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Ingrid K. Grueter, Pitkin County, CO

**ORDINANCE #01
SERIES OF 2024**

**AN ORDINANCE OF THE ASPEN CITY COUNCIL AMENDING CITY OF ASPEN
LAND USE CODE SECTION 26.470.050 – CALCULATIONS TO ADOPT A REVISED
AFFORDABLE HOUSING MITIGATION FEE-IN-LIEU RATE SCHEDULE**

WHEREAS, in 1985 Pitkin County and the City of Aspen instituted fee-in-lieu as an alternative tool in the provision of affordable housing; and,

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, 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, 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, The City elected 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; and,

WHEREAS, in Ordinance #10, Series of 2021, City Council adopted a new fee-in-lieu schedule reflective of the recommendation presented in the *Affordable Housing Fee-in-Lieu Study, Phase II* 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 National Construction Cost Index; and,

WHEREAS, in Ordinance #14, Series of 2022, City Council adopted an updated fee-in-lieu schedule to reflect a 8.47% change in the National Construction Cost Index; and,

WHEREAS, the City is electing to update the fee-in-lieu schedule based on the change in the Engineering News Record, National Construction Cost Index, which shows a 3.9% increase from the time of the fee-in-lieu adoption in May 2022 to January 2024; and,

WHEREAS, at a regular meeting on February 13, 2024, City Council by a five to zero (5-0) vote, approved Ordinance #01, Series of 2024 on First Reading; and,

WHEREAS, at a regular scheduled meeting and properly noticed public hearing on February 27, 2024, Council heard presentation from city staff, considered public comment, and, City Council by a X - X (X-X), approved Ordinance #01, Series of 2024 on Second Reading; and,

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

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

Section 1: Adoption of updated Fee-in-Lieu rates.

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:	\$459,878
Category 2:	\$424,288
Category 3:	\$389,595
Category 4:	\$341,346
Category 5:	\$282,174

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 annual update proposed in the intermediate years does not require a Policy Resolution prior to First and Second Reading.

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:

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 3:

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 4:


If any section, subsection, sentence, clause, phrase, or portion of this ordinance 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 5:

A public hearing on this ordinance was held on the 27th day of February, 2024, 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 AND READ, as provided by law, by the City Council of the City of Aspen on the 13th day of February 2024.

ATTEST:



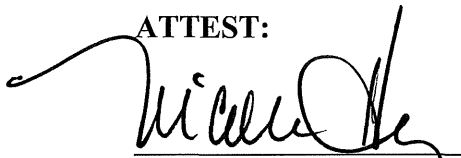
Nicole Henning, City Clerk



Torre, Mayor

FINALLY, adopted, passed and approved this 27th day of February 2024.

ATTEST:




Nicole Henning, City Clerk



Torre, Mayor

APPROVED AS TO FORM:



James R. True, City Attorney