

## Law & Accounting

# Aspen construction & vacation rental permit moratoriums

The Aspen City Council made extraordinary changes to Aspen's real estate development regime at the end of 2021. Aspen City Council held a special meeting Dec. 8 for the second reading of proposed Ordinance No. 27, Series of 2021, which was unanimously approved. With its passage, Ordinance No. 27 placed a moratorium on new land use applications, new residential development and the issuance of new vacation rental permits, which became effective on passage, and was originally set to expire on June 8. Due to a procedural error, a revised ordinance, Ordinance No. 6, Series 2022, was passed unanimously in March, which mirrored the contents of Ordinance No. 27. Aspen City Council approved a two-month extension of the moratorium in May pursuant to Ordinance No. 8, Series 2022.

### Applications Subject to Moratorium

• **Land use applications.** The ordinance imposes a temporary prohibition on acceptance by the Aspen Community Development Department 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



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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 pre-existing development orders or pending applications that were in process prior to its passage, 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, that: meet the definition of demolition; or

to residential, or residential development, as defined in Section 26.104.100 of the Aspen Municipal Code in all zone districts within Aspen. The moratorium includes approvals



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• **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 the ordinance, Aspen City Council spelled out various reasons for the moratorium. The main justifications for the moratoriums were the ever-increasing price of real estate in Aspen and environmental concerns. 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

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.

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."

Aspen City Council determined that the availability of housing for local workers was diminishing and the housing market in the region was "in crisis." Aspen City Council determined that a temporary ban on those certain development and rental activities restricted by the ordinance would allow Aspen 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 the ordinance. A lawsuit was quickly filed by the Aspen Board of Realtors after its passage that sought

a temporary restraining order against Aspen's enforcement of the ordinance alleging that Aspen City Council violated its charter with misuse of emergency powers, among other due process arguments.

• **Extension of moratorium.** Ordinance No. 8 was unanimously approved by Aspen City Council in May. Aspen City Council cited constraints such as staff and community capacity, the complexity and contentiousness of the issues and the pandemic as reasons for the extension of the moratorium. Aspen officials said the extension was necessary to provide time for new regulations to be created.

Currently, the moratorium on land use applications and building permits expires Aug. 8, but could be further extended by Aspen City Council, or curtailed by the courts. The moratorium on the issuance of vacation rental permits has been extended until Sept. 30. Aspen residential developers and buyers, as well as those looking to use their properties as new vacation rentals, should consult with counsel to understand the ordinance's implications on their real estate plans and needs. ▲

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