



OTTEN JOHNSON ALERT

Aspen Construction Permit and Vacation Rental Permit Moratorium

February 2022 • [Chelsea C. Brune](#)

Introduction

The City Council (“Aspen City Council”) of the City of Aspen, Colorado (“Aspen”) made extraordinary changes to Aspen’s real estate development regime at the end of 2021. Aspen City Council held a special meeting on December 8, 2021 for the second reading of proposed Ordinance #27, Series of 2021 (“Ordinance #27” or the “Ordinance”), which was unanimously approved. With its passage, Ordinance #27 places a moratorium on new land use applications, new residential development and the issuance of new vacation rental permits, which became effective on passage, and will continue through June 8, 2022, unless further extended.

Applications Subject to Moratorium

Land Use Applications: Ordinance #27 imposes a temporary prohibition on acceptance by the Community Development Department (“CDD”) of any new land use applications for a Development Order or Notice of Approval affecting all residential uses, changes in use from commercial or lodge to residential, or residential development, as defined in Section 26.104.100 of the Aspen Municipal Code (the “Code”) in all zone districts within Aspen. This moratorium includes approvals sought pursuant to Chapters 26.410 (Residential Design Standards), 26.415 (Historic Preservation), 26.435 (Development in Environmentally Sensitive Areas (ESA)),

26.445 (Planned Development), 26.470 (Grown Management Quota System (GMQS)), and 26.480 (Subdivision) of the Code. The moratorium for residential development does not apply to an existing development order or pending application that was in process prior to the passage of Ordinance #27, with some exceptions.

Building Permit Applications: The Ordinance also imposes a temporary ban on acceptance by the CDD of any building permit application for all residential uses and development, as defined in Section 26.104.100 of the Code in all zone districts in Aspen which: (i) meet the definition of demolition; or (ii) would have the effect of increasing the height, gross square footage, net leasable area, or net livable area of any building, as those terms are defined by the Code.

Vacation Rental Permits: In addition to land use and building permit applications, no new vacation rental permits pursuant to Title 26 of the Code will be issued or approved during the pendency of the Ordinance.

Justification for Moratorium

Within Ordinance #27, Aspen City Council spelled out various reasons for the moratorium. The main justifications for the Moratorium were the ever-increasing price of real estate in Aspen and environmental concerns, although the Ordinance itself listed several other reasons. The Ordinance identified that Aspen depends on “a lived-in community of year-round locals to ... provide labor and capital to support the local economy” and “due to unprecedented increases in home prices and a lack of supply over time, the residential real estate market in Aspen no longer delivers meaningful housing for local residents” and that “affordable housing” is “relied upon to provide the vast majority of housing for locals and workers.” The Aspen City Council determined that the availability of housing for local workers was diminishing and the housing market in the region was “in crisis”. The Aspen City Council determined that a temporary ban on those certain development and rental activities restricted by the Ordinance would allow the City Council time to reassess the needs of Aspen and revise the processes for development and rental properties to address the increasing costs for local residents. The Ordinance also outlined Aspen’s commitment to reducing the effects of climate change and determined that the residential development regulations in place were not sufficiently meeting Aspen’s environmental objectives and would also be reevaluated during the pendency of the moratorium.

Pushback to Moratorium

Not all of the Aspen community is supportive of Ordinance #27. A lawsuit was quickly filed by the Aspen Board of Realtors, who sought a temporary restraining order against Aspen’s enforcement of the ordinance alleging that the Aspen City Council violated its charter with misuse of emergency powers, among other due process arguments. This litigation remains ongoing at the date of this alert.

Conclusion

Currently, the Ordinance expires June 8, 2022, but could be further extended by Aspen City Council, or curtailed by the courts. Aspen residential developers and buyers, as well as those looking to use their properties as new vacation rentals should consult with counsel to understand Ordinance #27's implications on their real estate plans and needs.

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