

**ORDINANCE NO. 10
(SERIES OF 2021)**

**AN ORDINANCE OF THE ASPEN CITY COUNCIL AMENDING CITY OF ASPEN
LAND USE CODE SECTION 26.470.050.E – CALCULATIONS; TO ADOPT A NEW
AFFORDABLE HOUSING MITIGATION FEE-IN-LIEU RATE SCHEDULE AND
METHODOLOGY FOR REGULAR UPDATES.**

WHEREAS, pursuant to chapter 26.470, Growth Management Quota System, of the City of Aspen Municipal Code, applicants may, under conditions specified by the Chapter, pay fees to satisfy requirements to provide affordable or employee housing; and,

WHEREAS, in 2019 and 2020 Community Development Staff worked with consultants White and Smith Planning Law Group and TischlerBise in the drafting of the *Affordable Housing Fee-in-Lieu Study, Phase I*, a study that provided recommendations for improving the methodology in calculating and updating the Affordable Housing Fee-in-Lieu; and,

WHEREAS, Land Use Code Section 26.470.050(E), Calculations - Employee housing fee-in-lieu payment; prescribes that the Fee-In-Lieu rates shall be updated every five years and adopted by city council ordinance, and that during intermediate years, the City may choose to update the fee-in-lieu schedule, by ordinance, based on the change in the engineering news record inflation index; and,

WHEREAS, pursuant to prior resolutions and ordinances of the City, the City Council has historically established these fees, referred to in Chapter 26.470 as an affordable housing impact fee, affordable housing mitigation fees, and cash-in-lieu payments; and,

WHEREAS, pursuant to Section 26.310.020(B)(1), the City of Aspen conducted Public Outreach through various work sessions with Council, and discussions with members of the development community; and,

WHEREAS, on October 13, 2020, City Council passed Policy Resolution #079, Series of 2020, approving initiation of code amendments; and,

WHEREAS, The City is electing to enact a new fee-in-lieu schedule and methodology for update utilizing calculations and recommendation provided in the *Affordable Housing Fee-in-Lieu Study, Phase II*, completed in April of 2021 by White and Smith Planning and Law Group and TischlerBise,

WHEREAS, Community Development staff provided outreach opportunities and held discussion with the Aspen Pitkin County Housing Authority and the Planning and Zoning Commission and received formal recommendation from Planning and Zoning Commission in Resolution # 03, Series of 2021; and,

WHEREAS, at a regular meeting on May 11, 2021, City Council by a four – zero (4-0) vote, approved Ordinance #010, Series of 2021, approving a Code Amendment to 26.470.050.E; and,

WHEREAS, the Aspen City Council finds that this Ordinance furthers and is necessary for the promotion of public health, safety, and welfare.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASPEN, COLORADO THAT:

Section 1: Section 26.470.050.E shall be rescinded and readopted as follows:

26.470.050. Calculations

E. Employee housing fee-in-lieu payment. Whenever a project provides employee housing via a fee-in-lieu payment, in part or in total, the amount of the payment shall be based upon the following (fee-in-lieu is only allowed for Categories 1-4, Category 5 is included for any necessary conversions between affordable housing unit types or for the purpose of conversions in the value of Certificates of Affordable Housing Credits):

Fee-in-Lieu (per FTE):

Category 1:	\$408,054
Category 2:	\$376,475
Category 3:	\$345,691
Category 4:	\$302,879
Category 5:	\$250,375

Payment shall be calculated on a full-time-equivalent employee (FTE) basis according to the Affordable Housing Category designation required by this Title. Unless otherwise stated in this Title or in a Development Order, Fee-in-Lieu payments shall be collected by the City of Aspen Building Department prior to and as a condition of Building Permit issuance.

The Fee-In-Lieu rates shall be updated every five years and adopted by city council ordinance. This 5-year update shall evaluate and include cost analysis of new private and public sector affordable housing projects that have been completed or are otherwise appropriate since the previous update. During the intermediate years, Community Development staff shall propose to City Council an annual update (in January) to the Fee-in-Lieu schedule via Ordinance, utilizing the most recent National Construction Cost Index provided by the Engineering News Record. If the annual increase is approved, updated Fee-in-Lieu figures shall be rounded to the nearest dollar.

The following methodology (as depicted in a comprehensive report conducted by TischlerBise, *Affordable Housing Fee-in-Lieu Study, Phase II* in Spring of 2021) was used to determine the above Fee-in-Lieu schedule:

- 1) Utilizing recent public sector, private sector, and public private partnership affordable housing projects, staff and the consultant team identified actual land and construction (hard and soft) costs for a number of recent projects and land purchases.

2) Costs for both land and construction were analyzed by project to the square foot of net livable development and averaged across the projects. Using the Code determined calculation of 400 square feet per full time equivalent (FTE) employee, a total cost of constructing affordable housing per FTE was identified.

3) Utilizing the Aspen Pitkin County Housing Authority (APCHA) Guidelines, established sales and rental rates by Category and bedroom count were used in a calculation to identify the revenue per FTE. Two important assumptions were included for the rental revenue stream: a) revenue (rental income) was calculated over a 15 year period with a 2% annual increase in the rental rate; and b) rental revenue was reduced by 50% to acknowledge common maintenance and operations costs. Sales and Rental Revenue were then averaged per FTE.

4) The per FTE revenue amount for each Category (identified in #3 above) was subtracted from the total development cost per FTE (identified in #2 above). The remainder of each calculation subtracting the Category revenue from the total cost per FTE results in the Category Fee-in-Lieu schedule above.

Section 2:

Due to the rapidly changing nature of construction and land costs in 2020 and 2021, City Council provided direction that staff evaluate and report to Council the status of the Fee-in-Lieu calculation and its relationship to development costs as part of the annual update in January of 2022.

Section 3:

Any scrivener's errors contained in the code amendments herein, including but not limited to mislabeled subsections or titles, may be corrected administratively following adoption of the Ordinance.

Section 4:

This ordinance shall not affect any existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the resolutions or ordinances repealed or amended as herein provided, and the same shall be conducted and concluded under such prior resolutions or ordinances.

Section 5:

If any section, subsection, sentence, clause, phrase, or portion of this resolution is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions thereof.

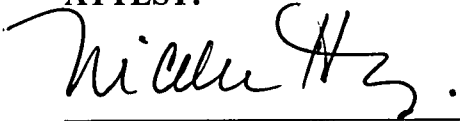
Section 6:

A public hearing on this ordinance was held on the 11th day of May, 2021, at a meeting of the Aspen City Council commencing at 5:00 p.m. in the City Council Chambers, Aspen City Hall, Aspen,


Colorado, a minimum of fifteen days prior to which hearing a public notice of the same shall be published in a newspaper of general circulation within the City of Aspen.

INTRODUCED, READ, AND ORDERED PUBLISHED as provided by law, by the City Council of the City of Aspen on the 27th day of April, 2021.

ATTEST:



Nicole Henning, City Clerk



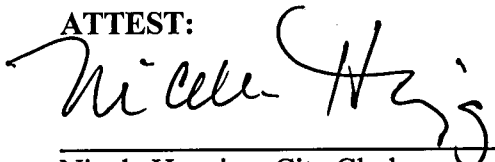
Torre, Mayor

FINALLY, adopted, passed and approved this 11th day of May, 2021.



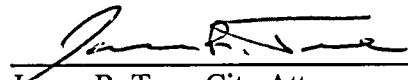
Torre, Mayor

ATTEST:



Nicole Henning, City Clerk

APPROVED AS TO FORM:



James R. True, City Attorney