

Chapter 23

COMMERCIAL LINKAGE

12-23-1: PURPOSE AND APPLICABILITY:

- A. The purpose of this chapter is to ensure that new commercial development and redevelopment in the town provide for a reasonable amount of employee housing to mitigate the impact on employee housing caused by such commercial development and redevelopment.
- B. Except as provided in section [12-23-5](#) of this chapter, this chapter shall apply to all new commercial development and redevelopment located within the following zone districts:
1. High density multiple-family (HDMF);
 2. Public accommodation (PA);
 3. Public accommodation 2 (PA-2);
 4. Commercial core 1 (CC1);
 5. Commercial core 2 (CC2);
 6. Commercial core 3 (CC3);
 7. Commercial service center (CSC);
 8. Arterial business (ABD);
 9. General use (GU);
 10. Heavy service (HS);
 11. Lionshead mixed use 1 (LMU-1);
 12. Lionshead mixed use 2 (LMU-2);
 13. Ski base/recreation (SBR);
 14. Ski base/recreation 2 (SBR2);
 15. Parking district (P); and
 16. Special development (SDD).
- C. The requirements of this chapter shall be in addition to all other requirements of this code.

- D. When any provision of this chapter conflicts with any other provision of this code, the provision of this chapter shall control. (Ord. 1(2008) § 24)

12-23-2: EMPLOYEE GENERATION AND MITIGATION RATES:

- A. The employee generation rates found in table 23-1, "Employee Generation Rates By Type Of Commercial Use", of this section, shall be applied to each type of use in a commercial development. For any use not listed, the administrator shall determine the applicable employee generation rate by consulting the town's current nexus study.

TABLE 23-1
EMPLOYEE GENERATION RATES
BY TYPE OF COMMERCIAL USE

Type Of Use	Employee Generation Rate
Accommodation unit/ limited service lodge unit	0.7 employee per net new units
Business office and professional office (excluding real estate office)	3.2 employees per 1,000 feet of new net floor area
Conference facility	0.8 employee per 1,000 feet of new net floor area
Eating and drinking establishment	6.75 employees per 1,000 feet of new net floor area
Health club	0.96 employee per 1,000 feet of new net floor area
Real estate office	5.1 employees per 1,000 feet of new net floor area
Retail store/personal service/repair shop	2.4 employees per 1,000 feet of new net floor area
Spa	2.1 employees per 1,000 feet of new net floor area

- B. If an applicant submits competent evidence that the employee generation rates contained in table 23-1 of this section or the nexus study do not accurately reflect the number of employees generated by the proposed commercial development or redevelopment and the administrator finds that such evidence warrants a deviation from those employee generation rates, the administrator shall allow for such a deviation as the administrator deems appropriate.
- C. Each commercial development or redevelopment shall mitigate its impact on employee housing by providing EHUs for twenty percent (20%) of the employees generated, pursuant to table 23-1 of this section, or the nexus study, in accordance with the requirements of this chapter.

For example, for a development proposing two thousand five hundred (2,500) square feet of new net floor area for an eating and drinking establishment, the equation would be as follows:

$$([2,500 \text{ square feet} \div 1,000 \text{ square feet}] \times [6.75]) = 16.875 \text{ new employees generated}$$

16.875 new employees generated x 20% = 3.375 employees to be housed
(Ord. 1(2008) § 24)

12-23-3: SIZE AND BUILDING REQUIREMENTS:

A. Table 23-2, "Size Of Employee Housing Units", of this section, establishes the minimum size of EHUs and the number of employees that can be housed in each. All EHUs shall meet or exceed the minimum size requirements.

TABLE 23-2
SIZE OF EMPLOYEE HOUSING UNITS

Type Of Unit	Minimum Size (GRFA)	Number Of Employees Housed
Dormitory	250	1
Studio	438	1.25
1 bedroom	613	1.75
2 bedroom	788	2.25
3 or more bedroom	1,225	3.5

B. Every EHU shall contain a kitchen facility or kitchenette and a bathroom.

C. All trash facilities shall be enclosed.

D. Parking shall be provided in accordance with [chapter 10](#) of this title.

1. Exception For On Site Units: At the discretion of the applicable governing body, variations to the parking standards outlined in [chapter 10](#) of this title may be approved during the review of an employee housing plan subject to a parking management plan. The parking management plan may be approved by the applicable governing body and may provide for a reduction in the parking requirements for on site units based on a demonstrated need for fewer parking spaces than [chapter 10](#) of this title would require. For example, a demonstrated need for a reduction in the required parking could include:

- a. Proximity or availability of alternative modes of transportation including, but not limited to, public transit or shuttle services.
- b. A limitation placed in the deed restrictions limiting the number of cars for each unit.
- c. A demonstrated permanent program including, but not limited to, rideshare programs, car

share programs, shuttle service, or staggered work shifts.

- E. Each EHU shall have its own entrance. There shall be no interior access from any EHU to any dwelling unit to which it may be attached. (Ord. 1(2008) § 24)

12-23-4: REDEVELOPMENT:

Employee housing impacts need only be mitigated for a redevelopment that results in a greater number of employees generated from an increase in net floor area, or an increase in the number of accommodation units or limited service lodge units in the redevelopment; provided however, that if any existing EHUs are to be removed, an equal amount of EHUs shall be replaced in addition to the other requirements of this chapter. (Ord. 1(2008) § 24)

12-23-5: EXEMPTIONS:

The following shall be exempt from this chapter:

- A. The redevelopment of existing commercial development, if no new net floor area, accommodation units, or limited service lodge units are created; and
- B. The construction of EHUs. (Ord. 1(2008) § 24)

12-23-6: METHODS OF MITIGATION:

- A. For all new construction (i.e., development that does not affect any existing buildings or structures) and demo/rebuild projects that result in a mitigation requirement of 1.25 employees or greater, no less than one-half ($1/2$) the mitigation of employee housing required by this chapter shall be accomplished with on site units.
1. Exceptions: At the sole discretion of the applicable governing body, an exception may be granted from this subsection based upon one of the following findings:
 - a. Implementation of the on site unit mitigation method would be contrary to the intent and purpose of the applicable zone district.
 - b. Implementation of the on site unit mitigation method would be contrary to the goals of the applicable elements of the Vail comprehensive plan and the town's development objectives.
 - c. Exceptional or extraordinary circumstances or conditions apply to the site that prevents the implementation of the on site unit mitigation method.

- d. The method of mitigation proposed better achieves the intent and purpose of this chapter and general and specific purposes of this title than the on site mitigation unit method.
2. On Site EHUs: All on site EHUs shall be deed restricted as a "type IV-CL" (type four, commercial linkage mitigation) or "type VII-CL" (type seven, commercial linkage mitigation) EHU in accordance with [chapter 13](#), "Employee Housing", of this title.
 3. On Site Dormitory Style Units: At the sole discretion of the applicable governing body, an applicant may provide on site dormitory style units.
 4. Fees In Lieu: An applicant may provide a payment of fees in lieu for any fractional remainder of the requirement generated under this chapter totaling less than 1.25 employees.
 5. Remaining Portion Of Requirement: Any remaining portion of the mitigation requirement not provided with on site units may be provided in accordance with subsection B of this section.
- B. For all development projects except those mitigated by subsection A of this section, the mitigation of employee housing required by this chapter shall be accomplished through one, or any combination, of the methods further described in this section. Unless otherwise regulated by this title, the choice of method(s) used to mitigate the employee housing requirements of this chapter shall be at the sole discretion of the applicant.
1. On Site Units:
 - a. All on site EHUs shall be deed restricted as a "type IV-CL" (type four, commercial linkage mitigation) or "type VII-CL" (type seven, commercial linkage mitigation) EHU in accordance with [chapter 13](#), "Employee Housing", of this title.
 - b. At the sole discretion of the applicable governing body, an applicant may provide on site dormitory style units.
 2. Conveyance Of Property On Site: An applicant may convey on site real property to the town on which no covenants, restrictions or issues exist that would limit the construction of EHUs, at the sole discretion of the town council. This method does not mitigate the on site unit requirements of subsection A of this section.
 3. Off Site Units:
 - a. The requisite number of EHUs, or a portion thereof, may be provided off site within the town, provided that such EHUs are deed restricted in accordance with this chapter.
 - b. At the sole discretion of the planning and environmental commission, an applicant may provide off site dormitory units, unless the application is for a special development district, in which case, the town council, in its sole discretion, may accept dormitory units as a method of mitigation.
 4. Payment Of Fees In Lieu:
 - a. The fee in lieu for each employee to be housed shall be established annually by resolution of the town council, provided that, in calculating that fee, the town council shall include the net cost (total cost less the amount covered by rental or sale income) of real property and all

related planning, design, site development, legal, construction and construction management costs of the project, in current dollars, which would be incurred by the town to provide housing for the employee to be housed in that year.

b. An administrative fee, established by resolution of the town council, shall be added to the amount set forth in subsection B4a of this section.

c. Fees in lieu shall be due and payable prior to the issuance of a building permit for the development.

d. The town shall only use monies collected from fees in lieu to provide new employee housing.

5. Conveyance Of Property Off Site: The town council may, at its sole discretion, accept the conveyance of property off site in lieu of requiring the provision of EHUs, provided that no covenants, restrictions or issues exist on such property that would limit the construction of EHUs. (Ord. 1(2008) § 24)

12-23-7: MITIGATION BANK:

A. The town will provide credit for any EHUs constructed on site, constructed off site, or otherwise acquired in anticipation of future commercial development or redevelopment, provided that those EHUs meet all applicable requirements of this title. However, the construction or acquisition of EHUs in anticipation of future development is at the sole risk of the applicant, because the commercial development shall be subject to all regulations pertaining to EHUs which are in effect at the time the application for commercial development review is submitted to the town, even if those regulations change after the EHUs are constructed.

B. It shall be the applicant's responsibility to provide documentation of any existing EHU credit upon submission of an application for development review. If the applicant cannot adequately document such credits, the town shall not be obligated to provide such credit. (Ord. 1(2008) § 24)

12-23-8: ADMINISTRATION:

A. Employee Housing Plan: Each application for development review, except those exempt pursuant to section [12-23-5](#) of this chapter, shall include an employee housing plan which includes the following:

1. Calculation Method: The calculation of employee generation, including credits if applicable, and the mitigation method by which the applicant proposes to meet the requirements of this chapter;

2. Plans: A dimensioned site plan and architectural floor plan that demonstrates compliance with section [12-23-3](#), "Size And Building Requirements", of this chapter;

3. Lot Size: The average lot size of the proposed EHUs and the average lot size of other dwelling

units in the commercial development or redevelopment, if any;

4. Schedules: A time line for the provision of any off site EHUs;

5. Off Site Units: A proposal for the provision of any off site EHUs shall include a brief statement explaining the basis of the proposal;

6. Off Site Conveyance Request: A request for an off site conveyance shall include a brief statement explaining the basis for the request;

7. Fees In Lieu: A proposal to pay fees in lieu shall include a brief statement explaining the basis of the proposal; and

8. Written Narrative: A written narrative explaining how the employee housing plan meets the purposes of this chapter and complies with the town's comprehensive plan.

B. Review:

1. The administrator shall approve, approve with modifications or deny an employee housing plan involving a total mitigation requirement of less than 1.25 employees.

2. The planning and environmental commission shall approve, approve with modifications or deny an employee housing plan unless the plan involves a total mitigation requirement of less than 1.25 employees; the development is located within a special development district; or the plan includes a request to convey property.

3. The town council shall approve, approve with modifications or deny an employee housing plan for a development located within a special development district or a plan requesting to convey property.

4. Before granting approval of an employee housing plan, the applicable governing body shall make findings that the employee housing plan conforms to the general and specific purposes of this title, and that the plan is compatible with the applicable elements of the Vail comprehensive plan and the development objectives of the town.

C. Housing Plan Modification: If modifications to a submitted application for development review changes the obligations of the applicant under this chapter, the applicant shall submit a modified employee housing plan. A modification to an employee housing plan shall be reviewed by the body that reviewed the initial employee housing plan, in accordance with the provisions of this chapter.

D. Approved Housing Plan: An approved employee housing plan shall become part of the approved application for development review for the affected site.

E. Amendment Requests: Requests to amend an approved employee housing plan shall be reviewed in accordance with the procedures described in this chapter. At the discretion of the administrator, minor amendments that do not alter the basic intent or methodology of the plan may be approved, or approved with modifications, or denied by the administrator. (Ord. 1(2008) § 24)

12-23-9: OCCUPANCY AND DEED RESTRICTIONS:

- A. No EHU shall be subdivided or divided into any form of timeshare unit or fractional fee club unit.
- B. EHUs shall not be leased for a period less than thirty (30) consecutive days.
- C. An EHU may be sold or transferred as a separate unit on the site.
- D. An EHU shall be continuously occupied by an employee and shall not remain vacant for a period in excess of three (3) consecutive months unless, despite reasonable and documented efforts to occupy the EHU, efforts are unsuccessful.
- E. No later than February 1 of each year, the owner of an EHU shall submit a sworn affidavit on a form provided by the town to the town of Vail community development department containing the following information:
 - 1. Evidence to establish that the EHU has been occupied throughout the year by an employee;
 - 2. The rental rate (unless owner occupied);
 - 3. The employee's employer; and
 - 4. Evidence to demonstrate that at least one person residing in the EHU is an employee. (Ord. 1 (2008) § 24)

12-23-10: TIMING:

All EHUs required by this chapter shall be ready for occupancy prior to the issuance of a temporary certificate of occupancy for the affected commercial development or redevelopment. (Ord. 1(2008) § 24)

12-23-11: VARIANCES:

Variations from the requirements of this chapter may be granted pursuant to the procedures and standards set forth in [chapter 17](#) of this title. (Ord. 1(2008) § 24)

12-23-12: REVIEW:

- A. Purpose: The town council intends that the application of this chapter not result in an unlawful taking of private property without the payment of just compensation, and therefore, the town council adopts the review procedures set forth in this section.
- B. Planning And Environmental Commission Review: Any applicant for commercial development who feels that the application of this chapter would effect an unlawful taking may apply to the planning and environmental commission for an adjustment of the requirements imposed by this chapter. If the planning and environmental commission determines that the application of this chapter would result in an unlawful taking of private property without just compensation, the planning and environmental commission may alter, lessen, or adjust employee housing requirements as applied to the particular project under consideration to ensure that there is no unlawful uncompensated taking.
- C. Town Council Review: If the planning and environmental commission denies the relief sought by an applicant, the applicant may request a hearing before the town council. Such hearing shall be a quasi-judicial hearing and conducted according to the town's rules and regulations regarding quasi-judicial hearings. At such hearing, the burden of proof shall be on the applicant to establish that the fulfillment of the requirements of this chapter would effect an unconstitutional taking without just compensation pursuant to applicable law. If the town council determines that the application of this chapter would effect an illegal taking without just compensation, the town council may alter, lessen, or adjust the employee housing requirements as applied to the particular project under consideration to ensure that no illegal uncompensated taking occurs. The decision of the town council shall be final, subject only to judicial review. (Ord. 1(2008) § 24)