allowed on a nonpermanent and temporary basis upon individual review of their proposed nature, location, duration, impact and compatibility with surrounding permitted uses and structures, excepting outdoor merchandising or commercial displays which shall not be permitted as temporary uses. Additionally, off-site construction staging and temporary storage shall only be permitted in accordance with the procedures and criteria as set forth in Chapter 26.314.

**26.450.020. Authorization for temporary uses.**

No temporary use shall be permitted except upon review and approval by either the Community Development Director or by City Council in accordance with the procedures, standards and limitations set forth in this Chapter. A temporary use may be granted by the City Council for a period of up to one hundred eighty (180) days. An insubstantial temporary use may be authorized by the Community Development Director. An *insubstantial temporary use* shall be defined as a temporary use that meets the criteria set forth below in Section 26.450.030, is limited to a period of time not to exceed seven (7) days, the impact upon the immediate vicinity is determined to be minimal and, in the opinion of the Community Development Director, does not require the review and approval of the City Council. Tents which are erected for a period of time which does not exceed seven (7) days, and which are erected on private property, shall be exempt from obtaining a temporary use permit.

(Ord. No. 12, 2007, §26)

**26.450.030. Criteria applicable to all temporary uses.**

When considering a development application for a temporary use or an insubstantial temporary use, the Community Development Director or City Council shall consider, among other pertinent factors, the following criteria as they or any of them, relate thereto:

- A.** The location, size, design, operating characteristics and visual impacts of the proposed use.
- B.** The compatibility of the proposed temporary use with the character, density and use of structures and uses in the immediate vicinity.

C. The impacts of the proposed temporary use on pedestrian and vehicular traffic and traffic patterns, municipal services, noise levels and neighborhood character.

D. The duration of the proposed temporary use and whether a temporary use has previously been approved for the structure, parcel, property or location as proposed in the application.

E. The purposes and intent of the zone district in which the temporary use is proposed.

F. The relation of the temporary use to conditions and character changes which may have occurred in the area and zone district in which the use is proposed.

G. How the proposed temporary use will enhance or diminish the general public health, safety or welfare.

**26.450.040. Conditions of approval.**

Upon review and approval by the Community Development Director or City Council, as set forth at Section 26.450.060 herein, the temporary use approval may be conditioned as deemed necessary to protect the integrity of the zone district and the surrounding uses and structures in the neighborhood in which a temporary use is to be permitted. This may include, but is not limited to, setting requirements for or imposing restrictions upon size, bulk, location, open space, landscaping, buffering, screening, lighting, noise, signage, parking, operations, hours of operation, set-backs, building materials and requiring such financial security as deemed necessary to ensure compliance with any or all conditions of approval and/or to restore the subject property to its original use and condition.

**26.450.050. Duration and expiration of a temporary use.**

**A. Duration.** Temporary uses may be granted for a period not to exceed one hundred eighty (180) days from the date upon which the City Council approves the temporary use, unless a shorter period is specified in the approval. Insubstantial temporary uses may be granted for a period not to exceed seven (7) days from the date upon which the Community Development Director approved the temporary use, unless a shorter period of time is specified in the approval.

For seasonal uses, the City Council shall determine the maximum number of annual recurrences, which shall not exceed ten (10) years.

**B. Extensions.** The City Council may grant one extension of an approved temporary use. The Community Development Director may grant one extension of an approved insubstantial temporary use. Requests for an extension of a temporary use approved by City Council must be submitted in writing to the Community Development Director no less than fifteen (15) days prior to the expiration of a permitted temporary use. Requests for an extension of an insubstantial temporary use approved by the Community Development Director must be submitted in writing to the Community Development Director no less than three (3) days prior to the expiration of a permitted insubstantial temporary use. All proposed extensions of a temporary use or insubstantial temporary use shall be evaluated under the same criteria as set forth in Sections 26.450.030 and 26.450.040. Requests for an extension of time approved by the City Council shall be heard and approved or denied at a public hearing. No extension of a temporary use approved by City Council shall exceed one hundred eighty

(180) days. No extension of an insubstantial temporary use approved by the Community Development Director shall exceed seven (7) days.

(Ord. No. 12, 2007, §27)

**26.450.060. Procedure for temporary use approval.**

A development application for temporary use shall be submitted to the Community Development. If the Community Development Director determines that the proposed temporary use is insubstantial in accordance with the criteria set forth at Sections 26.450.020 and 26.450.030, the Community Development Director may grant, or grant with conditions, the insubstantial temporary use. The Community Development Director may, as part of the determination whether the temporary use is insubstantial, require the applicant to provide notice to surrounding property owners with the opportunity to comment by a date certain. The form and method of such notice shall be in the sole discretion of the Community Development Director, taking into account the nature of the temporary use and its potential impacts upon the immediate vicinity. If the Community Development Director determines that the proposed temporary use is not insubstantial, the Community Development Director shall forward the same with comments and recommendations to the City Council. The City Council shall then after a public hearing approve, approve with conditions or deny the application. The hearing before the City Council shall be preceded by timely notice (publication, posting and mailing) as specified in Subparagraphs 26.304.060.E.3.a., b. and c., and all hearings shall be conducted in accordance with the procedures set forth in Subsection 26.304.060.C of this Title.

(Ord. No. 27-2002, §17; Ord. No. 12, 2007, §28)

**26.450.070. Application.**

A development application for a temporary use shall include the following information:

- A. The general application information required in Section 26.304.030 of this Title.
- B. A sketch plan of the site showing property lines and existing and proposed features relevant to the temporary use and its relationship to uses and structures in the immediate vicinity.
- C. If the application involves development of a new structure or expansion or remodeling of an existing one, then proposed elevations of the structure must be provided.
- D. Such other information as deemed necessary by the Community Development Director for purposes of evaluating the application.
- E. Payment of all necessary fees.

**26.450.080. Amendment of development order.**

**A. Insubstantial amendment.** An insubstantial amendment to an approved development order for a temporary use may be authorized by the Community Development Director. An insubstantial amendment shall be limited to design, technical or engineering considerations first discovered during actual development of the temporary use which were unknown and could not reasonably have become known prior to or during the approval process or any other minor amendment to the approval

which the Community Development Director has determined to have no affect on the nature of or the conditions imposed upon, a temporary use.

**B. Other amendment.** All amendments not constituting an insubstantial amendment must be reviewed and approved by the City Council at a public hearing.

**26.450.090. No vesting of temporary uses.**

A development application for and an approval of a temporary use and/or structure or development plan, shall not constitute nor be interpreted by any property owner, developer or court as a site Specific Development Plan entitled to vesting under Article 68 of Title 24 of the C.R.S., or Chapter 26.308 of this Title. Temporary uses and structures shall be considered transitory variances at all times and shall not vest. The failure of an applicant to adhere to any condition of approval for a temporary use shall result in the immediate forfeiture of the temporary use approval and such use shall immediately cease and may be abated as provided for in the Municipal Code.

**Chapter 26.470**  
**GROWTH MANAGEMENT QUOTA SYSTEM (GMQS)**

Sections:

Sec. 26.470.010.	Purpose.
Sec. 26.470.020.	Applicability.
Sec. 26.470.030.	Aspen metro area development ceilings and annual allotments.
Sec. 26.470.040.	Exempt development.
Sec. 26.470.050.	General requirements.
Sec. 26.470.060.	Administrative applications.
Sec. 26.470.070.	Minor Planning and Zoning Commission applications.
Sec. 26.470.080.	Major Planning and Zoning Commission applications.
Sec. 26.470.090.	City Council applications.
Sec. 26.470.100.	Calculations.
Sec. 26.470.110.	Growth management review procedures.
Sec. 26.470.120.	Community objective scoring criteria.
Sec. 26.470.130.	Reconstruction limitations.
Sec. 26.470.140.	Amendment of a growth management development order.
Sec. 26.470.150.	Appeals.

**26.470.010. Purpose.**

The purposes of this Chapter are as follows:

1. To implement the Aspen Area Community Plan's goals and policies, in conjunction with the background research and studies conducted in support of the Plan;
2. To ensure that new growth occurs in an orderly and efficient manner in the City;
3. To ensure sufficient public facilities to accommodate new growth and development;
4. To ensure that new growth and development is designed and constructed to maintain the character and ambiance of the City;
5. To ensure an adequate supply of affordable housing, businesses and events that serve the local, permanent community and the area's tourist base;
6. To ensure that growth does not overextend the community's ability to provide support services, including employee housing, traffic control and parking; and
7. To ensure that the resulting employees generated and impacts created by development and redevelopment are mitigated by said development and redevelopment.

(Ord. No. 21-2005, §1; Ord. No. 14, 2007, §1)

**26.470.020. Applicability.**

**A. General.** This Chapter shall apply to all development in the City – residential, lodging, commercial and community facilities. The "growth management year," as the term is used in this Chapter, shall be from January 1 through December 31.

**B. Development categories.** Table 4-1 establishes the development categories and units of allocation for each category for purposes of administering this Chapter.

**TABLE 4-1, Development Categories**

<i>Category</i>	<i>Description</i>	<i>Allocation units</i>
<b><i>A. Residential – Free-Market</i></b>	<b>Dwelling units intended exclusively for residential purposes, not subject to any residency requirements and not including hotels, lodging, or timeshare units. Units may be in the form of single-family, duplex, multi-family or part of a mixed-use structure. (See definitions of Residential use and Dwelling.)</b>	<b>Dwelling units</b>
<b><i>B. Residential – Affordable Housing</i></b>	<b>Dwelling units intended to house only local working residents and deed restricted according to the Aspen/Pitkin County Housing Authority Guidelines. Units may be in the form of single-family, duplex, multi-family, dormitory or part of a mixed-use structure. (See definition of Affordable housing.)</b>	<b>Dwelling units</b>
<b><i>C. Commercial</i></b>	<b>Buildings, or portions thereof, supporting office, retail, warehousing, manufacturing, commercial recreation, restaurant/bar or service oriented businesses, including retail and office uses but not including hotel, lodging or timeshare uses. (See definition of Commercial use.)</b>	<b>Net leasable square feet</b>
<b><i>D. Lodging</i></b>	<b>Buildings, or portions thereof, used to house a transient tourist population on a short-term basis, including lodges, hotels, motels, bed and breakfasts, timeshare lodging and exempt timesharing. (See definition of Hotel.)</b>	<b>Lodging pillows. Each lodging bedroom shall be considered to be two pillows</b>
<b><i>E. Essential Public Facilities</i></b>	<b>Facilities serving essential public purposes used by or for the benefit of the general public and serving the needs of the community. (See definition of Essential public facility.)</b>	<b>Square feet</b>

(Ord. No. 21-2005, §1; Ord. No. 14, 2007, §1)

**26.470.030. Aspen metro area development ceilings and annual allotments.**

**A. General.** As the primary implementation tool for the Aspen Area Community Plan (AACP), the Growth Management Quota System (GMQS) is designed to promote many objectives. Despite its complexity, two (2) overriding goals form its core: (1) to prohibit development in excess of the AACP objective of a thirty-thousand-peak population (permanent and visitor); and (2) to ensure that City of Aspen Land Use Code

the rate at which growth occurs does not exceed the community's ability to cope with associated public facility and service demands and accompanying changes to community character.

Aspen area residents have determined that the maximum average growth rate that can be accommodated without long-term negative consequences is two percent (2%) per year, with the exception of permanently affordable housing and lodging facilities. The AACP supports a "critical mass" of permanent residents to be housed and a growth rate of more than two percent (2%) for affordable housing to ensure a balance of resort and community. The Economic Sustainability Committee, a joint effort undertaken in 2002 between the City, the Aspen Institute Community Forum and the Aspen Chamber Resort Association, supported, as their Number One recommendation, the redevelopment of existing lodging facilities and the development of new lodging facilities to counteract the deteriorating and greatly decreased lodging base. Therefore, the GMQS does not limit the annual growth rate of affordable housing and lodging facilities, while all other types of development shall be limited to not exceed a two-percent annual growth rate. In order to address continued community growth concerns, a growth limit of one-half percent (0.5%) has been implemented for new free-market residential development.

For a variety of reasons, it is possible that the community's actual population growth might exceed the designated growth rate percentages in some years. Previous GMQS approvals and in/out-migration, for example, can result in periods of construction activity and population growth that exceed the planned average annual growth rate.

**B. Existing development.** The following tables describe the existing (as of March 2007) amount of development in each sector used as a "baseline" in establishing annual allotments and development ceilings.<sup>1</sup>

**C. Development ceiling levels.** Based on the 2000 Aspen Area Community Plan goal of limiting the ultimate population in order to preserve a quality of life for both residents and visitors, growth ceilings are hereby established for each type of land use.

<b>Commercial Development Within the City (square feet)<sup>1</sup></b>	
<b>Commercial use "class"</b>	<b>Leasable square feet for class</b>
Merchandising	365,486
Lodging <sup>2</sup>	19,950
Offices	113,207
Recreation	179,824
Special purpose	144,777
Warehouse/storage	149,814

<sup>1</sup> Source: Pitkin County Assessor, March 7, 2005

<sup>2</sup> Lodge unit square footage removed from total. Commercial space within lodge developments estimated through City records.

<b>Commercial Development Within the City (square feet)<sup>1</sup></b>	
Multi-use	208,331
Commercial Condos	483,549
<b>Total commercial:</b>	<b>1,664,938</b>
<b>2% Annual growth rate for commercial development</b>	<b>33,300</b>

<b>Residential Development Within the City (units)</b>	
<b>Property type</b>	<b>Residences in class</b>
Single-family	1,268
Duplex or triplex <sup>3</sup>	79
Multi-units 4-8 <sup>4</sup>	45
Multi-units 9+	142
Condominiums	2,978
Duplex condos	366
Manufactured	29
Partial exempt	1
<b>Total residences:</b>	<b>4,909</b>
Nonexempt affordable housing units <sup>5</sup>	1,132
<b>Total free-market residences</b>	<b>3,777</b>
<b>0.5% Annual growth rate for free-market residential</b>	<b>18.9 units</b>

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<sup>3</sup> Single ownership duplex and triplex units. 2 units per property ownership estimated.

<sup>4</sup> Single ownership apartment buildings. Residence count reflects actual number of units recorded with Assessor.

<sup>5</sup> A total of 1,815 residences within the City are deed-restricted affordable housing. Of these units, several are considered tax-exempt and are not included in the Assessor's counts. These units are rental affordable housing owned by the City, APCHA or tax-exempt nonprofit organizations. Therefore, only the nonexempt units have been subtracted from the Assessor's total residences to determine the number of free-market residences.

<b>development:</b>	
<b>Lodging Development Within the City (Pillows)</b>	
Total lodging pillows:	<b>7,500</b>
1.5% Annual growth rate	<b>112.5 pillows</b>

As part of the 2000 AACP, average monthly population was estimated based on daily influent flows of the Aspen Consolidated Sanitation District. This data was used to estimate the actual number of people in the City, including residents, tourists and the workforce. A total population of twenty-three thousand fifty (23,050) was estimated for the busiest month in 1998, July. Based on this month as the peak monthly population baseline, a total development ceiling to accommodate a total population of thirty thousand (30,000) represents a thirty-percent increase in development. Applied to each development sector, development ceilings are established as follows:

<b>Development Type</b>	<b>Current Development</b>	<b>Development Ceiling</b>
Free-market residential	3,777	4,906
Affordable housing	1,608	2,428 <sup>6</sup>
Commercial (sq. ft.)	1,664,938	2,164,420
Lodging	7,500 pillows	11,160 pillows <sup>7</sup>

The Community Development Director shall calculate the number of allotments remaining under established development ceilings as part of the year-end growth summary. Under no circumstances shall development be allowed in excess of the development ceilings unless the City Council, pursuant to Section 26.470.090, Appeals, permits development in excess of the ceilings.

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<sup>6</sup> The development ceiling for affordable housing is based on the 2000 AACP goal of providing an additional 800 to 1,300 affordable housing units. 588 affordable housing units have been completed and another 99 have been approved since adoption of the plan (as of January 2005). Although most of these units were either approved, under construction or occupied at the time of the plan adoption, they were recognized in the plan as part of the overall housing need and represent progress towards the goal. Considering the completed units, the affordable housing development ceiling has been established at 2,428 units, an increase of 613 units.

<sup>7</sup> The development ceiling for lodging is based on the “pillow count” of Stay Aspen Snowmass. This number peaked in 1995, with 9,959 pillows in the Aspen inventory. The 1998 pillow count of 8,583 was used to establish the development ceiling. 7,500 pillows existed in 2007, and this figure was used to establish the annual quota. The pillow count, because it is more accurate than unit counts at the time of the ordinance codified herein, shall be used to determine progress towards the development annual quotas and the development ceiling.

**D. Annual development allotments.** The Growth Management Quota System establishes annual development allotments available for use by projects during each growth management year, January 1 to December 1. The number of development allotments available within a single growth management year varies based on the following factors:

1. The type of land use.
2. The annual allotment available for each land use.
3. The number of allotments granted the previous year and whether or not the City Council permits an accumulation from year to year.
4. The number of multi-year allotments granted by the City Council from future years.
5. The number of allotments already granted in the current growth management year.

The Community Development Director shall calculate the development allotments available for each type of land use as follows:

<b>Available development allotments</b>	=	annual allotment	+	Carry-forward allotment from prior year
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Where the above terms are defined and established as follows:

**Annual allotment.** The annual allotment reflects each year's potential growth within the City, applied to each type of land use. The annual allotment may be reduced if multi-year allotments are granted by the City Council. The following annual allotments are hereby established:

<i>Development Type</i>	<i>Annual Allotment</i>
Residential — Free-Market	18 units
Commercial	33,300 net leasable square feet
Residential — Affordable Housing	No annual limit
Lodging	112 pillows
Essential public facility	No annual limit

**Carry-forward allotment.** At the conclusion of each growth management year, the City Council shall determine the amount of unused and unclaimed allotments, for each type of development, and

may assign the unused allotment to become part of the available development allotment for future projects (see accounting procedure). There is no limit, other than that implemented by the City Council, on the amount of potential growth that may be carried forward to the next year.

Allotments awarded to a project which does not proceed and which are considered void shall constitute unused allotments and shall be considered for allotment roll-over by the City Council. Allotments shall be considered vacated by a property owner upon written notification from the property owner or upon expiration of the development right pursuant to Subparagraph 26.470.060.B.4, Expiration of growth management allotments.

**E. Available allotments in each of two (2) annual application sessions.** The Growth Management Quota System permits the submission of growth management allotment applications that require scoring twice per year. (Not all applications require scoring.) The submission deadlines for the two (2) sessions shall be as defined in Section 26.470.110. For the first session of the year, the number of development allotments available shall be the entire annual allotment established pursuant to Subsection 26.470.030.D.

Allotments that are not granted, granted but then vacated or not requested in the first session of the year shall be available in the second session of the year. Any allotments remaining after the second session of the year shall only be available in the future as determined by the City Council (see accounting procedure). Allotments shall be considered not granted upon denial of the project and completion of any appeals. Allotments shall be considered vacated by a property owner upon written notification from the property owner.

**F. Accounting procedure.** The Community Development Director shall maintain an ongoing account of available, requested and approved growth management allocations and progress towards each development ceiling. Allotments shall be considered allocated upon issuance of a development order for the project. Unless specifically not deducted from the annual development allotment and development ceilings, all units of growth shall be included in the accounting. Affordable housing units shall be deducted regardless of the unit being provided as growth mitigation or otherwise. After the conclusion of each growth management session and year, the Community Development Director shall prepare a summary of growth allocations.

The City Council, at its first regular meeting of the growth management year, shall review, during a public hearing, the prior year's growth summary, consider a recommendation from the Community Development Director, consider comments from the general public and shall, via adoption of a resolution, establish the number of unused and unclaimed allotments to be carried forward and added to the annual allotment. The City Council may carry forward any portion of the previous year's unused allotment, including all or none.

The City Council shall also consider the remaining development allotments within the development ceilings, established pursuant to Subsection 26.470.030.C, and shall reduce the available development allotment by any amount that exceeds the development ceiling. The public hearing shall be noticed by publication, pursuant to Subparagraph 26.304.060.E.3.a. The City Council shall consider the following criteria in determining the allotments to be carried forward:

1. The community's growth rate over the preceding five-year period.
2. The ability of the community to absorb the growth that could result from a proposed development utilizing accumulated allotments, including issues of scale, infrastructure capacity, construction impacts and community character.
3. The expected impact from approved developments that have obtained allotments, but that have not yet been built.

(Ord. No. 21-2005, §1; Ord. No. 12-2006, §§1, 2; Ord. No. 14, 2007, §1; Ord. No. 3-2012, §16)

**Sec. 26.470.040. Exempt development.**

The following types of development shall be exempt from the provisions of this Chapter. Development exempt from growth management shall not be considered exempt from other chapters of the Land Use Code, and property owners should consult with the Community Development Department. Where applicable, exemptions are cumulative.

**1. Remodeling or expansion of existing single-family and duplex residential development.** The remodeling or expansion of existing single-family and duplex residential dwellings shall be exempt from growth management. When demolition occurs, see Paragraph 26.470.060.2. (Also see definition of demolition, Section 26.104.100.)

**2. Conversion of an existing single-family residence to a duplex residence or vice-versa.** The conversion of an existing single-family residence into multiple detached dwelling units or into a duplex residence, or vice-versa, shall be exempt from growth management. When demolition occurs, see Paragraph 26.470.060.2. Not all zone districts allow both single-family and duplex development. (See definition of demolition, Section 26.104.100, and Zone Districts, Chapter 26.710.)

Note: In zone districts permitting the development of a single-family, a duplex or two (2) single-family residences, one (1) development allotment may be expressed as a single-family, a duplex or two (2) single-family residences. The parcel shall have only one (1) development right regardless of the way in which it has been or is proposed to be developed. The parcel may be condominiumized to separate ownership. In order to subdivide the parcel, additional development rights must be obtained.

**3. Remodeling or expansion of existing multi-family residential development.** The remodeling or expansion of existing multi-family residential dwellings shall be exempt from growth management as long as no demolition occurs. When demolition occurs, see Paragraph 26.470.070.6, Demolition or redevelopment of multi-family housing. (Also see definition of demolition, Section 26.104.100.)

**4. Relocation of historic structures.** The relocation of a structure listed on the Aspen Inventory of Historic Landmark Sites and Structures, permanently or temporarily, shall be exempt from growth management, provided that all necessary approvals are obtained, pursuant to Chapter 26.415, Development Involving the Inventory of Historic Landmark Sites and Structures.

**5. Transferable development rights.** The establishment and extinguishment of transferable development right certificates shall be exempt from growth management, provided that such certificates comply with Chapter 26.535, Transferable Development Rights.

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**6. Remodeling or replacement of existing commercial or lodge development.** Remodeling or replacement after demolition of existing commercial or hotel/lodge buildings and portions thereof shall be exempt from the provisions of growth management, provided that no additional net leasable square footage or lodge units are created and there is no change in use. If redevelopment involves an expansion of net leasable square footage or lodge units, only the replacement of existing development shall be exempt. Existing, prior to demolition, net leasable square footage and lodge units shall be documented by the City Zoning Officer prior to demolition. Also see definition of net leasable commercial and office space, Section 26.104.100.

**7. Temporary uses and structures.** The development of a temporary use or structure shall be exempt from growth management, subject to the provisions of Chapter 26.450, Temporary and Seasonal Uses. Temporary external airlocks shall only be exempt from the provisions of this Chapter if approved pursuant to Chapter 26.450.

**8. Special events.** Special events permitted by the City shall be exempt from this Chapter.

**9. Accessory dwelling units and carriage houses.** The development of accessory dwelling units (ADUs) and carriage houses shall be exempt from the provisions of this Chapter but subject to the provisions of Chapter 26.520, Accessory Dwelling Units and Carriage Houses.

**10. Retractable canopies and trellis structures.** Retractable canopies and trellis structures appended to a commercial or lodging structure shall be exempt from growth management provided that: a) there is no expansion of floor area; b) the canopy or trellis structure is not enclosed by walls, screens, windows or other enclosures; and c) for a trellis structure, at least fifty percent (50%) of the overhead structure is open to the sky. Awnings shall be exempt from this Chapter.

**11. Public infrastructure.** The development of public infrastructure such as roads, bridges, waterways, utilities and associated poles, wires, conduits, drains, hydrants and similar items considered essential services (see definition) shall be exempt from growth management. Essential public facilities shall not be exempt and shall be reviewed pursuant to Paragraph 26.470.040.D.3, Essential public facilities.

(Ord. No. 21-2005, §1; Ord. No. 12-2006, §§3—8, 21; Ord. No. 14, 2007, §1)

**26.470.050. General requirements.**

**A. Purpose:** The intent of growth management is to provide for orderly development and redevelopment of the City while providing mitigation from the impacts said development and redevelopment creates. Different types of development are categorized below, as well as the necessary review process and review standards for the proposed development. A proposal may fall into multiple categories and therefore have multiple processes and standards to adhere to and meet.

**B. General requirements:** All development applications for growth management review shall comply with the following standards. The reviewing body shall approve, approve with conditions or deny an application for growth management review based on the following generally applicable criteria and the review criteria applicable to the specific type of development:

1. Sufficient growth management allotments are available to accommodate the proposed development, pursuant to Subsection 26.470.030.D. Applications for multi-year development allotment, pursuant to Paragraph 26.470.090.1 shall not be required to meet this standard.
2. The proposed development is compatible with land uses in the surrounding area, as well as with any applicable adopted regulatory master plan.
3. The development conforms to the requirements and limitations of the zone district.
4. The proposed development is consistent with the Conceptual Historic Preservation Commission approval, the Conceptual Commercial Design Review approval and the Planned Development – Project Review approval, as applicable.
5. Unless otherwise specified in this Chapter, sixty percent (60%) of the employees generated by the additional commercial or lodge development, according to Subsection 26.470.100.A, Employee generation rates, are mitigated through the provision of affordable housing. The employee generation mitigation plan shall be approved pursuant to Paragraph 26.470.070.4, Affordable housing, at a Category 4 rate as defined in the Aspen/Pitkin County Housing Authority Guidelines, as amended. An applicant may choose to provide mitigation units at a lower category designation. If an applicant chooses to use a Certificate of Affordable Housing Credit as mitigation, pursuant to Chapter 26.540, such Certificate shall be extinguished pursuant to Chapter 26.540.90 Criteria for Administrative Extinguishment of the Certificate.
6. Affordable housing net livable area, for which the finished floor level is at or above natural or finished grade, whichever is higher, shall be provided in an amount equal to at least thirty percent (30%) of the additional free-market residential net livable area, for which the finished floor level is at or above natural or finished grade, whichever is higher.

Affordable housing shall be approved pursuant to Paragraph 26.470.070.4, Affordable housing, and be restricted to a Category 4 rate as defined in the Aspen/Pitkin County Housing Authority Guidelines, as amended. An applicant may choose to provide mitigation units at a lower category designation. Affordable housing units that are being provided absent a requirement ("voluntary units") may be deed-restricted at any level of affordability, including residential occupied. If an applicant chooses to use a Certificate of Affordable Housing Credit as mitigation, pursuant to Chapter 26.540, such Certificate shall be extinguished pursuant to Chapter 26.540.90 Criteria for Administrative Extinguishment of the Certificate, utilizing the calculations in Section 26.470.100 Employee/Square Footage Conversion.

7. The project represents minimal additional demand on public infrastructure, or such additional demand is mitigated through improvement proposed as part of the project. Public infrastructure includes, but is not limited to, water supply, sewage treatment, energy and communication utilities, drainage control, fire and police protection, solid waste disposal, parking and road and transit services.

(Ord. No. 14, 2007, §1; Ord. No. 6 – 2010, §2; Ord. No. 3-2012 §17)

**Sec. 26.470.060. Administrative applications.**

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The following types of development shall be approved, approved with conditions or denied by the Community Development Director, pursuant to Section 26.470.110, Growth management review procedures, and the criteria for each type of development described below. Except as noted, all growth management applications shall comply with the general requirements of Section 26.470.050. Except as noted, all administrative growth management approvals shall be deducted from the respective development ceiling levels but shall not be deducted from the annual development allotments. Administrative approvals apply cumulatively.

**1. Single-family and duplex development on historic landmark properties.** The development of one (1) or multiple single-family residences or a duplex on a parcel of land designated as an historic landmark and which contains an historic resource shall be approved by the Community Development Director. This review applies to the rehabilitation of existing structures, reconstruction after demolition of existing structures and the development of new structures on historic landmark properties. No affordable housing mitigation shall be required, provided that all necessary approvals are obtained, pursuant to Chapter 26.415, Development Involving the Inventory of Historic Landmark Sites and Structures, and provided that the parcel contains an historic resource.

Development of single-family or duplex structures on an historic landmark property that does not contain an historic resource (for example, a new house on a vacant lot which was subdivided from an historic landmark property) shall be subject to the provisions of Paragraph 26.470.060.2, Single-family and duplex dwelling units.

**2. Single-family and duplex dwelling units.** The following types of development of single-family or duplex structures shall require the provision of affordable housing in one (1) of the methods described in Subparagraph c:

- a. The development of a new single-family, multiple detached residential units when permitted in the zone district or a duplex dwelling on a vacant lot in one (1) of the following conditions:
  - 1) A vacant lot created by a lot split, pursuant to Subsection 26.480.060.C.
  - 2) A vacant lot created by an historic lot split, pursuant to Paragraph 26.480.030.A.4, when the subject lot does not itself contain an historic resource.
  - 3) A vacant lot that was subdivided or was a legally described parcel prior to November 14, 1977, that complies with the provisions of Subsection 26.480.020.E, Aspen Townsite lots.

These new residential units shall be deducted from the development ceiling levels established pursuant to Section 26.470.030, but shall not be deducted from the respective annual development allotments for residential development.

- b. The replacement after demolition of an existing single-family, multiple detached residential units when permitted in the zone district or a duplex dwelling, regardless of when the lot was subdivided or legally described. These redeveloped units shall not require a growth management allocation and shall not be deducted from the respective annual development allotments or development ceiling levels established pursuant to Section 26.470.030.
- c. Affordable housing requirements for the types of single-family and duplex development described above shall be as follows:

**Single-family.** In order to qualify for a single-family approval, the applicant shall have five (5) options:

- 1) Providing an above-grade, detached accessory dwelling unit (ADU) or a carriage house pursuant to Chapter 26.520, Accessory Dwelling Units and Carriage Houses;
- 2) Providing an accessory dwelling unit, or a carriage house, authorized through special review to be attached and/or partially or fully subgrade, pursuant to Chapter 26.520;
- 3) Providing an off-site affordable housing unit within the Aspen Infill Area accepted by the Aspen/Pitkin County Housing Authority and deed-restricted in accordance with the Aspen/Pitkin County Housing Authority Guidelines, as amended;
- 4) Paying the applicable affordable housing impact fee pursuant to the Aspen/Pitkin County Housing Authority Guidelines, as amended; or
- 5) Recording a resident-occupancy (RO) deed restriction on the single-family dwelling unit being constructed.
- 6) Providing a Certificate of Affordable Housing Credit as mitigation, pursuant to Section 26.540.060 Authority of the Certificate, commensurate with the net increase of square footage, according to Aspen/Pitkin County Housing Authority Guidelines, as amended.

**Duplex.** In order to qualify for a duplex approval, the applicant shall have six (6) options:

- 1) Providing one (1) free-market dwelling unit and one (1) deed-restricted resident-occupied (RO) dwelling unit with a minimum floor area of one thousand five hundred (1,500) square feet;
- 2) Providing either two (2) above-grade, detached accessory dwelling units or carriage houses (or one [1] of each), or one (1) above-grade, detached ADU or carriage house with a minimum floor area of six hundred (600) net livable square feet, pursuant to Chapter 26.520;
- 3) Providing either two (2) accessory dwelling units or carriage houses (or one [1] of each) or one (1) ADU or carriage house with a minimum of six hundred (600) net livable square feet authorized through special review to be attached and/or partially or fully subgrade, pursuant to Chapter 26.520;
- 4) Providing an off-site affordable housing unit within the Aspen Infill Area accepted by the Aspen/Pitkin County Housing Authority and deed-restricted in accordance with the Aspen/Pitkin County Housing Authority Guidelines, as amended;
- 5) Providing two (2) deed-restricted resident-occupied (RO) dwelling units; or
- 6) Paying the applicable affordable housing impact fee pursuant to the Aspen/Pitkin County Housing Authority Guidelines, as amended.
- 7) Providing a Certificate of Affordable Housing Credit as mitigation, pursuant to Section 26.540.060 Authority of the Certificate, commensurate with the net increase of square footage, according to Aspen/Pitkin County Housing Authority Guidelines, as amended.

**3. Change in use of historic landmark sites and structures.** The change of use between the development categories identified in Section 26.470.020, of a property, structure or portion of a structure designated as an historic landmark shall be approved, approved with conditions or denied by the Community Development Director if no more than one (1) free-market residence is created. No employee mitigation shall be required. If more than one (1) free-market residence is created, the

additional units shall be reviewed pursuant to Paragraph 26.470.080.2. The change in amount of development and number of units shall be added and deducted from the respective development ceiling levels established pursuant to Section 26.470.030 but shall not be added or deducted from the respective annual development allotments.

**4. Minor enlargement of an historic landmark for commercial, lodge or mixed-use development.** The enlargement of a property, structure or portion of a structure designated as an historic landmark for commercial, lodge or mixed-use development shall be approved, approved with conditions or denied by the Community Development Director based on the following criteria. The additional development of uses identified in Section 26.470.020 shall be deducted from the development ceiling levels established pursuant to Section 26.470.030 but shall not be deducted from the respective annual development allotments.

- a. If the development increases either floor area or net leasable space/lodge units, but not both, then no employee mitigation shall be required.
- b. If the development increases both floor area and net leasable space/lodge units, up to four (4) employees generated by the additional commercial/lodge shall not require the provision of affordable housing. An expansion generating more than four (4) employees shall not qualify for this administrative approval and shall be reviewed pursuant to Paragraph 26.470.070.1.
- c. No more than one (1) free-market residence is created. This shall be cumulative and shall include administrative GMQS approvals granted prior to the adoption of Ordinance No. 14, Series of 2007.

**5. Minor expansion of a commercial, lodge or mixed-use development.** The minor enlargement of a property, structure or portion of a structure for commercial, lodge or mixed-use development shall be approved, approved with conditions or denied by the Community Development Director based on the following criteria. The additional development of uses identified in Section 26.470.020 shall be deducted from the development ceiling levels established pursuant to Section 26.470.030 but shall not be deducted from the respective annual development allotments.

- a. The expansion involves no more than five-hundred (500) square feet of net leasable space, no more than two-hundred-fifty (250) square feet of Floor Area, and up to two (2) additional hotel/lodge units. The expansion involves no residential units. No employee mitigation shall be required. This shall be cumulative and shall include administrative GMQS approvals granted prior to the adoption of Ordinance No. 22, Series of 2013.

**6. Alley stores.** The expansion or conversion of an existing commercial or mixed-use building, or portion thereof, or the development of a new commercial or mixed-use building to accommodate a storefront along an alleyway shall be approved, approved with conditions or denied by the Community Development Director based on the following criteria:

- a. The commercial space or spaces shall be no greater than six hundred (600) gross square feet per space, including storage and other nonleasable space, and shall have no internal connection to any other space. Multiple spaces may be created.
- b. The commercial space shall not reduce the property's utility/trash/recycle service area requirement unless such reduction is approved pursuant to Chapter 12.10.

- c. Alley stores that front entirely on an alleyway with no fenestration or direct access along a primary street shall not require the provision of affordable housing.

**7. Sale of locally-made products in common areas of commercial buildings.** Commercial use of common areas within commercial and mixed-use buildings which contain commercial use (a.k.a. “non-unit spaces,” “arcades,” “hallways,” “lobbies,” or “malls”) shall be approved, approved with conditions or denied by the Community Development Director based on the following criteria.

- a. Products shall be limited to arts, crafts, or produce designed, manufactured, created, grown, or assembled in the Roaring Fork Valley, defined as the watershed of the Roaring Fork River plus the municipal limits of the City of Glenwood Springs. Exempt from these product and geographic limitations are items sold by a hardware store adjacent to the common area and items incidental to arts, crafts, and produce such as frames and pedestals.
- b. The area can be used by an existing business within the building or by “stand-alone” businesses. Multiple spaces may be created.
- c. These areas shall not be considered net leasable space for the purposes of calculating impact fees or redevelopment credits. No employee mitigation shall be required. Compliance with all zoning, building, and fire codes is mandatory.

**8. Outdoor food/beverage vending license.** Outdoor food/beverage vending shall be approved, approved with conditions or denied by the Community Development Director based on the following criteria:

- a. Location. All outdoor food/beverage vending must be on private property and may be located in the Commercial Core (CC), Commercial (C1), Neighborhood Commercial (NC), or Commercial Lodge (CL) zone districts. Outdoor Food Vending may occur on public property that is subject to an approved mall lease. Additional location criteria:
  - 1) The operation shall be in a consistent location as is practically reasonable and not intended to move on a daily basis throughout the duration of the permit.
  - 2) Normal operation, including line queues, shall not inhibit the movement of pedestrian or vehicular traffic along the public right-of-way.
  - 3) The operation shall not interfere with required emergency egress or pose a threat to public health, safety and welfare. A minimum of six (6) foot ingress/egress shall be maintained for building entrances and exits.
- b. Size. The area of outdoor food/beverage vending activities shall not exceed fifty (50) square feet per operation. The area of activity shall be defined as a counter area, equipment needed for the food vending activities (e.g. cooler with drinks, snow cone machine, popcorn machine, etc.), and the space needed by employees to work the food vending activity.
- c. Signage. Signage for outdoor food/beverage vending carts shall be exempt from those requirements found within Land Use Code Section 26.510, Signs, but not excluding *Prohibited Signs*. The total amount of signage shall be the lesser of fifty percent (50%) of the surface area of the front of the cart, or six (6) square feet. Sign(s) shall be painted on or affixed to the cart. Any logos, lettering, or signage on umbrellas or canopies counts towards this calculation. Food carts may have a sandwich board sign in accordance with the regulations found within Chapter 26.510.

- d. Environmental Health Approval. Approval of a food service plan from the Environmental Health Department is required. The area of outdoor food vending activities shall include recycling bins and a waste disposal container that shall be emptied daily and stored inside at night and when the outdoor food vending activities are not in operation. Additionally, no outdoor, open-flame char-broiling shall be permitted pursuant to Municipal Code Section 13.08.100, Restaurant Grills.
- e. Building and Fire Code Compliance. All outdoor food/beverage vending operations must comply with adopted building and fire codes. Applicants are encouraged to meet with the City's Building Department to discuss the vending cart/stand.
- f. Application Contents. An application for a food/beverage vending license shall include the standard information required in 26.304.030.B, plus the following:
  - 1) Copy of a lease or approval letter from the property owner.
  - 2) A description of the operation including days/hours of operation, types of food and beverage to be offered, a picture or drawing of the vending cart/stand, and proposed signage.
  - 3) The property survey requirement shall be waived if the applicant can demonstrate how the operation will be contained on private property.
- g. License Duration. Outdoor food/beverage vending licenses shall be valid for a one (1) year period beginning on the same the date that the Notice of Approval is signed by the Community Development Director. This one (1) year period may not be separated into non-consecutive periods.
- h. License Renewal. Outdoor food/beverage vending licenses may be renewed. Upon renewal the Community Development Director shall consider the returning vendor's past performance. This shall include, but shall not be limited to, input from the Environmental Health Department, Chief of Police, special event staff, and feedback from adjacent businesses. Unresolved complaints may result in denial of a renewal request.
- i. Business License. The vending operator must obtain a business license.
- j. Affordable Housing and Impact Fees Waived. The Community Development Director shall waive affordable housing mitigation fees and impact fees associated with outdoor food/beverage vending activities.
- k. Maintenance and public safety. Outdoor food/beverage vending activities shall not diminish the general public health, safety or welfare and shall abide by applicable City regulations, including but not limited to building codes, health safety codes, fire codes, liquor laws, sign and lighting codes, and sales tax license regulations.
- l. Abandonment. The City of Aspen may remove an abandoned food/beverage vending operation, or components thereof, in order protect public health, safety, and welfare. Costs of such remediation shall be the sole burden of the property owner.
- m. Temporary Cessation. The Community Development Director may require a temporary cancelation of operations to accommodate special events, holidays, or similar large public gatherings. Such action will be taken if it is determined that the food/beverage cart will create a public safety issue or create an excessive burden on the event activities.

- n. License Revocation. The Community Development Director may deny renewal or revoke the license and cause removal of the food/beverage vending operation if the vendor fails to operate consistent with these criteria. An outdoor food/beverage vending license shall not constitute nor be interpreted by any property owner, developer, vendor, or court as a site specific development plan entitled to vesting under Article 68 of Title 24 of the Colorado Revised Statutes or Chapter 26.308 of this Title. Licenses granted in this subsection are subject to revocation by the City Manager or Community Development Director without requiring prior notice.

(Ord. No. 14, 2007, §1; Ord. No. 6 – 2010, §3; Ord. No. 9B, 2010 §1; Ord. No. 22, 2013, §1)

**26.470.070. Minor Planning and Zoning Commission applications.**

The following types of development shall be approved, approved with conditions or denied by the Planning and Zoning Commission, pursuant to Section 26.470.110, Procedures for review, and the criteria for each type of development described below. Except as noted, all growth management applications shall comply with the general requirements of Section 26.470.050. Except as noted, the following types of growth management approvals shall be deducted from the respective development ceiling levels but shall not be deducted from the annual development allotments. Approvals apply cumulatively.

**1. Enlargement of an historic landmark for commercial, lodge or mixed-use development.** The enlargement of an historic landmark building for commercial, lodge or mixed-use development shall be approved, approved with conditions or denied by the Planning and Zoning Commission based on the following criteria:

- a. Up to four (4) employees generated by the additional commercial/lodge development shall not require the provision of affordable housing. Thirty percent (30%) of the employee generation above four (4) and up to eight (8) employees shall be mitigated through the provision of affordable housing or cash in lieu thereof. Sixty percent (60%) of the employee generation above eight (8) employees shall be mitigated through the provision of affordable housing or cash in lieu thereof.

For example: A project generating 15 employees shall require employee mitigation for a total of 5.4 employees, as follows:

First 4 employees	=	0 employee mitigation
Second 4 employees mitigated at 30%	=	1.2 employees
Remaining 7 employees mitigated at 60%	=	4.2 employees

Affordable housing shall be approved pursuant to Subsection 4, Affordable housing, of this Section and be restricted to a Category 4 rate as defined in the Aspen/Pitkin County Housing Authority Guidelines, as amended. An applicant may choose to provide mitigation units at a lower category designation.

- b. Up to one (1) free-market residence may be created pursuant to Paragraph 26.470.060.4, Minor enlargement of an historic landmark for commercial, lodge or mixed-use development. This shall be cumulative and shall include administrative GMQS approvals granted prior to the adoption of Ordinance No. 14, Series of 2007. Additional free-market units (beyond one [1]) shall be reviewed pursuant to Paragraph 26.470.080.2, New free-market residential units within a multi-family or mixed-use project.

**2. Change in use.** A change in use of an existing property, structure or portions of an existing structure between the development categories identified in Section 26.470.020 (irrespective of direction), for which a certificate of occupancy has been issued for at least two (2) years and which is intended to be reused, shall be approved, approved with conditions or denied by the Planning and Zoning Commission based on the general requirements outlined in Section 26.470.050. No more than one (1) free-market residential unit may be created through the change-in-use.

**3. Expansion of free-market residential units within a multi-family or mixed-use project.** The net livable area expansion of existing free-market residential units within a mixed-use project, or the net livable area expansion after demolition of existing free-market residential units within a multi-family project, shall be approved, approved with conditions or denied by the Planning and Zoning Commission based on the general requirements outlined in Section 26.470.050. The remodeling or expansion of existing multi-family residential dwellings shall be exempt from growth management as long as no demolition occurs, pursuant to Paragraph 26.470.040.3.

**4. Affordable housing.** The development of affordable housing deed-restricted in accordance with the Aspen/Pitkin County Housing Authority Guidelines shall be approved, approved with conditions or denied by the Planning and Zoning Commission based on the following criteria:

- a. The proposed units comply with the Guidelines of the Aspen/Pitkin County Housing Authority. A recommendation from the Aspen/Pitkin County Housing Authority shall be required for this standard. The Aspen/Pitkin County Housing Authority may choose to hold a public hearing with the Board of Directors.
- b. Affordable housing required for mitigation purposes shall be in the form of actual newly built units or buy-down units. Off-site units shall be provided within the City limits. Units outside the City limits may be accepted as mitigation by the City Council, pursuant to Paragraph 26.470.090.2. If the mitigation requirement is less than one (1) full unit, a cash-in-lieu payment may be accepted by the Planning and Zoning Commission upon a recommendation from the Aspen/Pitkin County Housing Authority. If the mitigation requirement is one (1) or more units, a cash-in-lieu payment shall require City Council approval, pursuant to Paragraph 26.470.090.3. A Certificate of Affordable Housing Credit may be used to satisfy mitigation requirements by approval of the Community Development Department Director, pursuant to Section 26.540.080 Extinguishment of the Certificate. Required affordable housing may be provided through a mix of these methods.
- c. Each unit provided shall be designed such that the finished floor level of fifty percent (50%) or more of the unit's net livable area is at or above natural or finished grade, whichever is higher. This dimensional requirement may be varied through Special Review, Pursuant to Chapter 26.430.

- d. The proposed units shall be deed-restricted as "for sale" units and transferred to qualified purchasers according to the Aspen/Pitkin County Housing Authority Guidelines. The owner may be entitled to select the first purchasers, subject to the aforementioned qualifications, with approval from the Aspen/Pitkin County Housing Authority. The deed restriction shall authorize the Aspen/Pitkin County Housing Authority or the City to own the unit and rent it to qualified renters as defined in the Affordable Housing Guidelines established by the Aspen/Pitkin County Housing Authority, as amended.

The proposed units may be rental units, including but not limited to rental units owned by an employer or nonprofit organization, if a legal instrument in a form acceptable to the City

Attorney ensures permanent affordability of the units. The City encourages affordable housing units required for lodge development to be rental units associated with the lodge operation and contributing to the long-term viability of the lodge.

Units owned by the Aspen/Pitkin County Housing Authority, the City of Aspen, Pitkin County or other similar governmental or quasi-municipal agency shall not be subject to this mandatory "for sale" provision.

- e. Non-Mitigation Affordable Housing. Affordable housing units that are not required for mitigation, but meet the requirements of Section 26.470.070.4(a-d). The owner of such non-mitigation affordable housing is eligible to receive a Certificate of Affordable Housing Credit pursuant to Chapter 26.540.

**5. Demolition or redevelopment of multi-family housing.** The City's neighborhoods have traditionally been comprised of a mix of housing types, including those affordable by its working residents. However, because of Aspen's attractiveness as a resort environment and because of the physical constraints of the upper Roaring Fork Valley, there is constant pressure for the redevelopment of dwellings currently providing resident housing for tourist and second-home use. Such redevelopment results in the displacement of individuals and families who are an integral part of the Aspen work force. Given the extremely high cost of and demand for market-rate housing, resident housing opportunities for displaced working residents, which are now minimal, will continue to decrease.

Preservation of the housing inventory and provision of dispersed housing opportunities in Aspen have been long-standing planning goals of the community. Achievement of these goals will serve to promote a socially and economically balanced community, limit the number of individuals who face a long and sometimes dangerous commute on State Highway 82, reduce the air pollution effects of commuting and prevent exclusion of working residents from the City's neighborhoods.

The Aspen Area Community Plan established a goal that affordable housing for working residents be provided by both the public and private sectors. The City and the Aspen/Pitkin County Housing Authority have provided affordable housing both within and adjacent to the City limits. The private sector has also provided affordable housing. Nevertheless, as a result of the replacement of resident housing with second homes and tourist accommodations and the steady increase in the size of the workforce required to assure the continued viability of Aspen area businesses and the City's tourist-based economy, the City has found it necessary, in concert with other regulations, to adopt limitations

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on the combining, demolition or conversion of existing multi-family housing in order to minimize the displacement of working residents, to ensure that the private sector maintains its role in the provision of resident housing and to prevent a housing shortfall from occurring.

The combining, demolition, conversion or redevelopment of multi-family housing shall be approved, approved with conditions or denied by the Planning and Zoning Commission based on compliance with the following requirements (see definition of *demolition*):

1. Requirements for combining, demolishing, converting or redeveloping free-market multi-family housing units: Only one (1) of the following two (2) options is required to be met when combining, demolishing, converting or redeveloping a free-market multi-family residential property. To ensure the continued vitality of the community and a critical mass of local working residents, no net loss of density (total number of units) between the existing development and proposed development shall be allowed.

- a. *One-hundred-percent replacement.* In the event of the demolition of free-market multi-family housing, the applicant shall have the option to construct replacement housing consisting of no less than one hundred percent (100%) of the number of units, bedrooms and net livable area demolished. The replacement units shall be deed-restricted as resident occupied affordable housing, pursuant to the Guidelines of the Aspen/Pitkin County Housing Authority. An applicant may choose to provide mitigation units at a lower category designation. Each replacement unit shall be approved pursuant to Subsection 4, Affordable housing, of this Section.

When this one-hundred-percent standard is accomplished, the remaining development on the site may be free-market residential development with no additional affordable housing mitigation required as long as there is no increase in the number of free-market residential units on the parcel. Free-market units in excess of the total number originally on the parcel shall be reviewed pursuant to Paragraph 26.470.070.3, Expansion of free-market residential units within a multi-family or mixed-use development.

- b. *Fifty-percent replacement.* In the event of the demolition of free-market multi-family housing and replacement of less than one hundred percent (100%) of the number of previous units, bedrooms or net livable area as described above, the applicant shall be required to construct affordable housing consisting of no less than fifty percent (50%) of the number of units, bedrooms and the net livable area demolished. The replacement units shall be deed-restricted as Category 4 housing, pursuant to the guidelines of the Aspen/Pitkin County Housing Authority. An applicant may choose to provide mitigation units at a lower category designation. Each replacement unit shall be approved pursuant to Paragraph 26.470.070.4, Affordable housing.

When this fifty-percent standard is accomplished, the remaining development on the site may be free-market residential development as long as additional affordable housing mitigation is provided pursuant to Paragraph 26.470.070.3, Expansion of free-market residential units within a multi-family or mixed-use project, and there is no increase in the number of free-market residential units on the parcel. Free-market units in excess of the total number originally on the parcel shall be reviewed pursuant to Paragraph

26.470.080.2, New free-market residential units within a multi-family or mixed-use project.

c. *One-hundred percent affordable housing replacement.* When one-hundred-percent of the free-market multi-family housing units are demolished and are solely replaced with deed-restricted affordable housing units on a site that are not required for mitigation purposes, including any net additional dwelling units, pursuant to Section 26.470.070.4, Affordable Housing; all of the units in the redevelopment are eligible for a Certificate of Affordable Housing Credit, pursuant to Section 26.540 Certificate of Affordable Housing Credit. Any remaining unused free market residential development rights shall be vacated.

2. Requirements for demolishing affordable multi-family housing units: In the event a project proposes to demolish or replace existing deed-restricted affordable housing units, the redevelopment may increase or decrease the number of units, bedrooms or net livable area

such that there is no decrease in the total number of employees housed by the existing units. The overall number of replacement units, unit sizes, bedrooms and category of the units shall be reviewed by the Aspen/Pitkin County Housing Authority and a recommendation forwarded to the Planning and Zoning Commission.

3. Fractional unit requirement. When the affordable housing replacement requirement of this Section involves a fraction of a unit, cash-in-lieu may be provided only upon the review and approval of the City Council, to meet the fractional requirement only, pursuant to Paragraph 26.470.090.3, Provision of required affordable housing via a cash-in-lieu payment.

4. Location requirement. Multi-family replacement units, both free-market and affordable, shall be developed on the same site on which demolition has occurred, unless the owner shall demonstrate and the Planning and Zoning Commission determines that replacement of the units on site would be in conflict with the parcel's zoning or would be an inappropriate solution due to the site's physical constraints.

When either of the above circumstances result, the owner shall replace the maximum number of units on site which the Planning and Zoning Commission determines that the site can accommodate and may replace the remaining units off site, at a location determined acceptable to the Planning and Zoning Commission. A recommendation from the Aspen/Pitkin County Housing Authority shall be considered for this standard.

5. Timing requirement. Any replacement units required to be deed-restricted as affordable housing shall be issued a certificate of occupancy, according to the Building Department, and be available for occupancy at the same time as, or prior to, any redeveloped free-market units, regardless of whether the replacement units are built on site or off site.

6. Redevelopment agreement. The applicant and the City shall enter into a redevelopment agreement that specifies the manner in which the applicant shall adhere to the approvals granted pursuant to this Section and penalties for noncompliance. The agreement shall be recorded before an application for a demolition permit may be accepted by the City.

7. Growth management allotments. The existing number of free-market residential units, prior to demolition, may be replaced exempt from growth management, provided that the units conform to the provisions of this Section. The redevelopment credits shall not be transferable separate from the property unless permitted as described above in Subparagraph d, Location requirement.
8. Exemptions. The Community Development Director shall exempt from the procedures and requirements of this Section the following types of development involving Multi-Family Housing Units. An exemption from these replacement requirements shall not exempt a development from compliance with any other provisions of this Title:

- a. The replacement of Multi-Family Housing Units after non-willful demolition such as a flood, fire, or other natural catastrophe, civil commotion, or similar event not purposefully caused by the land owner. The Community Development Director may require documentation be provided by the landowner to confirm the damage to the building was in-fact non-willful.

To be exempted, the replacement development shall be an exact replacement of the previous number of units, bedrooms, and square footage and in the same configuration. The Community Development Director may approve exceptions to this exact replacement requirement to accommodate changes necessary to meet current building codes; improve accessibility; to conform to zoning, design standards, or other regulatory requirements of the City; or, to provide other architectural or site planning improvements that have no substantial effect on the use or program of the development. (Also see Chapter 26.312 – Nonconformities.) Substantive changes to the development shall not be exempted from this Section and shall be reviewed as a willful change pursuant to the procedures and requirements of this Section.

- b. The demolition of Multi-Family Housing Units by order of a public agency including, but not limited to, the City of Aspen for reasons of preserving the life, health, safety, or general welfare of the public.
- c. The demolition, combining, conversion, replacement, or redevelopment of Multi-Family Housing Units which have been used exclusively as tourist accommodations or by non-working residents. The Community Development Director may require occupancy records, leases, affidavits, or other documentation to the satisfaction of the Director to demonstrate that the unit(s) has never housed a working resident. All other requirements of this Title shall still apply including zoning, growth management, and building codes.)
- d. The demolition, combining, conversion, replacement, or redevelopment of Multi-Family Housing Units which were illegally created (also known as “Bandit Units”). Any improvements associated with Bandit Units shall be required to conform to current requirements of this Title including zoning, growth management, and building codes. Replaced or redeveloped Bandit Units shall be deed restricted as Resident Occupied affordable housing, pursuant to the Guidelines of the Aspen/Pitkin County Housing Authority

- e. Any development action involving demising walls or floors/ceilings necessary for the normal upkeep, maintenance, or remodeling of adjacent Multi-Family Housing Units.
- f. A change order to an issued and active building permit that proposes to exceed the limitations of remodeling/demolition to rebuild portions of a structure which, in the opinion of the Community Development Director, should be rebuilt for structural, safety, accessibility, or significant energy efficiency reasons first realized during construction, which were not known and could not have been reasonably predicted prior to construction, and which cause no or minimal changes to the exterior dimensions and character of the building.

(Ord. No. 14, 2007, §1; (Ord. No. 22-2008, §1); Ord. No. 20-2009, §1; Ord. No. 6 – 2010, §4; Ord. No. 14 – 2011, §3)

**26.470.080. Major Planning and Zoning Commission applications.**

The following types of development shall be approved, approved with conditions or denied by the Planning and Zoning Commission, pursuant to Section 26.470.060, Procedures for review, above and the criteria for each type of development described below. Except as noted, all growth

management applications shall comply with the general requirements of Section 26.470.050 above. Except as noted, all Planning and Zoning Commission growth management approvals shall be deducted from the respective annual development allotments and development ceiling levels.

**1. Expansion or new commercial development.** The expansion of an existing commercial building or commercial portion of a mixed-use building or the development of a new commercial building or commercial portion of a mixed-use building shall be approved, approved with conditions or denied by the Planning and Zoning Commission based on general requirements outlined in Section 26.470.050.

**2. New free-market residential units within a multi-family or mixed-use project.** The development of new free-market residential units within a multi-family or mixed-use project shall be approved, approved with conditions or denied by the Planning and Zoning Commission based on the general requirements outlined in Section 26.470.050 above.

**3. Lodge development.** The expansion of an existing lodge or the development of a new lodge shall be approved, approved with conditions or denied by the Planning and Zoning Commission based on the following criteria:

- a. If the project contains a minimum of one (1) lodge unit per five hundred (500) square feet of lot area, the following affordable housing mitigation standards shall apply:
  - 1) Affordable housing net livable area equaling a percentage, as defined in the unit size table below, of the additional free-market residential net livable area shall be mitigated through the provision of affordable housing.
  - 2) A percentage, as defined in the table below, of the employees generated by the additional lodge, timeshare lodge, exempt timeshare units and associated commercial development,

according to Paragraph 26.470.100.A.1, Employee generation, shall be mitigated through the provision of affordable housing.

<i>Average Net Livable Area of Lodge Units Being Added to the Parcel</i>	<i>Affordable Housing Net Livable Area Required (Percentage of Free-Market Net Livable Area)</i>	<i>Percentage of Employee Generation Requiring the Provision of Mitigation</i>
600 square feet or greater	30%	60%
500 square feet	30%	40%
400 square feet	20%	20%
300 square feet or smaller	10%	10%

When the average unit size falls between the square-footage categories, the required affordable housing shall be determined by interpolating the above schedule. For

example, a lodge project with an average unit size of four hundred fifty (450) square feet shall be required to provide mitigation for thirty percent (30%) of the employees generated.

Affordable housing units provided shall be approved pursuant to Paragraph 26.470.070.4, Affordable housing, and be restricted to a maximum of a Category 4 rate as defined in the Aspen/Pitkin County Housing Authority Guidelines, as amended. An applicant may choose to provide mitigation units at a lower category designation.

- b. If the project contains less than one (1) lodge unit per five hundred (500) square feet of lot area, the following affordable housing mitigation standards shall apply:
  - 1) Affordable housing net livable area equaling thirty percent (30%) of the additional free-market residential net livable area shall be mitigated through the provision of affordable housing.
  - 2) Sixty percent (60%) of the employees generated by the additional lodge, timeshare lodge, exempt timeshare units and associated commercial development, according to Paragraph 26.470.050.A.1, Employee generation, shall be mitigated through the provision of affordable housing.

**4. Residential development – sixty percent (60%) affordable.** The development of a residential project or an addition of units to an existing residential project, in which a minimum of sixty percent (60%) of the additional units and thirty percent (30%) of the additional floor area is affordable housing deed-restricted in accordance with the Aspen/Pitkin County Housing Authority Guidelines, shall be approved, approved with conditions or denied by the Planning and Zoning Commission based on the following criteria:

- a. A minimum of sixty percent (60%) of the total additional units and thirty percent (30%) of the project's additional floor area shall be affordable housing. Multi-site projects are permitted. Affordable housing units provided shall be approved pursuant to Paragraph 26.470.070.4, Affordable housing, and shall average Category 4 rates as defined in the Aspen/Pitkin County Housing Authority Guidelines, as amended. An applicant may choose to provide mitigation units at a lower category designation.
- b. If the project consists of only one (1) free-market residence, then a minimum of one (1) affordable residence representing a minimum of thirty percent (30%) of the project's total floor area and deed-restricted as a Category 4 "for sale" unit, according to the provisions of the Aspen/Pitkin County Affordable Housing Guidelines, shall qualify.

**5. Residential development – seventy percent (70%) affordable.** The development of a residential project or an addition to an existing residential project, in which seventy percent (70%) of the project's additional units and seventy percent (70%) of the project's additional bedrooms are affordable housing deed-restricted in accordance with the Aspen/Pitkin County Housing Authority Guidelines, shall be approved, approved with conditions or denied by the Planning and Zoning Commission based on the following criteria:

- a. Seventy percent (70%) of the total additional units and total additional bedrooms shall be affordable housing. At least forty percent (40%) of the units shall average Category 4 rates as defined in the Aspen/Pitkin County Housing Authority Guidelines. The remaining thirty-percent affordable housing unit requirement may be provided as Resident Occupied (RO) units as defined in the Aspen/Pitkin County Housing Authority Guidelines. Multi-site projects are permitted. Affordable housing units provided shall be approved pursuant to Paragraph 26.470.070.4, Affordable housing. An applicant may choose to provide mitigation units at a lower category designation.
- b. If the project consists of one (1) free-market residence, then the provision of one (1) RO residence and one (1) category residence shall be considered meeting the seventy-percent unit standard. If the project consists of two (2) free-market residences, then the provision of two (2) RO residences and two (2) category residences shall qualify.

(Ord. No. 14, 2007, §1)

**Sec. 26.470.090. City Council applications.**

The following types of development shall be approved, approved with conditions or denied by the City Council, pursuant to Section 26.470.110, Procedures for review, and the criteria for each type of development described below. Except as noted, all growth management applications shall comply with the general requirements of Section 26.470.050. Except as noted, all City Council growth management approvals shall be deducted from the respective annual development allotments and development ceiling levels.

**1. Multi-year development allotment.** The City Council, upon a recommendation from the Planning and Zoning Commission, shall approve, approve with conditions or deny a multi-year development allotment request based on the following criteria:

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- a. The proposed development is considered "exceptional" considering the following criteria: (Note: A project need not meet all of the following criteria, only enough to be sufficiently considered "exceptional.")
  - 1) The proposal exceeds the minimum affordable housing required for a standard project.
  - 2) The proposed project represents an excellent historic preservation accomplishment. A recommendation from the Historic Preservation Officer shall be considered for this standard.
  - 3) The proposal furthers affordable housing goals by providing units established as priority through the current Aspen/Pitkin County Housing Authority Guidelines and provides a desirable mix of affordable unit types, economic levels and lifestyles (e.g., singles, seniors, families, etc.). A recommendation from the Aspen/Pitkin County Housing Authority shall be considered for this standard.
  - 4) The proposal minimizes impacts on public infrastructure by incorporating innovative, energy-saving techniques.
  - 5) The proposal minimizes construction impacts to the extent practicable both during and after construction.
  - 6) The proposal maximizes potential public transit usage and minimizes reliance on the automobile.
  - 7) The proposal exceeds minimum requirements of the Efficient Building Code or for LEEDS certification, as applicable. A recommendation from the Building Department shall be considered for this standard.
  - 8) The proposal promotes sustainability of the local economy.
  - 9) The proposal represents a desirable site plan and an architectural design solution.
  - 10) The proposed development is compatible with the character of the existing land uses in the surrounding area and the purpose of the underlying zone district.
- b. The project complies with all other provisions of the Land Use Code and has obtained all necessary approvals from the Historic Preservation Commission, the Planning and Zoning Commission and the City Council, as applicable.
- c. The Community Development Director shall be directed to reduce the applicable annual development allotments, as provided in Subsection 26.470.030.D, in subsequent years as determined appropriate by the City Council.

**2. Provision of required affordable housing units outside City limits.** The provision of affordable housing, as required by Chapter 26.470, Growth Management, with units to be located outside the City boundary, upon a recommendation from the Planning and Zoning Commission, shall be approved, approved with conditions or denied by the City Council based on the following criteria:

- a. The off-site housing is within the Aspen Urban Growth Boundary.
- b. The proposal furthers affordable housing goals by providing units established as priority through the current Aspen/Pitkin County Housing Authority Guidelines and provides a

desirable mix of affordable unit types, economic levels and lifestyles (e.g., singles, seniors and families). A recommendation from the Aspen/Pitkin County Housing Authority shall be considered for this standard.

- c. The applicant has received all necessary approvals from the governing body with jurisdiction of the off-site parcel.

City Council may accept any percentage of a project's total affordable housing mitigation to be provided through units outside the City's jurisdictional limits, including all or none.

**3. Provision of required affordable housing via a cash-in-lieu payment.** The provision of affordable housing equal to or in excess of one (1) residential unit, as required by Chapter 26.470, Growth Management, via a cash-in-lieu payment shall be approved, approved with conditions or denied by the City Council based on the following criteria:

- a. The provision of affordable housing on site (on the same site as the project requiring such affordable housing) is impractical given the physical or legal parameters of the development or of the site or would be inconsistent with the character of the neighborhood in which the project is being developed.
- b. The applicant has made a reasonable good-faith effort in pursuit of providing the required affordable housing off site through construction of new dwelling units or the deed restriction of existing dwelling units to affordable housing status.
- c. The proposal furthers affordable housing goals, and the cash-in-lieu payment will result in the near-term production of affordable housing units. A recommendation from the Aspen/Pitkin County Housing Authority shall be considered for this standard.

The City Council may accept any percentage of a project's total affordable housing mitigation to be provided through a cash-in-lieu payment, including all or none. Unless otherwise required by this Title, the provision of affordable housing via a cash-in-lieu payment for a fraction of a dwelling unit shall not require City Council approval.

**4. Essential public facilities.** The development of an essential public facility, upon a recommendation from the Planning and Zoning Commission, shall be approved, approved with conditions or denied by the City Council based on the following criteria:

- a. The Community Development Director has determined the primary use and/or structure to be an essential public facility (see definition). Accessory uses may also be part of an essential public facility project.
- b. Upon a recommendation from the Community Development Director, the City Council may assess, waive or partially waive affordable housing mitigation requirements as is deemed appropriate and warranted for the purpose of promoting civic uses and in consideration of broader community goals. The employee generation rates may be used as a guideline, but each operation shall be analyzed for its unique employee needs, pursuant to Section 26.470.100, Calculations.

**5. Preservation of significant open space parcels.** On a project-specific basis and upon a recommendation from the Planning and Zoning Commission, the City Council shall approve, approve with conditions or deny development of one (1) or more residences in exchange for the permanent preservation of one (1) or more parcels considered significant for the preservation of open space. The preservation parcel may lie outside the City jurisdiction. The exempted residential units shall be deducted from the respective annual development allotment established pursuant to Subsection 26.470.030.D and the development ceiling levels established pursuant to Subsection 26.470.030.C. The exempted residential units shall provide affordable housing mitigation, pursuant to the requirements of Paragraph 26.470.060.2. This exemption shall only apply to the specific residences approved through this provision. Other residences within a project not specifically exempted through this provision shall require growth management approvals pursuant to this Chapter. The criteria for determining the significance of a preservation parcel and the associated development rights to be granted may include:

- a. The strategic nature of the preservation parcel to facilitate park, trails or open space objectives of the City. This shall include a recommendation from the City of Aspen Open Space Acquisition Board.
- b. Identification of the preservation parcel as "private land with preservation value" in the Aspen Area Community Plan or as a parcel desirable for preservation in any other adopted master plans of the City.
- c. Proximity and/or visibility of the preservation parcel to the City.
- d. The development rights of the preservation parcel, including the allowed uses and intensities and impacts associated with those uses if developed to the maximum.
- e. The proposed location of the parcel being granted growth management approvals and the compatibility of the resulting uses and intensities of development with the surrounding neighborhood, including the impacts from the specified method of providing affordable housing mitigation. The new residences shall be restricted to the underlying zoning restrictions of the property on which they lie unless additional restrictions are necessary in order to meet this criterion.
- f. The preservation parcel shall be encumbered with a legal instrument, acceptable to the City Attorney, which sterilizes the parcel from further development in perpetuity.

(Ord. No. 14, 2007, §1)

**26.470.100. Calculations.**

**A. Employee generation and mitigation.** Whenever employee housing or cash-in-lieu is required to mitigate for employees generated by a development, there shall be an analysis and credit for employee generation of the existing project, prior to redevelopment, and an employee generation analysis of the proposed development. The employee mitigation requirement shall be based upon the incremental employee generation difference between the existing development and the proposed development.

1. Employee generation. The following employee generation rates are the result of the Employee Generation Study, an analysis sponsored by the City during the fall and winter of 2012 considering the actual employment requirements of over one hundred (100) Aspen businesses. This study is available at the Community Development Department. Employee generation is quantified as full-time equivalents (FTEs) per one thousand (1,000) square feet of net leasable space or per lodge bedroom.

<i>Zone District</i>	<i>Employees Generated per 1,000 Square Feet of Net Leasable Space</i>
Commercial Core (CC) Commercial (C-1) Neighborhood Commercial (NC) Commercial Lodge (CL) commercial space Lodge (L) commercial space Lodge Preservation (LP) commercial space Lodge Overlay (LO) commercial space Ski Base (SKI) commercial space	4.7
Mixed-Use (MU)	3.6
Service Commercial Industrial (S/C/I)	3.9
Public <sup>1</sup>	5.1
Lodge Preservation (LP) lodge units	.3 per lodging bedroom
Lodge (L), Commercial Lodge (CL), Ski Base (SKI) and other zone district lodge units	.6 per lodging bedroom
<sup>1</sup> For the Public Zone, the study evaluated only office-type public uses, and this number should not be considered typical for other non-office public facilities. Hence, each Essential Public Facility proposal shall be evaluated for actual employee generation.	

This Employee Generation Rate Schedule shall be used to determine employee generation of projects within the City. Each use within a mixed-use building shall require a separate calculation to be added to the total for the project. For commercial net leasable space within basement or upper floors, the rates quoted above shall be reduced by twenty-five percent (25%) for the purpose of calculating total employee generation. This reduction shall not apply to lodge units.

For lodging projects with flexible unit configurations, also known as "lock-off units," each separate "key" or rentable division shall constitute a unit for the purposes of this Section. Timeshare units and exempt timeshare units are considered lodging projects for the purposes of determining employee generation.

Applicants may request an employee generation review with the Planning and Zoning Commission, pursuant to Section 26.470.110, Growth management review procedures, and according to the following criteria. All essential public facilities shall be reviewed by the Planning and Zoning Commission to determine employee generation. In establishing employee generation, the Planning and Zoning Commission shall consider the following:

- a) The expected employee generation of the use considering the employment generation pattern of the use or of a similar use within the City or a similar resort economy.
  - b) Any unique employment characteristics of the operation.
  - c) The extent to which employees of various uses within a mixed-use building or of a related off-site operation will overlap or serve multiple functions.
  - d) A proposed restriction requiring full employee generation mitigation upon vacation of the type of business acceptable to the Planning and Zoning Commission.
  - e) Any proposed follow-up analyses of the project (e.g., an audit) to confirm actual employee generation.
  - f) For lodge projects only: An efficiency or reduction in the number of employees required for the lodging component of the project may, at the discretion of the Commission as a means of incentivizing a lodge project, be applied as a credit towards the mitigation requirement of the free-market residential component of the project. Any approved reduction shall require an audit to determine actual employee generation after two (2) complete years of operation of the lodge.
2. Employees housed. Whenever a project provides residential units on or off site to satisfy affordable housing requirements of this Section, the following schedule shall be used to determine the number of employees housed by such units:

<i>Unit Type</i>	<i>Employees Housed</i>
Studio	1.25
One-bedroom	1.75
Two-bedroom	2.25
Three-bedroom or larger	3.00, plus .5 per each additional bedroom
Dormitory	1.00 employee per 150 square feet of net livable space

3. Employee housing cash-in-lieu payment. Whenever a project provides employee housing via a cash-in-lieu payment, in part or in total, the amount of the payment shall be in accordance with the applicable provisions of the Aspen/Pitkin County Housing Authority Guidelines, as amended.
4. Employee/square footage conversion. Whenever an affordable housing mitigation requirement is required to be converted between a number-of-employees requirement and a

square-footage requirement, regardless of direction, the following conversion factor shall be used: 1 employee = 400 square feet of net livable area.

5. Accessory dwelling units as mitigation units. Accessory dwelling units, approved pursuant to Chapter 26.520 and which are deed-restricted as "for sale" category housing and transferred to a qualified purchaser according to the provisions of the Aspen/Pitkin County Housing Authority, shall be considered mitigation units and attributed to a project's affordable housing provision. ADUs which are not deed-restricted as category units and are not transferred to qualified purchasers shall not be considered mitigation units and shall not be attributed to a project's affordable housing provision.
6. No combination of multiple affordable housing requirements allowed. Whenever multiple affordable housing mitigation requirements are required, each housing requirement shall be met. For example: A mixed-use project may require two (2) affordable housing units to mitigate an increase in commercial employee generation and two (2) affordable housing units to mitigate free-market residential development. In this case, four (4) affordable housing units are required.

(Ord. No. 14, 2007, §1; Ord. No. 4, 2013, §1)

#### **26.470.110. Growth management review procedures.**

##### **A. General.**

1. Number of development applications. No more than one (1) application for growth management allotments on any one (1) parcel shall be considered concurrently. To submit a new application, any active growth management application for the same property must be vacated.
2. Number of growth management allocations. No more than one (1) project shall be entitled to growth management allotments on any one (1) parcel concurrently. In order to entitle a different project on the same parcel, existing growth allotments must be vacated. (Also see Section 26.470.140, Amendment of a growth management development order.)
3. No automatic "resubmission" of growth management applications. Applications shall only be eligible for growth allotments within the growth management session in which they are submitted and shall not automatically become eligible for allotments in future sessions or future years. Applications must be resubmitted in order to be eligible for allotments in the next session or next year, as applicable. Resubmission shall effect a new submission date.
4. HPC conceptual approval required. Whenever Historic Preservation Commission approval is needed for a proposed project, the Historic Preservation Commission's conceptual approval must be secured prior to submitting an application for a growth management allotment. Conceptual HPC applications may not be combined with growth management review.
5. Planned Development review. Projects requiring approval of a Project Review or Detailed Review, pursuant to Chapter 26.445, may be reviewed concurrently with review for growth management, pursuant to Paragraph 26.304.060.B.1.

6. Conceptual Commercial Design Review. Commercial, lodging and mixed-use projects requiring conceptual commercial design review approval, pursuant to Chapter 26.412, may be reviewed concurrently with review for growth management, pursuant to Paragraph 26.304.060.B.1.
7. Subdivision and other required land use reviews. Subdivision approval and other land use review approvals, as applicable, shall be required and may be reviewed concurrently with review for growth management, pursuant to Paragraph 26.304.060.B.1.
8. No partial approvals. In order for a project to gain approval, sufficient allotments for every element of the project must be obtained. In circumstances where a proposal requires allotments be granted for various types of uses within the project, the reviewing body shall not grant approval unless allotments for every type of use are available. For example: If a proposal requires that allotments be granted for free-market residential units, affordable housing units and commercial space, and there are no remaining allotments for free-market residential for the year, the project shall be denied. No partial approvals shall be granted. In the above example, the project shall be denied in total and not granted allotments for the affordable housing units or the commercial space. Also see multi-year allotments below.
9. Nonassignability of growth allotments. Development allotments obtained pursuant to this Chapter shall not be assignable or transferable independent of the conveyance of the real property on which the development allotment has been approved.
10. Multi-year growth allotments. Projects requiring development allotments in excess of the annual allotment may be granted a multi-year allotment, pursuant to Subsection 26.470.090.1, or may gain allotments over a multi-year period, provided that the allotment gained in any one (1) year shall not exceed the annual allotment.

For example, a project requesting fifty thousand (50,000) square feet of commercial space may request either a one-time, multi-year allotment of fifty thousand (50,000) square feet or may request approval in the first year for twenty-five thousand (25,000) square feet and request approval for the remaining twenty-five thousand (25,000) square feet in a subsequent year.

Gaining allotments in any year shall not guarantee that allotments will be granted in later years for the same project. Projects requiring a multi-year allotment shall not be granted a development order until all elements of the project have been granted allotments. If the design of a project changes prior to receiving the full allotment needed for a development order, the reviewing body shall determine if the changes are acceptable or if the change invalidates the previously granted allotment and requires a resubmission for allotments. Applications for each year's allotment need to be submitted, and there shall be no preferential status given to a project granted partial allotment.

Projects that do not require allotments in excess of the annual allotment shall not be eligible to gain partial allotments. See No partial approvals above.

**B. Application review procedures – administrative review applications, minor P&Z review applications, and City Council review applications.**

1. Application submission dates. An application for growth management allocation that qualifies for administrative review, minor Planning and Zoning Commission review or City Council review may be submitted to the Community Development Director on any date of the year.
2. Administrative applications. Growth management applications for Community Development Director review shall be submitted to the Community Development Director who shall, based on the applicable standards identified in Section 26.470.060, approve, approve with conditions or disapprove the application.
3. Minor Planning and Zoning Commission applications. Growth management applications for minor Planning and Zoning Commission review shall be reviewed by the Community Development Director, who shall forward a recommendation to the Planning and Zoning Commission, based on the applicable standards identified in Section 26.470.070, that the application be approved, approved with conditions or disapproved.

The Planning and Zoning Commission shall review the application according to the applicable standards, consider the recommendation of the Community Development Director and, during a public hearing, adopt a resolution approving, approving with conditions or disapproving the application. Notice of the hearing shall be by publication, posting and mailing, pursuant to Subsection 26.304.060.E.

4. City Council applications. Growth management review applications for City Council review shall be submitted to the Community Development Director, who shall forward a recommendation to the Planning and Zoning Commission, based on the applicable standards identified in Section 26.470.090, that the application be approved, approved with conditions or disapproved.

The Planning and Zoning Commission shall review the application during a public hearing according to the applicable standards and, by resolution, recommend to City Council that the application be approved, approved with conditions or disapproved. Notice of the hearing shall be by publication, posting and mailing, pursuant to Subsection 26.304.060.E.

City Council shall review the application according to the applicable standards, consider the recommendation of the Planning and Zoning Commission, the recommendation of the Community Development Director and, during a public hearing, adopt an ordinance approving, approving with conditions or disapproving the application. Notice of the hearing shall be by publication, posting and mailing, pursuant to Subsection 26.304.060.E.

City Council review applications that require major Planning and Zoning Commission review shall be reviewed pursuant to the process outlined in Subsection 26.470.110.C.

### **C. Application review procedures – major Planning and Zoning Commission review.**

1. Application submission dates. An application for growth management allocation that requires major Planning and Zoning Commission review may only be submitted to the Community Development Director on one (1) of the two (2) application submittal dates, February 15 or August 15. When the application submittal date falls on a Saturday, Sunday or legal holiday,

the next business day shall be the application submittal date. Applications shall only be submitted within the growth management year in which allocations are requested.

2. Community objectives scoring and establishment of the application review order. Applications for major Planning and Zoning Commission growth management review shall be submitted to the Community Development Director on the submittal dates listed above. The Community Development Director shall review the applications for completeness and assign a community objectives score to each application, pursuant to Section 26.470.120, Community objectives scoring criteria. The assigned scores shall be used to establish the review order and sequence to which applications may be granted growth management allocations.

Applications for major Planning and Zoning Commission growth management review failing to receive a minimum threshold score in any one (1) of the community objectives scoring classifications, as defined in Section 26.470.120, shall be denied by the Community Development Director.

The project with the highest community objectives score shall be reviewed first and shall be the first project eligible for growth management allocations. The second-highest-scoring project shall be reviewed second and shall be the second project eligible for growth management allocations, and so forth. Applications shall maintain this assigned order and allocations shall be granted accordingly. After submission, applications may be modified but only in a manner that does not reduce the project's total community objectives score.

If projects obtain identical scores, the project with the highest score for Criterion #1 shall be considered to have the higher score. If projects with identical scores also have identical scores for Criterion #1, a random drawing shall be held to determine the order in which the projects shall proceed.

3. Application review. After the community objectives scoring is complete and the review order is established, growth management applications for major Planning and Zoning Commission review shall be reviewed by the Community Development Director, who shall forward a recommendation to the Planning and Zoning Commission, based on the applicable standards identified in Section 26.470.070, that the application be approved, approved with conditions or disapproved.

The Planning and Zoning Commission shall review the application and the recommendation of the Community Development Director during a public hearing according to the applicable standards and, by resolution, approve, approve with conditions or disapprove the application. Notice of the hearing shall be by publication, posting and mailing, pursuant to Subsection 26.304.060.E.

**D. Allocation procedure.** Following approval or approval with conditions, pursuant to the above procedures for review, the Community Development Director shall issue a development order pursuant to Section 26.304.070, Development orders. Those applicants having received allotments may proceed to apply for any further development approvals required by this Title or any other regulations of the City.

**E. Expiration of growth management allotments.** Growth management allotments granted pursuant to this Chapter shall expire on the day after the third anniversary of the effective date of the development order, pursuant to the terms and limitations of Section 26.304.070. Expired allotments shall not be considered valid, and the applicant shall be required to re-apply for growth management approval. Expired allotments may be added to the next year's available allotments at the discretion of the City Council, pursuant to Subsection 26.470.030.E.

**F. Application contents.** Applications for growth management shall include the following:

1. The general application information required in Common development review procedures, Chapter 26.304.
2. A site-improvement survey depicting:
  - a) Existing natural and man-made site features.
  - b) All legal easements and restrictions.
  - c) All requirements for improvement surveys outlined in the current City Engineering Department regulations.
3. A description of the project and the number and type of the requested growth management allotments.
4. A detailed description and site plan of the proposed development, including proposed land uses, densities, natural features, traffic and pedestrian circulation, off-street parking, open space areas, infrastructure improvements, site drainage and any associated off-site improvements.
5. A description of the proposed affordable housing and how it provides adequate mitigation for the project and conforms to the Aspen/Pitkin County Housing Authority Guidelines.
6. A statement as to how the application should be considered "exceptional" if multi-year allotments are being requested.
7. A statement specifying the public facilities that will be needed to accommodate the proposed development, proposed infrastructure improvements and the specific assurances that will be made to ensure that the public facilities will be available to accommodate the proposed development.
8. A written response to each of the review criteria for the particular review requested.
9. Copies of required approvals from the Planning and Zoning Commission, Historic Preservation Commission and the City Council, as necessary.
10. As applicable, a recommended community objective score according to the scoring criteria applicable to the type of development as outlined in Section 26.470.120 and a brief explanation supporting the recommended score.

(Ord. No. 14, 2007, §1; Ord. No. 36, 2013, §5)

**26.470.120. Community objective scoring criteria.**

Growth management allocation applications for major Planning and Zoning Commission review shall be reviewed in the order of their community objectives score with the highest-scoring project first, the second-highest-scoring project second, and so forth. The following scoring criteria have been established in order to define the City's expectation for new development and to reward projects that achieve identified community goals.

Projects failing to receive a minimum threshold score in any one (1) of the scoring classifications, as the term is defined in Section 26.470.120, shall be denied by the Community Development Director. The following point system shall be used to assign a community objectives score to each project. The score shall be a summation of the individual scores from each of the following categories. Scores shall be calculated to the nearest integer.

**A. Community Objectives Scoring Criterion #1 – Workforce Housing.** The community desires a balance between Aspen – the Community and Aspen – the Resort. Both the social fabric of the community and the long-term economic well-being of the resort are reliant on a resource of housing opportunities for local working residents. The Community Development Director shall assign a score to each project for this objective based on the following point schedule:

1. Points for the number of employees housed. One (1) point shall be assigned for each one percent (1%) by which a proposal exceeds the minimum affordable housing requirements of this Chapter, as applicable to the particular type of development, with actual housing units on site or off site. Depending upon the type of development, affordable housing requirements are either expressed as a number of units, number of employees to be housed or square footage of housing to be provided, and the score shall be a reflection of the applicable requirement. In circumstances where a project's affordable housing requirements are a combination of requirements, the average percent by which a proposal exceeds each requirement shall be used. In no case shall cash-in-lieu be used to obtain points for this criterion.
2. Points for the size of affordable housing units. One (1) point shall be assigned for each one percent (1%) by which proposed affordable housing units exceed the minimum square footage requirements of the Aspen/Pitkin County Housing Authority Guidelines. In no case shall cash-in-lieu be used to obtain points for this criterion.
3. Minimum threshold requirement. Proposals with less than the minimum required affordable housing requirement, as required pursuant to this Chapter according to the particular type of development, shall receive a failing score for this criterion and shall be denied by the Community Development Director. The minimum requirement may be a combination of on-site units, off-site units or cash in lieu thereof, as such methods are permitted by this Chapter.

**Table 26.470.1 – Examples for scoring projects on workforce housing criterion:**

	Required number of employees to be housed by development	Proposed number of employees to be housed by development with actual units	Percentage by which proposed units exceed the minimum size requirements	Score for Criterion # 1	Comments
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	Required number of employees to be housed by development	Proposed number of employees to be housed by development with actual units	Percentage by which proposed units exceed the minimum size requirements	Score for Criterion # 1	Comments
<b>Project A</b>	<b>12</b>	<b>15</b>	<b>0</b>	<b>25</b>	This project proposes to house 3 more employees than the 12 required. $3/12 = 25\%$ = a score of 25
<b>Project B</b>	<b>12</b>	<b>12</b>	<b>20</b>	<b>20</b>	This project proposes to house the minimum number of employees, but with units that are 20% larger than required. 20% larger = a score of 20
<b>Project C</b>	<b>8</b>	<b>12</b>	<b>15</b>	<b>65</b>	This project proposes to house 4 more employees than the 8 required. And the units are also 15% larger than required. $4/8 = 50\% + 15\%$ = a score of 65
<b>Project D</b>	<b>5</b>	<b>6</b>	<b>30</b>	<b>50</b>	This project proposes to house 1 more employee than the 5 required. And the units are also 30% larger than required. $1/5 = 20\% + 30\%$ = a score of 50

**B. Community Objective Scoring Criterion #2 – Energy Conservation.** The community desires development that minimizes its impact on the natural environment and to maintain a leadership role in energy conservation and production strategies, efficient building techniques and use of materials. The Community Development Director shall assign a score to each project for this objective based on the following point schedule and the most recent version of the Leadership in Energy and Environmental Design (LEED) standards of the US Green Building Council:

<b>Points for LEED Certified Projects</b>	
LEED Bronze level projects	= 10 points
LEED Silver level projects	= 20 points

Points for LEED Certified Projects			
LEED Gold level projects	=	30	points
LEED Platinum level projects	=	50	points

In order for proposals to obtain points for this criterion, an applicant must demonstrate credible progress towards certification as determined sufficient by the Community Development Director. It shall not be considered sufficient to merely state a certification level without evidence supporting progress towards actual certification by the US Green Building Council.

In no event shall a project be relieved of the adopted energy efficiency requirements of the City that are applicable to all development projects.

**C. Community Objective Scoring Criterion #3 – Small Lodges.** The City's small lodges provide a lodging experience that is becoming increasingly unique in mountain resorts. Refurbishment, expansion and redevelopment of small lodges and lodges with small units are increasingly challenging. In order to sustain the continued existence of these lodges, the following points are available to projects in the Lodge Preservation Overlay (LP) Zone District and projects with lodge units that average four hundred (400) square feet or less. The Community Development Director shall assign a score to each lodging project for this objective based on the following point schedule:

1. Points for Lodge Preservation Projects. Fifteen (15) points shall be assigned to lodging projects located in the Lodge Preservation Overlay (LP) Zone District. For projects in the LP District that do not have a lodging component, no points shall be assigned.
2. Points for Small Lodging Units. Fifteen (15) points shall be assigned for lodging projects with lodge units that average four hundred (400) square feet or less. For lodging projects that provide lodging units averaging greater than four hundred (400) square feet, no points shall be assigned.

For projects that qualify for both categories of points (a lodging project in the LP District with lodge units averaging four hundred [400] square feet or less), thirty (30) points shall be assigned.

**D. Community Objective Scoring Criterion #4 – Community Commercial.** This Section is reserved for a future community objective.

(Ord. No. 14, 2007, §1)

**26.470.130. Reconstruction limitations.**

**A.** An applicant may propose to demolish and then delay the reconstruction of existing development for a period not to exceed one (1) year. To comply with this limitation and maintain the reconstruction credit, an applicant must submit a complete building permit application for reconstruction on or before the one-year anniversary of the issuance date of the demolition permit.

The City Council may extend this deadline upon demonstration of good cause. This time limitation shall not apply to the reconstruction of single-family and duplex development.

**B.** Applicants shall verify existing conditions prior to demolition with the City Zoning Officer in order to document reconstruction rights. An applicant's failure to accurately document existing conditions prior to demolition and verify reconstruction rights with the City Zoning Officer may result in a loss of some or all of the reconstruction rights.

**C.** Reconstructed buildings shall comply with applicable requirements of the Land Use Code, including but not limited to Chapter 26.312, Nonconformities, and Chapter 26.710, Zone Districts.

**D.** Reconstruction rights shall be limited to reconstruction on the same parcel or on an adjacent parcel under the same ownership.

**E.** Residential redevelopment credits may be converted to lodge redevelopment credits by the Community Development Director. The conversion rate shall be three (3) lodge units per each one (1) residential unit.

(Ord. No. 14, 2007, §1)

**26.470.140. Amendment of a growth management development order.**

**A. Insubstantial amendment.** An insubstantial amendment to an approved growth management development order may be authorized by the Community Development Director if:

1. The change conforms to all other provisions of the Land Use Code and does not exceed approved variations to the residential design standards, require an amendment to the commercial design review approval or such variations or amendments have been approved.
2. The change does not alter the number, size, type or deed restriction of the proposed affordable housing units, or those changes have been accepted by the Aspen/Pitkin County Housing Authority.
3. The change is limited to technical or engineering considerations discovered prior to or during actual development that could not reasonably be anticipated during the review process or any other minor change that the Community Development Director finds has no substantial effect on the conditions and representations made during the original project review.

**B. Substantial amendment.** All other amendments to an approved growth management development order shall be reviewed pursuant to the terms and procedures of this Chapter. Allotments granted shall remain valid and applied to the amended application, provided that the amendment application is submitted prior to the expiration of vested rights. Amendment applications requiring additional allotments or allotments for different uses shall obtain those allotments pursuant to the procedures of this Chapter.

(Ord. No. 14, 2007, §1)

**26.470.150. Appeals.**

City of Aspen Land Use Code

**Part 400 – GMQS**

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**A. Appeals of community objectives scoring.** An applicant aggrieved by the community objectives score assigned to its project by the Community Development Director may appeal the decision to the Planning and Zoning Commission, pursuant to the procedures and standards of Chapter 26.316, Appeals. The Planning and Zoning Commission may uphold the scoring, remand the scoring to the Community Development Director for rescoring with or without direction on particular scores or may choose to rescore the project. The Planning and Zoning Commission decision shall be the final administrative action on the matter.

Upon appeal of any project's scoring, the Community Development Director shall not process any application for growth management allotment within the same development category until the appeal is concluded and the final review order is established.

**B. Appeal of adverse determination by Community Development Director.** An appeal made by an applicant aggrieved by a determination made by the Community Development Director on an application for administrative review shall be to the Planning and Zoning Commission. The appeal procedures set forth at Chapter 26.316 shall apply. The Planning and Zoning Commission may reverse, affirm or modify the decision or determination of the Community Development Director based upon the application submitted to the Community Development Director and the record established by the Director's review. The decision of the Planning and Zoning Commission shall constitute the final administrative action on the matter.

**C. Appeal of adverse determination by Planning and Zoning Commission.** An appeal made by an applicant aggrieved by a determination made by the Planning and Zoning Commission on an application for Planning and Zoning Commission review shall be to the City Council. The appeal procedures set forth at Chapter 26.316 shall apply. The City Council may reverse, affirm or modify the decision or determination of the Planning and Zoning Commission based upon the application submitted to the Planning and Zoning Commission and the record established by the Commission's review. The decision of the City Council shall constitute the final administrative action on the matter.

**D. Insufficient development allotments.** Any property owner within the City who is prevented from developing a property because that year's development allotments have been entirely allocated may appeal to the City Council for development approval. An application requesting allotments must first be denied due to lack of necessary allotments. The appeal procedures set forth at Chapter 26.316 shall apply. The City Council may take any such action determined necessary, including but not limited to making a one-time increase of the annual development allotment sufficient to accommodate the application.

(Ord. No. 14, 2007, §1)



**Chapter 26.480**  
**SUBDIVISION**

Sections:

Sec. 26.480.010	Purpose.
Sec. 26.480.020	Applicability, prohibitions and lot merger.
Sec. 26.480.030	Procedures for review.
Sec. 26.480.040	General subdivision review standards.
Sec. 26.480.050	Administrative subdivisions.
Sec. 26.480.060	Minor subdivisions.
Sec. 26.480.070	Major subdivisions.
Sec. 26.480.080	Subdivision application contents.
Sec. 26.480.090	Subdivision amendments.
Sec. 26.480.100	Appeals.

**26.480.010. Purpose.**

The purpose of this Chapter is to: (a) assist in the orderly and efficient development of the City; (b) ensure the proper distribution of development; (c) encourage the well-planned subdivision of land by establishing standards for the design of a subdivision; (d) safeguard the interests of the public and the subdivider and provide consumer protection for the purchaser; (e) provide procedures so that development encourages the preservation of important and unique natural or scenic features, including but not limited to mature trees or indigenous vegetation, bluffs, hillsides or similar geologic features or edges of rivers and other bodies of water; and (f) promote and protect the health, safety and general welfare of the residents of the City of Aspen.

(Ord. No. 37-2013, § 2)

**26.480.020. Applicability, prohibitions and lot merger.**

**A. Applicability** This Chapter shall apply to the division or aggregation of real estate into lots, parcels, tracts, or other physical units or legal interests of land, for the purpose of transferring or enabling transfer of deeded interests in real estate including fee simple interest, fractional fee interest, timeshare or time-span estate, condominium interest, interest in a common interest community, or similar forms of real estate interest.

This Chapter shall apply to the creation, alteration, realignment, amendment, vacation, or elimination of any lot line, property boundary, subdivided real estate interest, or other physical or legal definition of real estate, established by or reflected on a plat or deed recorded in the office of the Pitkin County Clerk and Recorder.

This Chapter shall apply to the dedication, boundary alteration, realignment, or any partial or whole vacation of a Street, Alley, or other vehicular right-of-way.

This Chapter shall apply to creating, amending, aggregating, or vacating separate deeded interests in a property including fractional fee interest, timeshare or time-span estate, condominium interest, interest in a common interest community, or similar forms of real estate interest.

Unless undertaken for the purpose of evading the procedures and requirements of Subdivision, this Chapter does not apply to the following activities:

1. A division of land created by judicial proceeding or order of a court of competent jurisdiction in this State, or by operation of law, provided that the city is given notice of and an opportunity to participate in the judicial proceeding prior to the entry of any such court order.
2. A division of land reflected or created by a lien, mortgage, deed of trust or any other security instrument.
3. A division of land created or reflected in a security or unit of interest in any investment trust regulated under the laws of Colorado, or any other interest in an investment entity.
4. A division of land to create cemetery plots.
5. A division of land creating an interest in oil, gas, minerals or water which is severed from the surface ownership or real property.
6. A division of land created by the acquisition of an interest in land by reason of marriage or blood relationship, joint-tenancy, or tenants-in-common. Any such interest is for the purposes of this Title a single interest.
7. The creation of an undivided leasehold interest in an entire parcel of land.
8. The creation of a leasehold interest in a portion of a parcel for a period of forty (40) years or less.
9. The creation of or transfer of a Transferable Development Right, pursuant to Chapter 26.535
10. The creation of or transfer of a Certificate of Affordable Housing Credit, pursuant to Chapter 26.540.
11. Any development or redevelopment which does not alter the physical boundaries or legal description of a parcel.
12. The creation, dedication, alteration, realignment, or vacation of non-vehicular easements such as utility or ditch easements, pedestrian or recreational trail easements, open space or similar use restrictions or easements, or other similar easements unrelated to vehicular access.
13. The creation, dedication, alteration, realignment, or vacation of a shared driveway easement when all affected parcels adjoin a public right-of-way.

## **B. Prohibitions.**

1. It shall be unlawful for any person to develop, lease, or sell any parcel of land, including any separate interest in a parcel of land (including leasehold interest or condominium interest) in

City of Aspen Land Use Code

**Part 400 – Subdivision**

**Page 2**

the City until it has been subdivided and a plat recorded in the office of the County Clerk and Recorder pursuant to the terms of this Chapter, except as otherwise provided by this Chapter

A written agreement to sell or lease an interest in a parcel of land which is expressly conditioned upon full compliance by the seller with this Chapter within a specified period of time and which expressly recites that seller's failure to satisfy such condition within said period of time shall terminate the agreement and entitle the buyer to the prompt return of all consideration paid by the buyer, shall not constitute a violation of this Chapter.

2. Unless otherwise merged by operation of the lot merger provision below, merging or combining lots or parcels into one lot shall require subdivision approval pursuant to this Chapter. Lots shall not be considered merged, or otherwise legally combined, by a structure spanning the property boundary and shall continue to be separate ownership interests unless combined pursuant to this Chapter.
3. No interest in a parcel of land shall be transferred, conveyed, sold, subdivided, acquired, separated from or combined with another parcel without subdivision approval pursuant to this Chapter. The lot lines established in a subdivision shall not be altered by conveyance of a part of a lot, nor shall any part of a lot be joined with a part of any other lot without subdivision approval pursuant to this Chapter. Conveyances intended to avoid or circumvent any provision of this Chapter shall be prohibited. A leasehold interest of 40 years or less of a portion of a lot or parcel shall not be considered a conveyance.

**C. Lot Merger.** If two (2) or more lots within the Original Aspen Townsite or additions thereto had continuous frontage and were in single ownership (including husband and wife) on October 27, 1975, the lots shall be considered an undivided lot for the purposes of this title and conveyance of any portion shall require subdivision approval pursuant to this Chapter. Any lot within a subdivision approved by the City of Aspen or Pitkin County is exempt from this merger provision.

For the purposes of this provision, the Aspen Townsite or addition thereto includes all lands depicted on the Official Map of the City of Aspen approved by the Aspen City Council November 16, 1959, (a.k.a. the "Buchanan Map") plus any lands annexed to the City on or before October 27, 1975.

(Ord. No. 44-2001, §1; Ord. No. 37-2013, § 2)

**26.480.030. Procedures for review.**

A development application for a subdivision approval shall be reviewed pursuant to the following procedures and standards and the Common Development Review Procedures set forth at Chapter 26.304. According to the type of subdivision requested, the following steps are necessary:

**A. Administrative Subdivisions.** The Community Development Director shall approve, approve with conditions or deny the application, based on the standards of review in Section 26.480.050, Administrative Subdivisions.

**B. Minor Subdivisions.** City Council, during a duly noticed public hearing, shall review a recommendation from the Community Development Director and shall approve, approve with

conditions, or deny an application for minor subdivision, based on the standards of review in Section 26.480.060, Minor Subdivision. This requires a one-step process as follows:

**Step One – Public Hearing before City Council.**

1. Purpose: To determine if the application meets the standards for minor subdivision approval.
2. Process: City Council shall approve, approve with conditions, or deny the application after considering the recommendation of the Community Development Director and comments and testimony from the public at a duly noticed public hearing.
3. Standards of review: The proposed subdivision shall comply with the review standards of Section 26.480.060.
4. Form of decision: City Council decision shall be by ordinance. The ordinance shall include a description or diagram of the subdivision and require timely recordation of a subdivision plat.
5. Notice requirements: Posting, Mailing and Publication pursuant to Subparagraph 26.304.060.E.3, the requirements of Section 26.304.035 – Neighborhood Outreach as applicable, and the requisite notice requirements for adoption of an ordinance by City Council.

**C. Major Subdivisions.** City Council, during a duly noticed public hearing, shall review a recommendation from the Community Development Director, a recommendation from the Planning and Zoning Commission and shall approve, approve with conditions, or deny an application for major subdivision, based on the standards of review in Section 26.480.070, Major Subdivision. This requires a two-step process as follows:

**Step One – Public Hearing before the Planning and Zoning Commission.**

1. Purpose: To determine if the application meets the standards for major subdivision approval.
2. Process: The Planning and Zoning Commission shall forward a recommendation of approval, approval with conditions, or denial to City Council after considering the recommendation of the Community Development Director and comments and testimony from the public at a duly noticed public hearing.
3. Standards of review: The proposed subdivision shall comply with the review standards of Section 26.480.070.
4. Form of decision: The Planning and Zoning recommendation shall be by resolution.
5. Notice requirements: Posting, Mailing and Publication pursuant to Subparagraph 26.304.060.E.3 and the provisions of Section 26.304.035 – Neighborhood Outreach as applicable.

**Step Two – Public Hearing before City Council.**

1. Purpose: To determine if the application meets the standards for major subdivision approval

2. Process: The Community Development Director shall provide City Council with a recommendation to approve, approve with conditions, or deny the application, based on the standards of review. City Council shall approve, approve with conditions, or deny the application after considering the recommendation of the Community Development Director, the recommendation from the Planning and Zoning Commission, and comments and testimony from the public at a duly noticed public hearing.
3. Standards of review: The proposed subdivision shall comply with the review standards of Section 26.480.070.
4. Form of decision: City Council decision shall be by ordinance. The ordinance shall include a description or diagram of the subdivision and require timely recordation of a final subdivision plat.
5. Notice requirements: Posting, Mailing and Publication pursuant to Subparagraph 26.304.060.E.3, the requirements of Section 26.304.035 – Neighborhood Outreach as applicable, and the requisite notice requirements for adoption of an ordinance by City Council.

(Ord. No. 55-2000, §11; Ord. No. 1-2002, §11, 2002; Ord. No. 9-2002, §9; Ord. No. 21-2002, §7; Ord. No. 34-2003, §1; Ord. No.7 -2011, §1; Ord. No. 37-2013, § 2)

**26.480.040. General subdivision review standards.**

All subdivisions shall be required to conform to the following general standards and limitations in addition to the specific standards applicable to each type of subdivision:

**A. Guaranteed Access to a Public Way.** All subdivided lots must have perpetual unobstructed legal vehicular access to a public way. A proposed subdivision shall not eliminate or obstruct legal vehicular access from a public way to an adjacent property. All streets in a Subdivision retained under private ownership shall be dedicated to public use to ensure adequate public and emergency access. Security/privacy gates across access points and driveways are prohibited.

**B. Alignment with Original Townsite Plat.** The proposed lot lines shall approximate, to the extent practical, the platting of the Original Aspen Townsite, and additions thereto, as applicable to the subject land. Minor deviations from the original platting lines to accommodate significant features of the site may be approved.

**C. Zoning Conformance.** All new lots shall conform to the requirements of the zone district in which the property is situated, including variations and variances approved pursuant to this Title. A single lot shall not be located in more than one zone district unless unique circumstances dictate. A rezoning application may be considered concurrently with subdivision review.

**D. Existing Structures, Uses, and Non-Conformities.** A subdivision shall not create or increase the non-conformity of a use, structure or parcel. A rezoning application or other mechanism to correct the non-conforming nature of a use, structure, or parcel may be considered concurrently.

In the case where an existing structure or use occupies a site eligible for subdivision, the structure need not be demolished and the use need not be discontinued prior to application for subdivision.

If approval of a subdivision creates a non-conforming structure or use, including a structure spanning a parcel boundary, such structure or use may continue until recordation of the subdivision plat. Alternatively, the City may accept certain assurance that the non-conformities will be remedied after recordation of the subdivision plat. Such assurances shall be reflected in a development agreement or other legal mechanism acceptable to the City Attorney and may be time-bound or secured with a financial surety.

(Ord. No. 21-2002, §8; Ord. No. 27-2002, §§18, 19; Ord. No. 37-2013, § 2)

**26.480.050. Administrative subdivisions.**

The following types of subdivision shall be approved, approved with conditions, or denied by the Community Development Director, pursuant to Section 26.480.030 – Procedures for Review, and the standards and limitations of each type of subdivision, described below:

**A. Condominiumization.** A subdivision to establish, amend, or vacate separate ownership interests of a single property in a Condominium or Common Ownership Interest Community form of ownership shall be approved, approved with conditions, or denied by the Community Development Director. Condominiumization shall be limited to allocating ownership interests of a single parcel and shall not effect a division of the parcel into multiple lots, an aggregation of the parcel with other lands, a change in use of the property, and shall not operate as an abatement of other applicable regulations affecting the property. The Director shall review the condominiumization plat pursuant to Section 26.480.030, Procedures for Review, and according to the following standards:

1. The Condominium Plat is in an acceptable style and format as prescribed in Title 29 – Engineering Design Standards, Plats.
2. The Condominium Plat shall be reviewed and then recorded in the office of the Pitkin County Clerk and Recorder. No subdivision agreement need be prepared or entered into between the applicant and the City unless the Community Development Director determines such an agreement is necessary.

**B. Exempt Timesharing.** A subdivision necessary to establish, amend, or vacate time-span estates that comply with the requirements of Section 26.590.030, Exempt Timesharing, shall be approved, approved with conditions, or denied by the Community Development Director if the requirements of Section 26.590.030, Exempt Timesharing, are met. Any plat shall be in a style and format as prescribed in Title 29 – Engineering Design Standards, Plats. No subdivision agreement need be prepared or entered into between the applicant and the City unless the Community Development Director determines such an agreement is necessary. This form of subdivision shall not be used to create any additional lots or dwelling units.

**C. Boundary Adjustment.** An adjustment of a lot line between contiguous lots shall be approved, approved with conditions, or denied by the Community Development Director, pursuant to Section 26.480.030, Procedures for Review, according to the following standards:

1. The request permits a boundary adjustment between contiguous parcels or corrects an error in a recorded plat.
2. The adjustment results in the same number of parcels. Changes in development rights for the individual lots may occur unless specifically prohibited by the original subdivision documents.
3. The request complies with the requirements of Section 26.480.040, General Subdivision Review Standards.
4. The adjustment does not result in a parcel lying in more than one zone district. For adjustments between parcels located in different zone districts, the adjustment shall be approved only upon an amendment to the Official Zone District Map. (Please see Section 26.304.060.B.2 and Chapter 26.310.)
5. For adjustments between parcels located in a Planned Development, the adjustment shall be approved conditioned upon an amendment to the Planned Development approvals or designated area, as applicable. (Please see Section 26.304.060.B.2 and Chapter 26.445.)
6. The Boundary Adjustment Plat shall be reviewed and recorded in the office of the Pitkin County Clerk and Recorder, pursuant to Chapter 26.490 – Approval Documents. No subdivision agreement need be prepared or entered into between the applicant and the City unless the Community Development Director determines such an agreement is necessary.

(Ord. No. 44-2001, §2; Ord. No. 12, 2007, §§29, 30; Ord. No. 3, §18; Ord. No. 37-2013, § 2)

**26.480.060. Minor subdivisions.**

The following types of subdivision may be approved by the City Council, pursuant to the provisions of Section 26.480.030 – Procedures for Review, and the standards and limitations of each type of subdivision, described below:

**A. Lot Split.** The subdivision of a lot for the purpose of creating one additional development parcel shall be approved, approved with conditions, or denied by the City Council, pursuant to Section 26.480.030 – Procedures for Review, according to the following standards:

1. The request complies with the requirements of Section 26.480.040, General Subdivision Review Standards.
2. No more than two lots are created by the lot split. No more than one lot split shall occur on any one fathering parcel.
3. The Lot Split Plat shall be reviewed and recorded in the office of the Pitkin County Clerk and Recorder, pursuant to Chapter 26.490 – Approval Documents. No subdivision agreement need be prepared or entered into between the applicant and the City unless the Community Development Director determines such an agreement is necessary.

**B. Historic Landmark Lot Split.** The split of a lot that is a designated Historic Landmark for the purpose of creating one additional development parcel shall be approved, approved with conditions,

or denied by the City Council, pursuant to Section 26.480.030 – Procedures for Review, after a recommendation is provided by the Historic Preservation Commission pursuant to Section 26.415.110(A) Historic Landmark Lot Split, and according to the following standards:

1. The request complies with the requirements of Section 26.480.040, General Subdivision Review Standards.
2. The fathering parcel is listed in the Inventory of Historic Sites and Structures.
3. No more than two lots are created by the Historic Landmark Lot Split. No more than one historic landmark lot split shall occur on any one fathering parcel.
4. In residential zone districts, the allowable Floor Area for each new residential lot shall be established by allocating the total allowable Floor Area of the fathering parcel to each of the new lots such that no overall increase in Floor Area is achieved and no individual lot allows a Floor Area in excess of that allowed a similarly-sized lot in the same zone district. An equal distribution is not required. The allowable Floor Area for each new lot shall be noted on the Historic Lot Split Plat.

Any Floor Area bonus already granted by the Historic Preservation Commission shall be allocated to each individual parcel and shall also be noted on the plat as a square footage bonus. If the properties remain eligible for a Floor Area bonus from the Historic Preservation Commission, the plat and subdivision agreement shall specify the manner in which this potential bonus shall be allocated to the two properties if received.

In non-residential zones districts, the Floor Area shall be calculated according to the limitations of the zone district applied to each new lot as permitted for the use. The total Floor Area shall not be stated on the plat because the floor area will be determined by the use established on each parcel.

5. The Historic Lot Split Plat shall be reviewed and recorded in the office of the Pitkin County Clerk and Recorder, pursuant to Chapter 26.490 – Approval Documents. No subdivision agreement need be prepared or entered into between the applicant and the City unless the Community Development Director determines such an agreement is necessary.

\*Note – Historic properties eligible for a standard lot split are not required to proceed through the historic lot split process.

(Ord. No. 37-2013, § 2)

**26.480.070. Major subdivisions.**

The following subdivisions shall be approved, approved with conditions, or denied by the City Council, after receiving a recommendation from the Planning and Zoning Commission. Major subdivisions are subject to Section 26.480.030 – Procedures for Review, the standards and limitations of Section 26.480.040 – General Subdivision Review Standards, and the standards and limitations of each type of subdivision, described below. All subdivisions not defined as administrative or minor subdivisions shall be considered major subdivisions.

**A. Land Subdivision.** The division or aggregation of land for the purpose of creating individual lots or parcels shall be approved, approved with conditions, or denied according to the following standards:

1. The proposed subdivision complies with the requirements of Section 26.480.040 – General Subdivision Review Standards.
2. The proposed subdivision enables an efficient pattern of development that optimizes the use of the limited amount of land available for development.
3. The proposed subdivision preserves important geologic features, mature vegetation, and structures or features of the site that have historic, cultural, visual, or ecological importance or contribute to the identity of the town.
4. The proposed subdivision prohibits development on land unsuitable for development because of natural or man-made hazards affecting the property, including flooding, mudflow, debris flow, fault ruptures, landslides, rock or soil creep, rock falls, rock slides, mining activity including mine waste deposit, avalanche or snowslide areas, slopes in excess of 30%, and any other natural or man-made hazard or condition that could harm the health, safety, or welfare of the community. Affected areas may be accepted as suitable for development if adequate mitigation techniques acceptable to the City Engineer are proposed in compliance with Title 29 – Engineering Design Standards. Conceptual plans for mitigation techniques may be accepted with specific design details and timing of implementation addressed through a Development Agreement pursuant to Chapter 26.490 – Approval Documents.
5. There has been accurate identification of engineering design and mitigation techniques necessary for development of the proposed subdivision to comply with the applicable requirements of Municipal Code Title 29 – Engineering Design Standards and the City of Aspen Urban Runoff Management Plan (URMP). The City Engineer may require specific designs, mitigation techniques, and implementation timelines be defined and documented within a Development Agreement.
6. The proposed subdivision shall upgrade public infrastructure and facilities necessary to serve the subdivision. Improvements shall be at the sole cost of the developer.
7. The proposed subdivision is exempt from or has been granted all growth management approvals pursuant to Chapter 26.470 – Growth Management Quota System, including compliance with all affordable housing requirements for new and replacement development as applicable.
8. The proposed subdivision meets the School Land Dedication requirements of Chapter 26.620 and any land proposed for dedication meets the criteria for land acceptance pursuant to said Chapter.
9. A Subdivision Plat shall be reviewed and recorded in the office of the Pitkin County Clerk and Recorder, pursuant to Chapter 26.490 – Approval Documents.

10. A Development Agreement shall be reviewed and recorded in the office of the Pitkin County Clerk and Recorder, pursuant to Chapter 26.490 – Approval Documents.

**B. Vehicular Rights-of-Way.** The dedication, boundary alteration, realignment, or any partial or whole vacation of a Street, Alley, or other vehicular right-of-way serving more than one parcel, shall be approved, approved with conditions, or denied according to the following standards:

1. The proposed change maintains or improves the public health, safety, and welfare of the community and is in the best interests of the City of Aspen.
2. The proposed change to the public rights-of-way maintains or improves safe physical and legal access from a public way to all adjacent properties and shall not restrict the ability for a property to develop by eliminating or hindering access. Redundant access, such as a primary street access plus alley access, is preferred.
3. The design of the proposed change complies with Municipal Code Title 29 – Engineering Design Standards and is consistent with applicable adopted policies, plans, and approved projects for the area (such as a highway access policy, an approved development project, an infrastructure plan, a trails plan, an improvement district plan, and the like).
4. The proposed change maintains or improves normal traffic circulation, traffic control capabilities, access by emergency and service vehicles, pedestrian and bike connections, drainage infrastructure, street and infrastructure maintenance needs, and normal operating needs of the City including snow removal.
5. For all new rights-of-way and physical changes to existing rights-of-way, the applicant shall design and construct the proposed right-of-way improvements according to the design and construction standards of the City Engineer. Upon completion, the right-of-way improvements shall be subject to inspection and acceptance by the City Engineer. The City may require a performance warranty. The requirements of this criterion shall be reflected in a Development Agreement.
6. For partial or full vacation of existing rights-of-way, the applicant shall demonstrate the right-of-way, or portion thereof, has no current or future use to the community as a vehicular way, pedestrian or bike way, utility corridor, drainage corridor, or recreational connection due to dimensions, location, topography, existing or proposed development, or other similar circumstances. The City shall consider whether the interests of the applicant and the City can be achieved through a “closure” of the right-of-way.
7. A Right-of-Way Dedication/Vacation Plat shall be reviewed and recorded in the office of the Pitkin County Clerk and Recorder, pursuant to Chapter 26.490 – Approval Documents. The plat shall demonstrate how the lands underlying vacated rights-of-way shall accrue to adjacent parcels in compliance with State Statute.
8. A Development Agreement shall be reviewed and recorded in the office of the Pitkin County Clerk and Recorder, pursuant to Chapter 26.490 – Approval Documents. This requirement may be waived if no right-of-way construction is proposed.

(Ord. No. 9-2002, §10; Ord. No. 37-2013, § 2)

**26.480.080. Subdivision application contents.**

An application for a subdivision shall include the following:

**A.** The general application information required in common development review procedures set forth at Section 26.304.030.

**B.** Written responses to the review criteria applicable to the request.

**C.** A Draft Plat meeting the plat requirements of Chapter 26.490 – Approval Documents.

**D.** For Major Subdivision applications involving the addition of 10 or more residential units, 20 or more lodging units, or 20,000 square feet or more of commercial space (or any equivalent combination thereof), “ability-to-serve” letters from public and private utility providers that will service the proposed subdivision with potable water, natural gas, electricity, sanitary sewer, storm sewer, and roads stating they can service the proposed subdivision. Ability-to-Serve letters shall be substantially in the following format:

*The [utility provider] has reviewed the proposed [subdivision name and date of application] subdivision and has adequate capacity to serve proposed development, subject to compliance with the following adopted design standards [reference] and subject to the following adopted tap fee or impact mitigation requirements [reference].*

For Major Subdivision applications proposing the addition of 50 or more residences, or that proposes new water use in an amount equal to or exceeding that used by 50 residences, the application must demonstrate compliance with the State Adequate Water Supply Act. (Colo. Revised Statutes 29-20-301, et seq.)

**E.** For Major Subdivision applications, a statement prepared by a Colorado registered Professional Engineer, and depiction or mapping as necessary, regarding the presence of natural or man-made hazards affecting the property, including flooding, mudflow, debris flow, fault ruptures, landslides, rock or soil creep, rock falls, rock slides, mining activity including mine waste deposit, avalanche or snowslide areas, slopes in excess of 30%, and any other natural or man-made hazard or condition that could harm the health, safety, or welfare of the community. Areas with slopes in excess of 30% shall require a slope stability study reviewed by the Colorado Geologic Survey. Also see Chapter 29 – Engineering Design Standards regarding identification and mitigation of natural hazards.

**F.** For Major Subdivision applications, a narrative prepared by a Colorado registered Professional Engineer, and depiction or mapping as necessary, describing the potential infrastructure upgrades, alignment, design, and mitigation techniques that may be necessary for development of the site to be served by public infrastructure, achieve compliance with Municipal Code Title 29 – Engineering Design Standards, and achieve compliance with the City of Aspen Urban Runoff Management Plan (URMP).

The information shall be of sufficient detail to determine the acceptable location(s) and extent of development and to understand the necessary upgrades and the possible alignments, designs, or mitigation techniques that may be required. Specific engineered solutions and design details do not need to be submitted for land use review. An applicant may be required to submit specific design solutions prior to or in conjunction with recordation of a subdivision plat and development agreement, pursuant to Chapter 26.490 – Approval Documents.

**G.** For Major Subdivision applications, a statement regarding School Land Dedication requirements of Section 26.620.060 and a description of any lands to be dedicated to meet the standard.

**H.** For changes to vehicular rights-of-way, a draft right-of-way vacation/dedication plat meeting the requirements of Chapter 26.490 – Approval Documents, describing and depicting the boundary of the vacation/dedication including bearings and dimensions with adequate ties to existing monuments to permit accurate legal definition.

**I.** For changes to vehicular rights-of-way, a statement and depiction on the draft vacation/dedication plat regarding compliance with State Statute showing which portions of vacation areas accrue to which properties.

**J.** For changes to vehicular rights-of-way, a statement by the surveyor that all utility companies have been contacted and a depiction of all existing utility lines in the right(s)-of-way in which the vacation/dedication is requested.

(Ord. No. 37-2013, § 2)

#### **26.480.090. Subdivision amendments.**

**A. Release of minimum-term lease deed restrictions.** Upon request by the property owner, deed restrictions prohibiting short-term rentals imposed by the City Council as a condition of condominiumization approval (which was common practice prior to July 1, 1992) shall be voided by the Community Development Director. The Director shall extinguish the City’s interest in the restriction by issuance of a written decision notice in a recordable format acceptable to the property owner and the City Attorney.

**B. Insubstantial amendment.** An insubstantial amendment to an approved subdivision or between adjacent subdivisions may be authorized by the Community Development Director. An insubstantial amendment shall be limited to technical or engineering considerations which could not reasonably have been anticipated during the approval process or any other minor change to a subdivision which the Community Development Director finds has no substantial effect upon the subdivision or to the allowances and limitations of the subdivision.

**C. Minor amendment.** An amendment to an approved subdivision found to be generally consistent with the original approval but which does not qualify for an insubstantial amendment may be approved, approved with conditions, or denied by the City Council. The amendment must either respond to issues raised during the original review or must address an issue that could not have been reasonably anticipated during the review. The City Council must find that the change is minor and

that it is consistent with or an improvement to the approved subdivision. Notwithstanding the above, the City Council may find that an amendment request is substantial and should require review as a Major Amendment.

**D. Major Amendment.** If the Community Development Director finds that the amendment request is inconsistent with the original approval or represents a substantive change to the allowances and limitations of a subdivision, the amendment shall be subject to review as a new subdivision pursuant to the procedures and requirements of this Chapter.

**E. Plat Vacation.** Vacation of an approved plat or any other document recorded in conjunction with a plat shall be reviewed by the individual or review body established in this Chapter as having jurisdiction for approving the plat or document. The individual or review body shall apply the applicable standards of review established in this Chapter and shall also consider whether the applicant has demonstrated good cause. If no review body has established jurisdiction, the document may be vacated by the City Council if good cause is demonstrated.

(Ord. No. 55-2000, §12; Ord. No. 37-2013, § 2)

**26.480.100. Appeals.**

An applicant aggrieved by a decision made by the Community Development Director regarding this Chapter may appeal the decision to the City Council, pursuant to Chapter 26.316.

(Ord. No. 37-2013, § 2)

## Chapter

**26.490**  
**APPROVAL DOCUMENTS**

26.490.010	Purpose.
26.490.020	Applicability.
26.490.030	Procedures and Standards for Review
26.490.040	Approval Documents Content and Form
26.490.050	Development Agreements.
26.490.060	Financial and Site Protection Requirements
26.490.070	Performance Guarantees
26.490.080	Deadlines and Extensions
26.490.090	Appeals

**26.490.010. Purpose.**

The purpose of this Chapter is to: a) create certainty and clarity between a developer and the City regarding land use entitlements granted by the City, including certain expectations and obligations of a developer and of the City; b) improve public records regarding the character and nature of development approvals granted by the City; c) improve land records and survey monuments by establishing standards for surveys and plats; d) ensure the timely installation and maintenance of public facilities, landscape improvements, storm water improvements, and other improvements required pursuant to a land use approval; and, e) ensure the public health, safety, and welfare of the community is maintained during the construction process, including unforeseen circumstances of development.

(Ord. No.41-2013, §1)

**26.490.020 Applicability and Limitations.**

This Chapter shall apply to all land use approvals granted by the City of Aspen pursuant to this Title that require submission or recordation of documents to reflect or define an approved site specific development plan. Documents submitted or recorded pursuant to this Chapter shall supersede or preclude the effect of laws and policies of general applicability of the City of Aspen or those of local, State, and Federal agencies with jurisdiction.

(Ord. No.41-2013, §1)

**26.490.030 Procedures and Standards for Review.**

Upon receipt of a complete draft set of approval documents, the Community Development Director shall refer copies to other appropriate City staff and applicable outside agencies for compliance review. The draft set shall be evaluated to determine whether each document:

1. Accurately describes/depicts an approval granted by the City of Aspen.
2. Is in an acceptable style and format as prescribed herein and as further defined by the City and review agencies.

The Community Development Director shall provide response comments to the applicant specifying requested amendments to the draft documents. The Director shall advise the applicant whether an additional cycle of review is necessary or if the applicant can prepare final documents for signature.

Upon cure of all requested amendments to the development documents, the applicant shall provide final documents, executed by the owner. The Community Development Director shall route the documents for final approval, and signatures as applicable, by the appropriate City or outside agencies.

If the documents are to be recorded, the Community Development Director shall deliver the executed documents to the Pitkin County Clerk and Recorder for recordation. The Director shall coordinate with the applicant as needed for recordation of related documents. Recordation fees apply and shall be the responsibility of the applicant.

(Ord. No.41-2013, §1)

**26.490.040 Approval Documents Content and Form**

Approval Documents required by this Title shall conform to the following requirements:

**A. Subdivision Plat.** Subdivision plats required by Chapter 26.480 – Subdivision plats, including condominium plats and any change to a platted legal description of a parcel, shall contain the information and be in the format required by Title 29 – Engineering Design Standards, Plats.

**B. Right-of-Way Dedication/Vacation Plat.** Right-of-Way Dedication/Vacation plats required by Chapter 26.480 – Subdivision, including any adjustment to the legal description of a public right-of-way, shall contain the information and be in the format required by Title 29 – Engineering Design Standards, Plats.

**C. Annexation Map.** Annexation maps in connection with any annexation or disconnection of land to the City shall contain the information and be in the format required by Title 29 – Engineering Design Standards, Plats.

**D. Approved Plan Set.** When required pursuant to this Title, plans shall be submitted to the Community Development Department to document the approved design, layout, and configuration of an approved project. The plans shall reflect approved changes made to the project during the review and provide reference to approval documents and date(s).

The purpose of the Approved Plan Set is for the City and the developer to document a common understanding of the approval granted. The plan should be of sufficient detail to understand the intent of the developer but should not be considered an application for building permit, a thorough review by the city of technical requirements, and should not be considered a construction-level document or a permit to proceed. Plans do not need to show specific details and are not expected to be technical drawings or construction plans.

Plans must be in 24” x 36” format and include an approval certificate for the Community Development Director. Smaller plans may be accepted for simple projects. The Director may require certain plans be prepared in a format acceptable for recording. Plans shall also be submitted

in a digital format as prescribed by the City. Depending on the nature and complexity of a project and its approvals, some or all of the following plans shall be included in an Approved Plan Set:

1. Conceptual Commercial or Historic Design Review Plans. Plan and elevation drawings to reflect a conceptual design review approval granted by the City. The plans should depict the general layout, massing, heights, and setbacks of the approved development. The plans may contain a combination of elevations, axonometric views, narrative, and illustrative renderings. The city may require language on the plans specifying the limits of the conceptual design approval.
2. Final Commercial or Historic Design Review Plans. Plan and elevation drawings to reflect a final design review approval granted by the City. The plans may contain a combination of elevations, floor plans, axonometric views, depiction/description of exterior materials, narrative, and illustrative renderings.
3. Planned Development – Project Review. Plan and elevation drawings to reflect the Project Review approval for a Planned Development. The plans should depict/describe the uses, site plan, general layout, massing, heights, and all dimensions of the Project Review approval. The plans may contain a combination of floor plans, elevations, axonometric views, narrative, and illustrative renderings. The city may require language on the plans noting the limits of the approval or highlighting aspects of the design expected to be amended prior to Detail review.
4. Planned Development – Detail Review. Plan and elevation drawings to reflect a Detail Review approval for a Planned Development. The plans should depict/describe the specific uses, site plan, general layout, massing, heights, dimensions, and conditions of the Detail Review approval. The plans may contain a combination of floor plans, elevations, axonometric views, depiction/description of exterior materials, narrative, and illustrative renderings. The city may require language on the plans noting limitations of the approval. Depending upon the complexity of the project, additional plans as described herein may be required to provide more detail or address certain aspects of the approved project.
5. Environmentally Sensitive Area Plan. A plan depicting the general layout of development approved within an environmentally sensitive area. The plan should provide a general depiction of the layout of existing and proposed natural and man-made features and improvements including structures, existing vegetation, landscape improvements, civil improvements, and access ways including accessible routes if relevant. The plan shall describe/depict unique setbacks, building envelopes, no-build zones, height restrictions, and similar unique conditions of the approval. The plan should depict and describe detailed location and types of vegetation protection measures to preserve environmentally sensitive areas. The plan may include draft restoration techniques to be implemented, at a conceptual level, including ecological communities targeted to restore or improve. The plan may contain a combination of plans, elevations, site sections, axonometric views, depiction/description of exterior materials, narrative, and illustrative renderings.
6. Hazards Map. A plan prepared by a Colorado registered Professional Engineer depicting, and describing in narrative as necessary, all areas of a property that are affected by the presence of

natural or man-made hazard areas including areas of the property affected by flooding, mudflow, debris flow, fault ruptures, landslides, rock or soil creep, rock falls, rock slides, mining activity including mine waste deposit, avalanche or snowslide areas, slopes in excess of 30%, and any other natural or man-made hazard or condition that could harm the health, safety, or welfare of the community. Areas with topography in excess of 30% shall require a slope stability study reviewed by the Colorado Geologic Survey.

7. Hazards Mitigation Plan. A plan describing/depicting certain required construction or mitigation techniques to ensure public health and safety from known natural and man-made hazards affecting a property. The plan shall be prepared by a Colorado registered Professional Engineer.
8. Illustrative Site Plan. A plan depicting the general layout of proposed development. The plan should depict the layout of existing and proposed natural and man-made features and improvements including structures, landscape improvements, civil improvements, and access ways including accessible routes if relevant. The plan may contain a combination of site plans, narrative, and illustrative renderings.
9. Accessibility Plan. A plan depicting accessible routes intended to meet the provisions of the International Building Code. The plan should be of sufficient detail to understand the intent of the developer but should not be considered a construction document.
10. Transportation Management Plan. A plan describing/depicting the Transportation Impacts associated with the project, as may be required by this Title, and containing proposed special operational practices or demand management techniques to be implemented to reduce the impacts of the project on pedestrian, bicycle, transit, and road systems.
11. Historic Preservation Plan. A plan showing the location and condition of existing structures and site features to be protected or restored as approved by the City of Aspen. The plan shall diagram and describe protection techniques to be used to protect historic resources during construction or from demolition by neglect, including structure stabilization, protection from weather or other site or environmental conditions, temporary relocation, protective barriers or fencing, and other techniques to protect an historic resource.

The plan shall describe and depict restoration strategies to recover the structure(s) or resources, including specific conditions of the approval. The plan shall include an approval certificate for the Historic Preservation Officer.

12. Architectural Character Plan. A plan depicting the general character of proposed structures. The plan should depict the massing, layout, exterior materials, and fenestration of the proposed buildings. The plan may contain a combination of elevations, floor plans, axonometric views, depiction/description of exterior materials, narrative, and illustrative renderings. The plan does not need to show every aspect of every building, especially if the architectural character is repeated. Interior demising walls between units should be shown, but other interior layouts of individual units, fixture details, furniture, etc. are not necessary to depict.

13. Landscape Character Plan. A plan showing location, size and type of proposed landscape features. The plan should depict the layout and character of plant materials, site features, hardscape, fixed furniture, structures, fences, drainage improvements, and other exterior elements. The plan may contain a combination of site plans, site sections, plant type and material specifications, narrative, and illustrative renderings. The plan may contain design details for site features or systems to be installed. The plan does not need to show every detail of every exterior treatment. The plan shall include an approval certificate for the Director of Parks and Open Space.
14. Vegetation Removal/Protection Plan. A plan showing the location, size and type of existing vegetation and other natural landscape features within the property limits, including the location of trees with a trunk diameter of four (4) inches or more measured four and one-half (4½) feet above the ground. For native species, the plan shall locate vegetation with a trunk diameter of three (3) inches or more. Where large groves exist, single trees need not be located. The plan shall diagram vegetation proposed for removal along with a list of each tree, species, and measured caliper. The vegetation removal plan shall correlate with excavation and grading plans. The plan shall diagram and describe vegetation protection techniques to be used including protective fencing and areas where materials storage will be prohibited. The plan shall include an approval certificate for the Director of Parks and Open Space.
15. Existing and Proposed Site Topography and Drainage. A plan depicting the pre-development conditions and proposed grading of a site including layout of proposed development and depiction of drainage basins. The plan should provide a general description of proposed drainage improvements. The plan should be of sufficient detail to understand the intent of the developer but should not be considered a construction document. The plan may contain a combination of site plans, sections, and narrative.

This may include an interpolated natural grade plan documenting estimated pre-development conditions of the site. A plan estimating pre-development topography must be prepared by a registered land surveyor or civil engineer. The Community Development Director may require additional historical documentation, technical studies, reports, or other information to verify a pre-development topography. The Director may require this plan be prepared in a recordable format.
16. Public Easement Plan. A plan depicting and describing the layout and purpose of existing and proposed public easements affecting the property including those dedicated for current or future infrastructure needs; those dedicated for current or future access needs such as roads, trails, open space, fishing, skiing, or similar access or recreational needs; and, those dedicated for current or future use, operational, or maintenance needs. If the plan is intended to dedicate the easements, the plan shall be prepared in a recordable format with appropriate approval and acceptance certificates.
17. Public Infrastructure Plan. A plan depicting the layout and design of proposed public improvements to be built by a developer. The plan shall include plans and specifications for all public improvements to be installed with the proposed development including but not limited to water and sewer utilities; electric transformers; streets, sidewalks, and related

improvements; trails; bridges; transit facilities; structures; storm drainage improvements; and, similar public infrastructure or facilities. The Community Development Director may require sufficient detail and unit totals for cost estimating and surety requirements in conjunction with a Development Agreement. In the alternative, the Community Development Director may postpone submission of the detailed design and/or specifications necessary for unit totals and costing for inclusion in a supplement to the Development Agreement to be executed prior to issuance of a building permit. The City may require as-built drawings prior to acceptance of the improvements. (Also see Development Agreements, below.)

(Ord. No.41-2013, §1)

**26.490.050. Development Agreements.**

When required pursuant to this Title, the City and the developer shall enter into an agreement documenting the nature, extent, sequencing, and details of a project, including all conditions placed on the development order; the obligations and responsibilities of all parties including successors and assigns; and the procedures to define and cure default or failure to perform during the execution or operation of the project. The agreement shall be binding upon the parties.

The form and content of the agreement shall be acceptable to the City Attorney, the Community Development Director, and other City staff or outside agencies affected by the agreement. The Development Agreement may refer to or contain an approved plan set or similar maps, depictions, or descriptions of improvements or obligations.

The specific contents of a Development Agreement will vary according to the scope and complexity of a project, but shall generally contain the following provisions:

- A.** A section of recitals stating the nature of the agreement, parties, background, and references to related documents.
- B.** A section stating the purpose and effect of the agreement.
- C.** A section stating the effect of prior approvals or agreements.
- D.** A section describing the zoning and regulatory approvals granted and the allowances and restrictions of the approvals with references to approval documents.
- E.** A section describing public improvements and required elements of the project which are subject to performance guarantees, along with referenced or attached plans and specifications.
- F.** A section describing any cost-recovery or pro-rata reimbursement schedule related to over-sizing public infrastructure.
- G.** A section describing any unique construction techniques, sequencing, or timing requirements.
- H.** A section describing any unique operating conditions or requirements of the project during or following completion.

- I. A section describing the effect and time period of statutory vested rights.
- J. A section describing process and procedures for dispute resolution.
- K. A section describing the process for amendments and extensions.
- L. A section describing general provisions applicable to the agreement.
- M. A section including or referring to agreements with utility agencies outside the City, as applicable.
- N. A section describing financial and site protection requirements and performance guarantee requirements.
- O. A section describing submission requirements for a building permit, including unique submission, permit review, or permit issuance sequencing conditions of a phased project.

Development Agreements shall not supersede the allowances and limitations of an approved Development Order. If during drafting of the development agreement certain amendments are desired by all parties, the amendments shall be subject to the procedures and requirements applicable to such an amendment and the City shall issue an amended Development Order if the amendments are approved.

(Ord. No.41-2013, §1)

#### **26.490.060. Financial and Site Protection Requirements**

**A. Proof of Financing.** The City may require, as a condition of issuing a permit allowing an Owner to proceed with any phase of a project, the Owner provide to the City Building Department and the City Attorney for review and approval satisfactory evidence that the Owner has in place sufficient financing to accomplish and complete the construction related to the Building Permit being sought, including all private and public improvements covered by the Building Permit, and all public improvements required under the Development Order or Development Agreement. The requirement for proof of financing shall be defined in the Development Order or Development Agreement for the project.

Supporting cost estimates for all improvements covered by the requested Building Permit shall be prepared by the Owner's General Contractor and shall be reviewed by the City Attorney before the Building Permit is issued.

**B. Site Protection Guarantee.** The City may require, as a condition of issuing a permit allowing an Owner to proceed with any phase of a project, the Owner deposit cash escrow funds with an acceptable Escrow Agent, or other financial security acceptable to the City Attorney, to secure recovery of the property and surrounding grounds to a safe condition in the event of a work stoppage. The requirement for and the amount of a cash escrow shall be defined in the Development Order or Development Agreement for the project. The Owner shall execute an Escrow Agreement and

Instructions with the Escrow Agent in a form acceptable to the City Attorney. The agreement shall include instructions in substantially the following form:

“In the event construction work on [the project] shall cease for sixty (60) days or longer (‘work stoppage’) prior to completion of the work authorized by the Foundation/Structural Frame Permit on [the project], then the City in its discretion may draw upon the Escrow Funds from time to time as needed for purposes of protecting and securing [the project] site, surrounding grounds, and improvements from damage by the elements, from trespass by unauthorized persons, and for purposes of improving [the project] site and surrounding grounds to a safe condition such that it does not become an attractive nuisance or pose a threat to neighbors or other persons.”

The City of Aspen shall be named a third party beneficiary of the Escrow Agreement with the express right and authority to enforce the terms of the Agreement. Unless otherwise established in a Development Order or Development Agreement, the Escrow Funds or any remaining balance thereof shall be returned to Applicant upon substantial completion of the project to a “dried-in” condition. The Community Development Director may authorize partial releases, in increments of no less than 25% of the original surety, of the Site Protection Guarantee as portions of the project progress and public safety issues are reduced.

**C. Site Enhancement Guarantee.** The City may require, as a condition of issuing a permit allowing an Owner to proceed with any phase of a project, the Owner deposit cash escrow funds with an acceptable Escrow Agent, or other financial security acceptable to the City Attorney, to secure recovery of the site and surrounding grounds to a visually acceptable condition and to install public improvements on or adjacent to the project site to a safe condition in the event of a work stoppage. The requirement for and the amount of a cash escrow shall be defined in the Development Order or Development Agreement for the project. The Owner shall execute an Escrow Agreement and Instructions with the Escrow Agent in a form acceptable to the City Attorney. The agreement shall include instructions in substantially the following form:

“In the event construction work on [the project] shall cease for ninety (90) days or longer (‘work stoppage’) prior to a final inspection by the City of the work authorized by any permit or phase of permit for [the project], then the City in its discretion may draw upon the Escrow Funds from time to time as needed for purposes of improving the appearance of any construction already completed on or adjacent to the project site and for installing any public improvements on or adjacent to the project site. The City shall have sole discretion with respect to the manner of improving the appearance of construction work in progress as well as determining the public improvements to be installed.”

The City of Aspen shall be named a third party beneficiary of the Escrow Agreement with the express right and authority to enforce the terms of the Agreement. Unless otherwise established in a Development Order or Development Agreement, the Escrow Funds or any remaining balance thereof shall be returned to Applicant upon completion by the City of a final inspection or issuance of a Certificate of Occupancy for the project, or upon an earlier date as agreed to by the City. The Community Development Director may authorize partial releases, in increments of no less than 25% of the original surety, of the Site Enhancement Guarantee as portions of the project progress and aesthetic and public improvement issues are reduced.

(Ord. No.41-2013, §1)

**26.490.070. Performance Guarantees**

The City may require, as a condition of issuing a permit allowing an Owner to proceed with any phase of a project, the Owner provide certain performance guarantees to secure successful implementation of public improvements, and private improvements that inure to the benefit of the public, required under the Development Order or Development Agreement. The requirements for performance guarantees shall be defined in the Development Order or Development Agreement for the project.

**A. Types of Guarantees.** Depending upon the nature and complexity of a project, the following types of performance guarantees may be required:

1. Landscape Guarantee. In order to ensure successful implementation of a landscape plan, the applicant may be required to provide a guarantee to ensure the successful installation of all landscaping required under a site specific development plan approval and the continued maintenance and replacement of the landscaping for a period of two (2) years after installation.
2. Native Landscape Restoration Guarantee. In order to ensure successful restoration of a native landscape, the applicant may be required to provide a guarantee to ensure the successful recovery of a site's native vegetation as required under a site specific development plan approval and the continued maintenance and replacement of the native vegetation for a period of two (2) years after installation.
3. Environmentally Sensitive Area Guarantee. In order to ensure successful improvement to or restoration of an environmentally sensitive area, including riparian areas and areas of steep topography, the applicant may be required to provide a guarantee to ensure the successful improvement to or reclamation of a site as required under a site specific development plan approval and the continued maintenance and replacement of vegetation for a period of two (2) years after installation.
4. Natural Hazard Mitigation Guarantee. In order to ensure successful installation of natural hazard mitigation techniques, the applicant may be required to provide a guarantee to ensure the successful installation of hazard mitigation as required under a site specific development plan.
5. Historic Preservation Guarantee. In order to ensure the successful relocation, stabilization, protection, or restoration of an historic resource as required under a site specific development plan approval, the applicant may be required to provide a guarantee. Unless the amount may be estimated as described herein, the amount of the guarantee shall be established by the Historic Preservation Commission and may include certain sequencing requirements or restrictions in relation to the development and completion of other elements of a project.
6. Affordable Housing Guarantee. In order to ensure the successful development and completion of affordable housing as required under a site specific development plan approval, the applicant may be required to complete the required affordable housing prior to completion of

other elements of a project. Proportionate requirements may be established for phased projects, including phased completion of a project.

If sequencing strategies cannot adequately secure the successful development and completion of required affordable housing, the applicant may be required to provide a guarantee in a form described below.

7. Public Facilities and Public Infrastructure Guarantee. In order to ensure installation of necessary public facilities and public infrastructure planned to accommodate the development and as required under a site specific development plan approval, the applicant may be required to provide a guarantee to ensure the successful installation of all public facilities and infrastructure.
8. Storm Water and Drainage Improvements Guarantee. In order to ensure successful implementation of storm water and drainage infrastructure planned to accommodate the development and as required under a site specific development plan approval, the applicant may be required to provide a guarantee to ensure the successful installation of all storm water and drainage infrastructure.
9. Miscellaneous. In order to ensure successful performance or completion of a requirement of a Development Order not otherwise contemplated herein, the applicant may be required to provide a guarantee. The amount, form, timing, inspection, and release provisions of the requirement shall be as defined in a Development Agreement.

**B. Amount of Guarantee.** Unless otherwise specified within a Development Order, guarantees shall be in an amount no less than one-hundred-and-fifty percent (150%) of the current estimated cost of the improvements described in the approved plans and specifications. Current estimated costs shall be prepared by the General Contractor with supporting documentation from Colorado licensed professionals, as applicable, for review and acceptance by the City Engineer. The City Engineer may seek confirmation of cost estimates from third party professionals with local construction costing expertise. The City Engineer may require updated costing information if, in the opinion of the City Engineer, the estimates do not reflect current market conditions. The City Engineer may assign the review and acceptance of costs estimates to other City staff as necessary. In such case, all references to the City Engineer in this sub-section shall be to that assigned staff position. However, all tracking of the guarantee and releases thereof shall be maintained by the City Engineer.

**C. Form and Timing of Guarantees.** Prior to requiring a monetary guarantee, the City shall pursue every non-monetary performance guarantee option, such as permitting or completion sequencing, in order to minimize the financial impact of performance guarantees on a project.

Guarantees shall be described within a Development Agreement and specify each unit or item, unit costs, and quantities. The Development Agreement shall contain or refer to approved plans and specifications for the required improvements, as necessary. The Development Agreement shall allow unit costs to be adjusted to current market conditions unless a permit is accepted within one year of recordation of the Development Agreement. Guarantees shall be funded prior to issuance of a building permit, or any phase thereof which enables the initiation of construction.

Guarantees shall be in the form of a cash escrow with the City or a bank or savings and loan association or an irrevocable sight draft or letter of commitment from a financially responsible lender, or any other financial security acceptable to the City Attorney. The guarantee shall give the City the unconditional right upon demand to partially or fully complete or pay for any improvements or pay any outstanding bills or to withdraw funds upon demand to partially or fully complete or pay for any improvements or pay for any improvement or pay any outstanding bills for work done thereon by any party.

**D. Inspection and Release of Guarantee.** As portions of the required improvements are completed, the City Engineer (or assigned staff as applicable) shall inspect them for compliance with the approved plans and specifications. The City Engineer shall accept the improvements, or portions thereof, if they conform to the approved plans and specifications. The City Engineer may reject the improvements if they do not conform to the approved plans and specifications, may require specific testing to confirm conformance, may require certain upgrades to achieve conformance, or may postpone the inspection to accommodate seasonal or other conditions. The City Engineer may delay acceptance of improvements until other related improvements, which are part of an overall system, are constructed.

Upon inspection and acceptance, the City Engineer (or assigned staff as applicable) shall authorize the release of one-hundred percent (100%) of the agreed estimated costs of the improvements. As portions of a project progress, the City Engineer may release portions of the agreed estimated costs of the improvements, in increments of no less than 25% of the original agreed estimated costs.

The remaining fifty percent (50%) of the estimated costs shall be retained by the City for a period of up to two (2) years from the date of final acceptance to ensure the improvements perform as designed. During this two-year period, the City Engineer (or assigned staff as applicable) may require the applicant, at his or her sole cost, perform certain testing, maintenance, upgrades, or replacement of the improvements to ensure they perform as designed. The City Engineer may draw upon the surety to accomplish the same.

Upon completion of the two-year period and a final inspection and acceptance by the City Engineer (or assigned staff as applicable), the remaining surety shall be released. The City Engineer may extend the final inspection and acceptance period to accommodate seasonal or other conditions that prevent inspection. The City Engineer may authorize release of the remaining surety prior to the two-year period. The City Engineer may authorize release of portions of the remaining surety prior to the two-year period as performance risks diminish. The City Engineer may authorize release of the remaining surety by accepting a contractor's performance warrantee, or guarantee, acceptable to the City Attorney.

A developer may assign, by affidavit, the receiver or beneficiary of surety releases, such as to a contractor, owner, or other agent. The City Engineer may assign the inspection and release responsibilities of this Section to other City staff as necessary. In such case, all references to the City Engineer in this sub-section shall be to that assigned staff position. However, all tracking of the guarantee and releases thereof shall be maintained by the City Engineer.

(Ord. No.41-2013, §1)

**26.490.080 Deadlines and Extensions**

Unless an alternate timeframe is specified by this Title or by the approving body, all approval documents, plats, plans, and agreements shall be submitted to the Community Development Department within one hundred eighty (180) days following issuance of a Development Order.

Failure on the part of the applicant to submit required approval documents within this timeframe shall render the land use approval invalid. The Community Development Director may extend the submission deadline if the request is made within the statutory vesting period, the applicant demonstrates evidence of preparing the needed documents, and the applicant shows reasonable cause for the delay. The Community Development Director may forward the extension request to the City Council.

Unless an alternate timeframe is specified by the Community Development Director, corrected approval documents shall be resubmitted to the Community Development Department within ninety (90) days following the City's issuance of requested corrections to the documents. Failure on the part of the applicant to resubmit corrected documents within this timeframe shall render the land use approval invalid. The Community Development Director may extend the resubmission deadline if the applicant demonstrates good cause. The Community Development Director may forward the request to the City Council.

**26.490.090 Appeals**

An applicant aggrieved by a determination made by the Community Development Director, the Director of Parks and Open Space, the City Engineer, or city staff assigned by said parties to administer this Chapter may appeal the decision to the Administrative Hearing Officer, pursuant to the procedures and standards of Chapter 26.316, Appeals.

(Ord. No.41-2013, §1)