



## APCHA Affordable Housing Development Policy

### Public and Private Sector Affordable Housing Development

Affordable housing is developed through new construction and conversion of existing dwelling units by the City of Aspen, Pitkin County and private sector property developers. Under City and County land use regulations and codes, private sector developers are required to include an approved affordable housing component in all development projects or satisfy requirements through mitigation as described in the Regulations.

Whether in the public or private sector, affordable housing units shall conform to specifications and requirements of City of Aspen Land Use Regulations or the Pitkin County Land Use Code as applicable to location, and to APCHA Regulations.

### Affordable Housing Development Priorities

The APCHA Board has prioritized affordable housing development as follows:

1. Private Sector Priorities
  - a. *Ownership: one and two-bedroom units in Categories 1, 2 or 3, with associated RO units*
  - b. *Ownership: three-bedroom units in Categories 3 and 4*
2. Public Sector Priorities
  - a. *Entry-level rental: one-bedroom units in Categories 1 and 2*
  - b. *Ownership: one and two-bedroom units in Categories 2 and 3*
  - c. *Ownership: three-bedroom units in Categories 3 and 4*

### Section 1. Legislation Governing Affordable Housing Development

In addition to Colorado State legislation and the Intergovernmental Agreement (IGA) between the City of Aspen and Pitkin County, affordable housing development is governed by City of Aspen Land Use Regulations found in Municipal Code Title 26 and the Pitkin County Land Use Code found in Title 8 of the Pitkin County Code.

Affordable housing development projects are coordinated by the Community Development Department of the City or County, approved by City ordinance or County resolution, and subject to APCHA Regulations and deed restrictions pertaining to occupant qualification, lease, purchase and sale, among other policies and procedures.

Land use regulations and codes establish, among other specifications, net minimum livable square footage, occupancy standards and other development and construction standards, as well as mitigation options pertaining to affordable housing.

- The City Affordable Housing Zone District is established under Affordable Housing/Planned Development in the Zone Districts section of City of Aspen Land Use Regulations, Section 26.710.110.
- The County Affordable Housing Zoning District is established under the Growth Management System in the Pitkin County Code, Title 8, Chapter 3.
- Affordable housing requirements for development of a private residential subdivision are stipulated in City of Aspen Land Use Regulations, Section 26.470.
- Development involving demolition or displacement of affordable housing units is governed by the Multifamily Housing Replacement Program under City of Aspen Land Use Regulations, Section 26.470.
- Development involving an expansion or redevelopment of free-market housing is governed by the Growth Management Quota System under City of Aspen Land Use Regulations, Chapter 26.470.
- Calculation of Fee-in-lieu and Impact Fees, and other mitigation requirements is according to a formula established under County land use regulations, Chapter 8-30, and the City of Aspen Land Use Regulations Growth Management Quota System, Section 26.470, and Impact Fees, Chapter 26.610.
- Applicants and developers are encouraged to discuss zoning and affordable housing requirements with a member of the City of Aspen (if the property is within the City limits) or the Pitkin County (outside the City limits) Community Development Departments.
- City of Aspen and Pitkin County land use and building codes and APCHA Guidelines and procedures adhere to the Americans with Disabilities Act (ADA) regulations under which a required percentage of public affordable housing shall meet ADA standards. In APCHA affordable housing, ADA standards are incorporated in construction or units are designed to be adaptable to standards.
- City of Aspen and Pitkin County land use and building codes adhere to the International Building Code providing consistent standards for safe construction.

## Section 2. Private Sector Development Process

### 1. Building Permit Process

The Community Development Departments and Planning and Zoning Commissions of the City of Aspen and Pitkin County coordinate public and private sector affordable housing development through the building permit application and approval processes.

Building permit applicants shall work with the City or County in selecting a mitigation option to satisfy affordable housing requirements of development projects according to City and County land use regulations and codes.

APCHA monitors affordable housing development permit applications to facilitate informed communications between developers and government and to expedite the process.

Building permit applications are coordinated by the respective City or County Community Development Departments for analysis and recommendations, and project review and approval through Council ordinance and or BOCC resolution.

The City or County Community Development Departments retain a set of approved building permit drawings for each project and is authorized to inspect actual construction or conversion for compliance with approved building permit plans.

### 2. APCHA Consultation

Private sector property developers are advised to schedule building permit pre-application consultations with APCHA to review affordable housing mitigation options and/or deed restrictions associated with planned projects. APCHA is authorized to inspect affordable housing projects under construction or conversion for compliance with APCHA Regulations.

## Section 3. Affordable Housing Mitigation of Private Sector Property Development

Mitigation requirements, established under city and county land use regulations and codes and APCHA Regulations, are planned and formulated to generate affordable housing units, revenues and/or property acquisition in support of the program. The APCHA Board has prioritized affordable housing mitigation options available to private sector property developers in the following order:

1. *On-site deed-restricted housing units constructed or converted next to or attached to the proposed development.*
2. *Off-site deed-restricted housing units constructed or converted at a separate location within the Aspen core subject to approval by APCHA. A single off-site deed-restricted unit in an otherwise free-market housing complex shall not be approved.*
3. *Use of the Affordable Housing Credit Program.*
4. *APCHA approved buy-down units.*
5. *Payment-in-lieu to the city or payment of an Impact Fee to the county; or Land-in-lieu by conveyance of vacant property to the city or APCHA, permitted on a case-by-case basis.*

Private sector property developers may satisfy mitigation requirements through the following methods or combination of methods, in accordance with the requirements of the City of Aspen and Pitkin County:

- Construction of new affordable housing units to remain deed-restricted in perpetuity.
- Conversion of existing dwelling units to achieve deed-restricted status in perpetuity. Units converted for mitigation purposes shall not previously have been deed-restricted under APCA Guidelines.
- Affordable Housing Credit Certificate Program.
- Land-in-lieu conveyance of vacant property as approved by the city or county and APCA on a case-by-case basis.
- Payment-in-lieu or payment of impact fee.

### 1. Mitigation through Construction of Deed-Restricted Affordable Housing Units

A private sector property developer may, with City or County approval, satisfy affordable housing requirements by construction of affordable housing units within a free-market housing development.

Deed restrictions for newly constructed units shall be approved by APCA prior to recording and prior to issuance of a Certificate of Occupancy. Constructed units are subject to Maximum Rental Rates and Sale Prices for Newly Deed-restricted Units. See Tables III and IV.

- a. Eliminated Affordable Housing Units: If new development requires the demolition of existing affordable housing units previously deed-restricted under APCA Regulations, mitigation for the new development by the construction of or conversion to affordable housing units is credited only for the number, type and category of units in excess of the affordable housing bedrooms demolished.

Under the City of Aspen Multi-Family Housing Replacement Program, at least half the number of eliminated affordable housing units shall be constructed on the development site for which City approval is granted; the remaining number of eliminated units must be constructed or converted at another site as approved by the city. Multi-family housing replacement requirements are not subject to variance and may not be satisfied through the construction of any RO units.

- b. Construction on Single-family Lots: Construction of affordable housing on a single-family lot will be permitted only if the unit has three or more bedrooms and is placed in Category 5. Category 1, 2, 3 and 4 single-family lots are not permitted. Construction on single-family lots in Category 5 or RO shall include access and utilities up to the lot line to achieve construction-ready condition

## 2. Mitigation through the Affordable Housing Credit Program

Chapter 26, Section 540, of the City Land Use Code, is for two purposes: 1) to encourage the development of affordable housing; and 2) to establish an option for housing mitigation that immediately offsets the impacts of free market development. A Certificate of Affordable Housing Credit is issued to a developer of affordable housing when such housing is not required for mitigation. Another developer may purchase such a Certificate and use it to satisfy housing mitigation requirements. Establishing this transferable Certificate creates a new revenue stream that can make the development of affordable housing more economically viable. Establishing this transferable Certificate also provides an option for mitigation that reflects built and occupied affordable housing, thereby offsetting the impacts of development before those impacts occur. Section 540 describes the process for establishing, transferring and extinguishing a Certificate of Affordable Housing Credit. Section 26.540.020, *Terminology*, defines the Certificate of Affordable Housing Credit (Credit or Certificate) as a “transferable document issued by the City of Aspen acknowledging and documenting the voluntary provisions of affordable housing which is not otherwise required by this Title or by a Development Order issued by the City of Aspen. The Certificate documents the category designations and number of employees housed by the affordable housing. The Credit is irrevocable and assignable. A Certificate of Affordable Housing Credit is a bearer instrument.”

## 3. Mitigation through Conversion or “Buy-down” of Existing Dwelling Units

A free-market developer may be permitted to satisfy affordable housing mitigation requirements by conversion of existing free market dwelling units to deed-restricted affordable housing, also called a *buy-down*. Conversion/buy-down requests are reviewed on a case-by-case basis by City, County and/or APCHA and shall be considered and approved only for Category 3 or higher units located in an existing free market development. Such housing units must conform to City and County land use regulations and the APCHA Regulations, including requirements for recording deed restrictions to be effective in perpetuity. Such approval may be denied if it is determined that HOA dues and/or assessments would exceed reasonableness for qualified buyers. Existing housing that is being provided for mitigation purposes (either as actual mitigation or for use in the Affordable Housing Credit Program), shall be brought up to current building code standards as required by the Community Development Department.

Deed restrictions for converted units must be approved by APCHA prior to recording and prior to issuance of a Certificate of Occupancy. Converted units shall be subject to Maximum Rental Rates and Sale Prices for Newly Deed-restricted Units. See Tables III and IV.

Developers requesting approval for conversions must document the feasibility and marketability of any such proposed affordable housing and specify the size(s) of unit(s) proposed for conversion and any physical upgrades necessary to meet City or County and APCHA requirements.

## 4. Mitigation through Fee-in-Lieu or Impact Fee

Under City and County land use regulations and codes and at the sole discretion of the City or County upon the recommendation of APCHA, a free-market developer may be permitted to mitigate

affordable housing requirements through Fee-in-lieu to the city or payment of an Impact Fee to the county (also known as Dedication Fee and Cash-in-lieu). See Table V for current Fee-in-lieu/Impact Fees per APCHA category. However, payment of a fee in lieu of the use of on-site off-site, or the Affordable Housing Credit Program shall be the last resort as acceptable mitigation.

- a. Calculation of Fees: Fee-in-lieu and Impact Fees are calculated according to city and county land use regulations. See the appropriate Code for calculating the employee mitigation impact fee.
- b. Payment of Fees: Fees in mitigation of affordable housing requirements are due prior to the issuance of a building permit. Fees are payable to the City of Aspen Finance Director; Impact Fees are payable to the Pitkin County Finance Director. The respective finance director must issue a receipt to the developer/building permit applicant who shall submit a copy to APCHA as verification of satisfying affordable housing mitigation requirements.

An APCHA-qualified owner/developer of a single-family home or duplex unit may, upon request and approval by APCHA, defer the Fee-in-lieu or Impact Fee until the free-market home or duplex unit is sold to a free-market purchaser(s). Such fee shall be calculated at the time of the free-market sale according to the City/County Code then in effect. An *Affordable Housing Impact Fee Deferral Agreement (Deferral Agreement)* must be completed, signed by the Community Development Director and the APCHA Executive Director, and the document recorded in the records of the Pitkin County Clerk and Recorder.

The obligation to pay the Impact Fee may be deferred until such time as the Owner is no longer a qualified working employee as defined in these Regulations, the Property is sold by the qualified Owner, or a subsequent owner who was a qualified working resident at the time of acquisition sells to a buyer who is not a qualified working resident ("non-qualified buyer"). To obtain this deferral, proof shall be provided to APCHA as to the status of the owner as a qualified Pitkin County employee or employer as defined in the APCHA Regulations. The home must be the principal residence of the owner requesting the deferral.

In the event of such a sale, the fee shall be due and payable on or before the date of closing (the date on which the deed conveying title is recorded) and is payable concurrently with the RETT (Real Estate Transfer Tax). Nothing herein shall prevent or preclude Owner from paying the Impact Fee at an earlier time. If payment is deferred, the obligation to pay and the terms for calculation of the fee shall be agreed to in writing by the APCHA-approved initial purchasers of the respective home or duplex units; and the agreement shall be approved by the City of Aspen Community Development Department and APCHA and recorded as a restriction with the deed to the property. Upon proof of payment of the impact fee, a release of the *Deferral Agreement* will be recorded in the records of the Pitkin County Clerk and Recorder.

#### **Section 4. Additional Information for Private Sector Property Development**

The tables below provide the City's payment-in-lieu impact fee schedule (Table I), the Minimum Net Livable Square Feet for Affordable Housing based on unit size (Table II) and the allowable acceptance for a reduction of the minimum square footage, and APCHA Mitigation Standards per unit size (Table III). For maximum rental rates and maximum sales prices for newly deed-restricted units, check the Regulations.

**TABLE I**  
**2022 PAYMENT-IN-LIEU/IMPACT FEE SCHEDULE**  
*Per Category – CITY ONLY*  
City Ordinance No. 13 (2022) – Effective Date - 07/29/2022 (8.47%)

Category 1	\$442,616
Category 2	408,362
Category 3	374,971
Category 4	328,533
Category 5	271,582

Based on an analysis of employment and construction data, the City was able to understand the employment generation for each 1,000 square feet of residential development. City Council made a decision to include 100% of the construction employment generated by residential development and to only include 25% of the operations and maintenance employment that is generated by residential development. This resulted in an FTE generation of 0.107 FTEs per 1,000 square feet of residential development.

Employee Generation rate of 0.107 FTE / 1000 square feet of single-family, duplex and multi-family residential development.

**Minimum Net Livable Square Footage for Affordable Housing Development**

Dwelling units provided in satisfaction of affordable housing requirements shall meet square footage requirements of City and County land use regulations and codes. Unit size is not based on the category of the unit, but rather the number of bedrooms. See Table II below.

**1. Permitted Adjustments to Net Minimum Livable Square Footage**

The approval of the City or County of Net Minimum Livable Square Footage of affordable housing units for construction and conversion must be obtained prior to the issuance of a building permit. Any adjustment is subject to the approval of the City or County.

a. Permitted Reduction of Square Footage

Net Minimum Livable Square Footage may be reduced by the City or County based on the specific criteria identified below, and if the permit applicant sufficiently demonstrates that construction requires accommodation for physical conditions of the property or in consideration of design for livability, common storage, amenities, location and site design, including but not limited to provisions for the following (**under no circumstances shall a reduction of more than twenty percent [20%] of the square footage required for the applicable category be permitted**):

- Significant storage space located outside the unit;
- Above average natural light, i.e., more windows than required by code;
- Efficient, flexible layout with limited hall and staircase space;
- Availability of site amenities, such as pool or proximity to park or open space;

- Unit location within the development, i.e., above ground location versus ground level or below ground; and/or
- Possibility that project can achieve higher density of deed-restricted units with a reduction variance.

b. Permitted Addition of Square Footage

Subject to the approval of the City or County, developers may elect to construct units larger than the required minimum square footage. However, sale prices and rental rates for any such newly deed-restricted units shall not exceed maximum figures shown in Tables III and IV.

**2. Minimum Net Livable Square Footage for Dormitories**

Qualified employers, including lodging facilities, agricultural operations and commercial developments demonstrating the need to house employees onsite may be permitted to develop affordable housing dormitory and/or category units onsite.

In accordance with City and County land use regulations and codes, the Minimum Net Livable Square Footage for dormitory units is 150 square feet of living area per person. Living area includes sleeping and bathroom areas, but does not include interior or exterior hallways, parking areas, patios, decks, cooking area, common lounge area, laundry rooms, and mechanical and storage areas. Dormitories shall include at least one bathroom for shared use by no more than four persons. Each bathroom shall contain at least one water closet, one lavatory, and one bathtub with a shower, and shall have a total area of at least sixty (60) net livable square feet. Each dormitory unit shall include a kitchen facility or access to a common kitchen and eating facility sufficient for the number of persons sharing the dormitory, as approved by the city or county. Each occupant shall be provided the use of twenty (20) square feet of enclosed storage space located within or adjacent to the unit. Dormitory occupancy is limited to eight (8) APCHA-qualified employees per unit.

**3. Unit Square Footages**

RO units are limited to a maximum 2,200 gross square feet of livable space plus a maximum 500 square foot garage and maximum 800 square foot basement. If a larger garage or basement is approved, the square footage in excess of these limitations shall be deducted from the maximum gross square footage of livable space. In no event shall the square footage of all improvements exceed 3,500 square feet.

**TABLE II**  
**MINIMUM NET LIVABLE SQUARE FEET (SF) FOR AFFORDABLE HOUSING**  
*Per Unit Size (standardized)*

<i>Unit Size</i>	<i>Minimum Square Footage</i>
Studio	500
1-Bedroom	700
2-Bedroom	900
3-Bedroom	1,200
Single-Family Detached	1,500



**TABLE III  
APCHA MITIGATION STANDARDS**

<i>Unit Type</i>	<i>Per Unit Size</i>	<i>Occupancy Standard</i>
Dormitory/Lodge per 150 sq. ft. mitigates for		1.00 employee
Studio units mitigate for		1.25 employees
One-bedroom units mitigate for		1.75 employees
Two-bedroom units mitigate for		2.25 employees
Three-bedroom units mitigate for		3.00 employees

Four or more bedrooms mitigate by adding an additional .5 employee per bedroom

### **Mitigation through Impact Conveyance of Vacant Property**

A developer of a free-market project may be permitted to satisfy affordable housing requirements by the conveyance of vacant property to the City of Aspen or Pitkin County, known as land-in-lieu. Acceptance of the property shall be at the sole discretion of the City or County upon recommendation of APCHA and may be subject to conditions.

**Condition of Vacant Property** – Vacant property conveyed in satisfaction of affordable housing requirements shall be provided in construction-ready condition, with utilities including domestic water, sewer line or septic system, roads, telephone, electricity, and/or gas lines, installed to the property line or as otherwise required.

At APCHA’s discretion, a developer conveying vacant property that does not meet the conditions for construction readiness may be permitted to establish an escrow account in an amount sufficient to cover one hundred twenty-five percent (125%) of the estimated cost of completing the required preparation of the property and may be allowed one year from date of conveyance to complete work required by City and County land use regulations and codes.

1. **Soils Report** – A developer/applicant shall submit to the city or county and APCHA a soils report prepared by a qualified engineer based on studies of appropriate testing within the approved building envelope demonstrating that the property is suitable for construction of the proposed dwelling units without extensive excavation and foundation work or accommodation for unusual conditions.
2. **Conveyance Procedure** – Title to the property shall be transferred to the city, county, or APCHA as required, and the deed recorded simultaneously with the final plat for the development project. If the vacant property is located within a subdivision, the Subdivision Improvements Agreement and Protective Covenants shall include the requirements of this section.
3. **Settlement by Sale of Vacant Property** – Vacant property or a single-family lot conveyed in mitigation of affordable housing requirements but not suitable or desirable for affordable housing development or growth management may at the discretion of the city and/or APCHA be sold on the free market.