

ARTICLE XIX

Housing Mitigation

Sec. 16-411. Purpose.

(a) Basalt is located in a unique and highly desirable valley. The Town recognizes that having a supply of community housing attainable by households earning lower and median incomes in the Town is critical to retaining a diversified and sustainable Town having the character and sense of community of a Town where people can live and work in the same area. The citizens of the Town do not want Basalt to become an exclusive community. Historically, persons earning lower and median incomes have been able to attain housing in the Basalt area, and the Town currently reflects a mix of socioeconomic backgrounds. The Town further recognizes that there is a growing gap between housing costs and wages in Basalt. Therefore, the Town Council has determined that it needs to develop and maintain a community housing program.

(b) The intent of this community housing program is to require new development to mitigate for a portion of the employees generated by such development and to reflect and maintain the Town's small town character and enhance the livability of the Town. The goal of these regulations is to require new development to provide community housing attainable by persons having lower and median incomes paying not more than approximately thirty percent (30%) of their household income for total housing expense.

(1) All new residential developments will integrate community housing into the development or, if integration is impractical or not desired given the specific circumstance as determined at the sole discretion of the Town of Basalt, provide meaningful community housing in or near Basalt; methods will be developed to maintain the affordability of existing housing in Basalt; nonresidential projects will mitigate for impacts they create by providing community housing; and existing community housing will not be lost through displacement or demolition.

(2) Community housing should be dispersed throughout the community and, where possible, integrated into the existing community fabric.

(3) The Town encourages community participation in solving and benefitting from solutions to the community housing concerns. The Town intends to supplement the provisions of this Article by developing a program that looks at the total benefits to a neighborhood and to the community while relying less on numerical standards and limitations.

(4) The Town will emphasize programs that will result in the creation of community housing units -- by units being constructed or by existing units being permanently restricted for community housing, either through deed restrictions or other methods. As an example, the Town has identified as a priority an Accessory Dwelling/Employee Dwelling Unit Program. This will include an educational program on the benefits and workings of the Accessory Dwelling/Employee Dwelling Unit Program.

(5) Community housing will be transit friendly, integrate with intermodal transportation connections and perpetuate the Town's history of pedestrian walkability and ease of mass transit use.

(6) The Town will look at the total costs for all housing, including life cycle costs such as painting, building materials and energy costs. The Town will work toward a zero energy footprint for all housing.

(7) The Town's housing program should acknowledge regional issues and encourage coordination among jurisdictions including community housing standards and requirements. The Town will seek out partnerships with other entities supporting community housing and develop reciprocal agreements. The Town will discourage jurisdiction shopping for development proposals.

(8) The Town will support creative housing solutions, including projects that include sweat equity by those benefiting from the housing subsidy. (Ord. 6 §C, 1999; Ord. 26 §2, 2001; Ord. 33 §B1, 2003)

Sec. 16-412. Definitions.

The following definitions shall apply to the following terms and phrases:

Accessory dwelling unit or *ADU* shall mean a deed restricted community housing unit typically required to be developed to mitigate for single-family residential development which is a separate dwelling unit that contains not less than four hundred and fifteen (415) square feet and not more than one thousand (1,000) total square feet and comprises not more than thirty-three percent (33%) of the total floor area on the lot and (a) is located within or attached to a principal dwelling unit, but has a separate entrance from such principal dwelling unit, or (b) is detached from the principal dwelling unit but located on the same lot. ADUs shall be subject to a deed restriction requiring occupancy in accordance with the Community Housing Guidelines then in effect.

Community housing shall mean dwelling units deed restricted with initial sales price and appreciation caps corresponding to the housing sizes and types set forth in the Community Housing Guidelines. Community housing units shall be (1) owned or rented and (2) occupied by individuals and households meeting income, employment and occupancy requirements set forth in the Town's Community Housing Guidelines.

Community Housing Guidelines shall mean guidelines adopted by resolution of the Town Council which may include, but shall not be limited to, standards concerning the procedure for qualifying to obtain community housing; the limitations (e.g., income and asset) and requirements (e.g., residency) for qualifying to obtain community housing; forms of approved deed restrictions; limitations on appreciation of sale prices of community housing; procedures for sale and rental of community housing; priorities for persons bidding to purchase community housing; occupancy requirements; size, and price limitations; maximum price increases; employee generation standards for commercial land uses; standards for numbers of residents per dwelling unit; land dedication standards; quality of construction requirements for new community housing; and formula for calculating any payment of a fee-in-lieu of provision of community housing. The Community Housing Guidelines and any subsequent amendments thereto shall be adopted only after a duly noticed public hearing at which such guidelines are considered. Other terms used in this section but not defined in the Town Code are defined in the Community Housing Guidelines.

Employee dwelling unit or EDU shall mean a deed restricted community housing unit typically required to mitigate for multi-family, mixed-use, and commercial development, which separate dwelling unit contains not less than four hundred and fifteen (415) square feet and not more than one thousand five hundred eighty-five (1,585) total square feet and (a) is located within or attached to a commercial development, but has a separate entrance from such commercial development, or (b) is detached from the commercial development but located on the same lot. EDUs shall be subject to a deed restriction requiring occupancy in accordance with the Community Housing Guidelines then in effect.

Net Commercial Square Footage shall mean those areas within a commercial, industrial, or office building, which are or which are designed to be operated by the owner or leased to a tenant and occupied for commercial, industrial, or office purposes. Net Commercial Square Footage shall not include of areas dedicated to bathrooms, stairways, circulation corridors, mechanical areas and storage areas so long as these areas are used solely by the commercial owner or tenants on the site.

Net Square Footage (Feet) shall mean a calculation based on interior area that is measured from the interior walls, including all interior partitions, habitable basements (including unfinished basements that have the potential to meet habitability standards once finished), interior storage areas, and closets and laundry area. Such calculations shall not include mechanical areas, exterior storage, stairwells, garages (either attached or detached), patios, decks, and porches. Exterior storage exclusions may not exceed 10 percent (20 percent of the Net Square Footage) of the total Net Square Footage of the Community Housing or Resident-Occupied Housing.

New residential development or new commercial development shall mean any development for which a building permit has not been issued prior to the effective date of this ordinance, except the following:

(a) development which has a vested property right pursuant to Section 17-125 of this Code; or,

(b) Application for site specific development plan approval which have been determined by the Town prior to the effective date of this ordinance to be complete; and,

(c) The following applications (which were exempt from the development moratorium preceding adoption of this regulation). If any of these applications are withdrawn or denied, then any new application is subject to these regulations. If the application fails to comply with any subsequent submittal deadline, the Town Council may require the application to be subject to the new community housing regulations:

1. Stott's Mill
2. Basalt Design District
3. Jadwin
4. Pokorny/Flying Fish
5. St. Vincent
6. Basalt Bluffs
7. Arbaney/Kittle
8. 261 Sopris
9. Wolfgang
10. 237 Park Avenue

New commercial development shall include the development of new public and non-profit facilities that include the uses listed in Section 16-28(3) of this Chapter. Upon a recommendation from the Town Planner, the Town Council may assess, waive or partially waive community housing mitigation requirements on new public facilities by governmental and quasi-governmental agencies 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.

Sec. 16-413. Employee Impact and Housing Mitigation Report.

Unless waived in part or whole by the Town Planner, in order for the Town to be able to assess the need for housing mitigation generated by new nonresidential development, any application for site plan review (Sections 16-111 through 16-113), planned unit development (Section 16-65), subdivision (Sections 17-83 and 17-84), rezoning (Section 16-267), Community Priorities Scoring System (Section 16-471) or special review (Section 16-43) containing nonresidential development shall include an Employee Impact and Housing Mitigation Report prepared by a professional qualified to prepare such report and approved by the Town using recognized standards which provide, at a minimum, the following items:

- (1) An analysis of the number of full-time equivalent employees which will be added to the Town as a result of the applicant's proposed nonresidential development, including employees during and necessary for construction of the project as well as employees necessary after complete build out of the project;
- (2) An analysis of the number, size, type and configuration of all housing on the property as of January 1, 1999, which was generally attainable by households having low and median incomes (household income less than fifty thousand dollars [\$50,000.00] in 1999) paying not more than twenty-eight percent (28%) to thirty-six percent (36%) of their household income for total housing expense, including debt service or rental payments, homeowner's or renter's insurance, real estate taxes and utilities;
- (3) A description of the manner in which the applicant proposes that employees will be housed, including any on-site or off-site housing the applicant will provide;
- (4) A description of the methodology by which the applicant will ensure that the housing to be provided by the applicant will be maintained as housing available for employees of the Town; and
- (5) A written statement verifying that the proposed development is in compliance with the then-existing Master Plan. (Ord. 27 §1, 1998; Ord. 6 §C, 1999; Ord. 26 §4, 2001)
- (6) A written statement describing how the proposed development is consistent with the adopted Community Housing Guidelines and Community Housing requirements established in this Article.

Sec. 16-414. Waiver or additional information.

The Town Planner may waive the requirement of preparing and submitting the Employee Impact and Housing Mitigation Report in instances when the Town Planner finds that the

preparation and filing of the report for a particular application is unduly burdensome, duplicative or unnecessary because the applicant conclusively demonstrates there will be no impacts on the employees of the community or the availability of housing in the Town generated by the proposed development; or the Town Planner conclusively finds that the applicant has proposed a plan for community housing that satisfies all of the requirements of Sections 16-416, 16-417 and 16-418 below. The Technical Review Committee, Planning and Zoning Commission and Town Council may require the applicant to provide additional or supplemental information not provided in such report prior to granting any approval, denial or approval with conditions for the application. (Ord. 27 §1, 1998; Ord. 6 §C, 1999; Ord. 26 §5, 2001; Ord. 33 §B1, 2003)

Sec. 16-415. Mitigation methods.

Except as otherwise provided in this Article, a requirement to provide community housing shall require construction of newly deed-restricted community housing or recording a deed restriction against title to existing housing not previously deed restricted. The applicant shall in its development application propose the location and the mixture of type, size and configuration of the community housing which shall be subject to the review and approval, approval with conditions or denial by the Town Council in accordance with this article. The Town Council, with information provided by the Town staff and the applicant, shall require community housing in a location and a mixture of unit types, sizes and configurations which based on the location and nature of the development is most likely to offset the impacts of the specific development on a case-by-case basis. The proposed community housing shall meet the minimum average size, sale/rent price, and tenant/owner qualification requirements established in the Community Housing Guidelines and the average pricing requirements set forth in this Article and the Community Housing Guidelines.

Additionally, in determining the location and mix of unit types, sizes and configurations, the Town Council shall consider the then-perceived needs of the community for housing. Applicants are encouraged to be creative with community housing proposals. The requirement to provide community housing pursuant to the following residential, commercial and replacement housing sections may be satisfied in full or in part through the creation of ADUs or EDUs. This may include the construction of new ADUs or EDUs at off-site properties (i.e., properties other than the property which is the subject of the new development), the construction of new ADUs or EDUs on-site, the recording of new deed restrictions on existing accessory units, or other mechanisms subject to approval of the Town Council that will create dwelling units that are assured to meet the Town's affordability criteria on a permanent basis.

In the sole and absolute discretion of the Town Council, a requirement to provide community housing may be satisfied in whole or in part by the dedication of land to the Town or an entity designated by the Town for community housing. Developers may dedicate land to the Town in-lieu of providing community housing at the Town Council's sole discretion, as long as the land to be dedicated meets the following criteria:

- 1) Located within the Town's Urban Growth Boundary as defined in the Town of Basalt's Master Plan; and,
- 2) Located in an area determined to be more appropriate for community housing than the property proposed for development that generates the need for community housing mitigation; and,

- 3) The land to be dedicated in-lieu of providing community housing units shall be equal to or more than the value of the Community Housing Units required for mitigation, including total development costs such as the land, structures, and utilities. The development costs of the community housing units that the land is being dedicated in-lieu of and the value of the land being dedicated shall be determined by an appraisal from a real estate appraiser licensed in the State of Colorado. An Applicant proposing to dedicate land shall pay the cost of the appraisal.

In the case of a development that is required to provide 500 net square feet or less of community housing, an applicant may satisfy the requirement by payment of fees-in-lieu of community housing in accordance with the Community Housing Guidelines upon approval by the Special Housing Evaluation Committee as defined in the Community Housing Guidelines. In addition, a development proposing a combination of community housing units and fees in-lieu for a fraction of unit (less than 950 net square feet) may pay fees-in-lieu for the fraction of unit at the discretion of the Special Housing Evaluation Committee. All community housing required for a particular development approval shall be available for occupancy prior to or simultaneous with issuance of a certificate of occupancy for any of the non-community housing components of the development, except upon approval of the Town Council of a specific phasing schedule for the development. All community housing shall be located within the urban growth boundaries as defined in the then-current Master Plan, and shall otherwise be consistent with the goals and objectives of the then-current Master Plan. (Ord. 6 §C, 1999; Ord. 33 §B1, 2003)

Sec. 16-416. Residential Inclusionary Requirements.

(a) All new residential development comprised of two or more units or lots unless exempted by the provisions below, including the residential component of a mixed use development shall satisfy residential inclusionary requirements by providing deed-restricted, category-level housing in the form and amount described in one of the following options:

- (1) Community Housing equal to at least 35 percent of total Net Square Footage of the Residential Development; or,
- (2) Community Housing equal to at least 30 percent of total Net Square Footage of the Residential Development and Resident-Occupied Housing equal to at least 10 percent of total Net Square Footage of the Residential Development; or,
- (3) Community Housing equal to at least 30 percent of total Net Square Footage of the Residential Development and voluntary adoption of a 1.5 percent transfer assessment placed on the second and all subsequent sales of all market-rate units (excluding units resold to Eligible Households). The assessment shall remain in place in perpetuity. The proceeds from the assessment shall be paid to a non-profit entity specified by the Town Council for the purpose of creating Community Housing within the Town's UGB; or,
- (4) Community Housing equal to at least 25 percent of total Net Square Footage of the Residential Development and voluntary adoption of a 1.5 percent transfer assessment placed on the second and all subsequent sales of all market-rate units (excluding units resold to Eligible Households) and Resident-Occupied Housing equal to at least 10 percent of total Net Square Footage of the Residential Development.

Residential or mixed use developments creating three (3) or fewer new residential units are exempt from the residential inclusionary housing requirements set forth above if they consist of detached residential dwelling units not exceeding 3,000 total square feet each or attached residential dwelling units not exceeding 1,400 total square feet each.

(b) Category-level Community Housing Units constructed within a development to satisfy inclusionary zoning requirements shall have an average initial sales price not to exceed a sales price that is affordable to those individuals or households making one hundred fifteen percent (115%) of Basalt's Area Median Income (AMI) as is updated periodically pursuant to the method established in the Community Housing Guidelines. By way of example, if there are three (3) community housing units constructed in a development to satisfy inclusionary zoning requirements, one community housing unit could be priced to be affordable to those individuals or households making 100% of AMI, the second community housing unit could be priced to be affordable to those individuals or households making 130% of AMI, and the third community housing unit could be priced to be affordable to those individuals or households making 115% of AMI so that they do not average an initial sales price greater than would be affordable for those individuals or households making 115% of AMI. The bedroom mix of units used to meet the inclusionary zoning requirements shall be at the discretion of the Town Council as is set forth in Section 16-415, *Mitigation Methods*.

(c) When an applicant seeks to create only residential lots, the Inclusionary Housing requirement shall be based on the applicant's estimate at the time of the land use application of the Net Square Footage of residential development that will be constructed on such lots. The Inclusionary Housing requirement from lot creation shall generally be imposed at the time of subdivision, except upon showing of good cause to the Town Council. If additional Net Square Footage is later requested and approved, an additional housing or in-lieu payment shall be required at that time. If purchasers build smaller units than the estimate, they may sell their unused housing allocation as Community Housing Credits.

Sec. 16-417. Commercial linkage requirements.

(a) Except as provided elsewhere in this chapter, all new commercial development, except for remodeling of existing structures which results in no more additional countable floor area, shall satisfy commercial mitigation requirements by providing deed-restricted, category-level housing for twenty-five (25%) percent of the new employees generated. If a development in the C-2 Zone District provides one-hundred (100%) percent of its Net Commercial Square Footage as being deed restricted such that it is to be sold in commercial units of 1,000 square feet or less that cannot be combined, then the mitigation rate will be reduced by half to twelve and a half (12.5%) percent.

If a development in the C-2 Zone District provides one-hundred (100%) percent of its Net Commercial Square Footage as being deed restricted such that it is to be sold in commercial units of 1,000 square feet or less that cannot be combined, and restricts the occupancy to uses identified as retail uses in the C-2 Zone District, then the mitigation rate will be reduced to zero.

(b) For mixed-use projects, only the higher of the (1) Inclusionary Housing Requirement established in Town Code Section 16-416(a), *Residential Inclusionary Requirements*, or (2) the Commercial Linkage requirements established in Town Code Section 16-417(a), *Commercial Linkage* shall apply at the lowest applicable AMI-affordability levels. By way of example, if a

mixed-use project of 100,000 Net Square Feet of total Residential Development and 50,000 Net Square Feet of Commercial Development were proposed, the community housing obligation would be 35,000 square feet at an average price point affordable to a household earning 100% AMI. This represents the higher Net Square Footage requirement of Inclusionary Housing (35,000) or Commercial Mitigation (21,935), at the 100% AMI level required by Commercial Mitigation.

(c) Community Housing Units within a development constructed to satisfy commercial linkage requirements shall have an average initial sales price not to exceed a sales price that is affordable to individuals or households making one hundred percent (100%) of Basalt's AMI as is updated periodically pursuant to the method established in the Community Housing Guidelines. By way of example, if there are three (3) community housing units constructed in a development to satisfy commercial linkage requirements, one community housing unit could be priced to be affordable to individuals or households making 80% of AMI, the second community housing unit could be priced to be affordable to individuals or households making 120% of AMI, and the third community housing unit could be priced to be affordable for those individuals or households making 100% of AMI so that they do not average an initial sales price greater than would be affordable to those individuals or households making 100% of AMI. The bedroom mix of units used to meet the commercial linkage requirements shall be at the discretion of the Town Council as is set forth in Section 16-415, *Mitigation Methods*.

(d) The Community Housing demand generated by a Commercial Development shall be determined by utilizing an average job generation rate of 4 employees per 1,000 net square feet of commercial space with adjustments for multiple job holding and multiple employees per Household. Job generation rates and mitigation rates are based on the 2009 Town of Basalt Housing Support Study. The mitigation requirements shall be discounted by taking into account multiple job holdings of 1.25 jobs per employee and multiple employees per household of 1.73 employees per household as is demonstrated in the example below.

By way of example, below is the housing demand requirement for a new 3,000 net square foot of commercial space:

3,000 of net leasable square feet divided by 1,000; multiplied by a job generation rate of 4 full-time employees per 1,000 net square feet of commercial space; divided by 1.25 Jobs per Employees, divided by 1.73 Employees per Household; multiplied by .25 (25% of employees generated) mitigation requirement equals 1.38 community housing units required, multiplied by 950 net square feet per community housing unit equals 1,317 net square feet of community housing required.

(e) If the applicant can document, to the TRC's reasonable satisfaction, that the proposed commercial development will generate fewer jobs per 1,000 net square feet than the rate of jobs identified above for the life of the project, then the Town may allow the Applicant to use the anticipated lower job-generation rate in calculating Commercial Mitigation obligations. The TRC may require a request to use a lower job generation rate to be reviewed by the Town Council or an Applicant may appeal the TRC's determination to the Town Council. The bedroom mix of units used to meet the commercial linkage requirements shall be at the discretion of the Town Council as set forth in Section 16.415, *Mitigation Methods*.

Sec. 16-418. Replacement housing requirements.

Redevelopment of any property in the Town or newly annexed to the Town which, as of January 1, 1999, had four (4) or more residential housing units generally attainable by persons with a household income of fifty thousand dollars (\$50,000.00) on January 1, 1999, shall replace one hundred percent (100%) of such housing with community housing. Any such replacement community housing may be located on the property being redeveloped or on any other property within the urban growth boundaries as identified in the then-current Master Plan. The unit type and configuration of any such replacement housing shall be as similar in nature and number of bedrooms as reasonably possible and shall be subject to approval by the Town Council. (Ord. 6 §C, 1999; Ord. 33 §B1, 2003)

Sec. 16-419. Fee exemptions.

Community housing, including deed-restricted ADUs and EDUs, may be exempted by the Town Council from the payment of certain fees required by this Code, such as fees or land dedications required for park land dedication, school land dedication, special improvement fees and water tap fees in special circumstances. (Ord. 6 §C, 1999; Ord. 33 §B1, 2003)

Secs. 16-420—16-430. Reserved.

Exhibit “B”

Section 16-394 (e)

Historic Preservation Incentives

(e) Community_Housing.

(1) Community housing for commercial development. The remodel of a landmark with new commercial square footage which results in no more than three thousand (3,000) square feet of additional countable floor area subsequent to August 14, 2001, shall be exempt from the commercial housing mitigation requirements including the requirement to provide mitigation for at least twenty-five percent (25%) of the full-time equivalent employees generated by such development. The portion of new commercial countable floor area in excess of three thousand (3,000) square feet shall be subject to the community housing mitigation requirements.

(2) Community housing for inclusionary zoning. If none of the individual free-market residential units in a development on a landmark parcel exceed the minimum square footage for Category 2 community housing units established in the Community Housing Guidelines, the residential portion of the development shall be exempt from the inclusionary housing requirements.

A property owner is permitted to seek relief in addition to that outlined above for commercial and residential development through the zoning incentive procedures.

