



Policy Direction



Housing Mitigation LDRs Update

11/13/17

The Land Development Regulations (LDRs) include housing mitigation requirements that require development to include affordable housing. The intent of housing mitigation requirements is that when new jobs are created through development, housing that is affordable to the workforce is also created. In the Comprehensive Plan (2012) and Housing Action Plan (2015) the community commits to continuing to use housing mitigation LDRs as one tool to meet its goal of providing affordable housing opportunities so that 65% of the workforce lives locally.

This document is the Town and County direction on how to update the housing mitigation LDRs. This direction is informed by the Comprehensive Plan, Housing Action Plan and 5 months of community input.

- In late May and early June, the public identified issues regarding housing mitigation through an online survey (220 responses), open house (75 attendees, and in-person discussions (17 attendees in Spanish, 75 attendees in English).
- On July 10, Town Council and the Board of County Commissioners committed to answering 10 policy questions in order to inform an update of the housing mitigation LDRs.
- On September 13, alternative answers to those 10 policy questions were released for public analysis.
- From September 13 to October 12, the public analyzed the alternatives through an online survey (197 responses) and in-person discussions (40 attendees in Spanish, 80 in English).
- On October 13, staff's analysis and recommendation on the alternatives was released.
- On October 16 and 17, the joint Town/County Planning Commission analyzed and made a recommendation on the alternatives.
- On October 30 and November 1, Town Council and the Board of County Commissioners considered public, staff and Planning Commission analyses and recommendations and provided preliminary direction.
- On November 13, Town Council and the Board of County Commissioners finalized the direction below.

Based on the final direction below, consultant Clarion Associates, and staff, will draft updated housing mitigation LDRs. For a list of all documents, meetings, and workshops for this project please visit the project website at www.engage2017.jacksontetonplan.com/housingrequirements.

1. What segments of the workforce should housing mitigation be for?

Direction: Mitigate for year-round, fulltime employees, whether they work in one job or many (Alternative 1.A)

Year-round, fulltime employees will be the foundation of the housing mitigation requirement. Workers in the community can get to year-round, fulltime employment through a variety of job combinations. While there is a desire and intent to capture as many of the multi-job, year-round, fulltime employees as possible, current data will be used to update the housing mitigation LDRs. A known undercount in the 2013 Nexus Study are multi-job, year-round, fulltime employees, but the 2013 Nexus Study is the best available data. Future Nexus Study updates will include improved accounting for year-round, fulltime employees with many jobs.

Seasonal employees will only be calculated into the mitigation requirement as they relate to outdoor recreation and other job sectors that are not tied to square footage in a building. The housing needs of seasonal employees are an important part of the community's character but will be primarily addressed through incentives and

market allowances such as bonus floor area for on-site employee housing. The Town and County also acknowledge the need to look for other tools other than mitigation to address job growth not associated with development, because the rate of job growth has outpace the rate of development over the past 10 years.

2. What portion of the workforce generated by development should be housed through mitigation? (the rest will be housed through other tools, or commute)

Direction: Mitigate for the entire income range of households that cannot afford housing (about 0-200% of median income), but focus the requirements on the lower income households with greater need. (part of Alternative 2.A)

Requiring mitigation for the entire income range of households that cannot afford housing takes advantage of the opportunity presented by development to increase the variety in housing options available in the community. Homes at the higher end of the spectrum will create more opportunities for families in restricted housing to move up through the program and potentially make it into market housing. Homes at the higher end of the spectrum also require less subsidy because the households can pay nearly market value. While providing options at the higher end of the spectrum is an important expansion of the housing program, the focus should remain on the lower income households with the greatest need. Mitigation requirements should ensure that more housing is required for the lower end of the spectrum than the high end of the spectrum.

Direction: Mitigate to the maximum, legal extent to meet the community's housing goal. Include with the draft Housing Mitigation LDRs and draft Zoning for Character Districts 3-6, an analysis of how incentives would have to perform if the mitigation requirement were decreased. (part of Alternative 2.A)

Mitigating to the maximum, legal extent ensures that new development provides housing for the workforce generated who cannot afford housing. This ensures that growth through physical development does not add to the housing shortage in the community. While the maximum mitigation rate may dampen nonresidential development and redevelopment, ensuring that the needed workforce housing is provided with development is a higher priority than enabling development and redevelopment. The community's goal to house at least 65% of the workforce locally is a minimum, not a target.

All possible zoning allowances and incentives should still be pursued to provide the affordable workforce housing needed in the community. At this point that pursuit should be in addition to – rather than instead of – using mitigation to the maximum extent possible. The market cannot be unleashed to meet the community's housing demand, because the community also values growth management and has established neighborhood character goals that limit the location and amount of growth. As part of the supporting materials released with the draft updates to the Housing Mitigation LDRs and Zoning for Character Districts 3-6 (in Town) staff will provide an analysis of the incentives created through the zoning updates so that the Town and County can evaluate whether the amount of mitigation can be reduced. If there are not enough zoning and incentive options to achieve the community's housing goals, mitigation will need to be set to the maximum, legal extent.

3.4.5. How should the housing mitigation requirement be imposed?

Direction: Utilize an employee generation requirement (part of Alternative 3/4/5.C) with an implementation approach designed to be consistent with the overall policy direction.

An employee generation based requirement has been the direction the community has been headed for a number of years. The Comprehensive Plan (Policy 5.3.a) adopted in 2012, Employee Generation Nexus Study

completed in 2013, and Housing Action Plan (Initiative 5.C) adopted in 2015 all discuss moving toward a mitigation requirement that is distributed across residential and nonresidential development.

Everyone in the community generates employees, and everyone should contribute to housing those employees. An employee generation approach is the only way to distribute housing mitigation across all types of development. To ensure the mitigation is distributed to everyone, the requirements should include mitigation calculations based on something other than square footage for outdoor recreation and other businesses that do not really correlate to floor area.

The implication of this policy, in combination with the policy direction above, is that the mitigation required of nonresidential development will increase by about 4 times for industries such as lodging, retail, and food service that have a lower proportion of year-round employees. It will increase by about 20 times for industries such as office work that are mostly year-round employees. The mitigation required of a large single family home on an existing lot in the

County will stay about the same. The mitigation required for a multi-unit residential development will be about a quarter of what it is today.

Estimated Subsidy Represented by Required Affordable Housing Mitigation		
Development	Current Requirement	Alt. 2.A + Alt. 3.C
8,000 sf single family home on an existing lot	(County) \$ 40,669 (Town) exempt	\$ 50,387
Apartment building with 10-1,000 sf market units	(County) \$ 1,107,007 (Town) \$ 847,122	\$ 115,747
50 room hotel	\$ 491,560	\$ 1,907,007
10,000 sf office	\$ 25,871	\$ 527,550
5,000 sf retail	\$ 144,881	\$ 653,400
2,000 sf restaurant	\$ 139,706	\$ 577,760

These implications are a function of two changes since 1994. First, housing has gotten less affordable since 1994. Second, these policy directions require nonresidential development to house its fulltime, year-round employees who cannot afford housing instead of just the seasonal employees who cannot afford housing. The multi-unit residential requirement is reduced because the nonresidential requirement is increased, and developers of multi-unit residential projects are no longer responsible for housing all new fulltime, year-round employees who cannot afford housing. This decrease in the requirement on multi-unit residential development and corresponding increase in the requirement on nonresidential development may serve to incentivize multi-unit residential development in mixed use areas of Town where a developer can choose between residential or nonresidential development.

In discussing when and how to fairly impose the requirement it is evident that the implementation approach needs to be informed by all of the policy questions. Details such as whether mitigation is due at subdivision or building permit and how requirements will apply to a change from one nonresidential use to another are informed, in part, by all of the policy questions. Rather than provide direction now, the details of the implementation approach will be reviewed against the overall policy direction once updated housing mitigation LDRs are drafted.

6. What type of housing should be provided through housing mitigation requirements?

Direction: Required housing shall be a residential unit with the following minimum design standards. (Alternative 6.A modified)

- A minimum number of bedrooms per person required to be housed.
- Minimum livability features such as kitchen, bathroom, bedroom, and storage.

In order for a housing mitigation requirement to function a minimum accounting of bedrooms per person required to be housed has to be included. A requirement for other minimum features is necessary to ensure livability. These two requirements are best reviewed at the time of development and so should be included in the LDRs.

Additional requirements, such as design maximums and details about finishes and other livability standards, either overregulate the provision of required housing or are more appropriately addressed in the Housing Department Rules and Regulations. Overregulation adds even more cost to the provision of required housing, without providing commensurate community benefit. Livability standards and maximums are more appropriately addressed in the Housing Department Rules and Regulations because they apply beyond initial construction to ongoing maintenance requirements and how improvements are credited toward resale. Those sorts of ongoing standards are enforced by the Housing Department over time and so they belong in the Rules and Regulations rather than the LDRs, but can be referenced in the LDRs as needed.

Minimum unit sizes are not necessary at this time. Removing that requirement will give designers more flexibility to provide quality, livable space at less cost. If the livability of designs becomes an issue because of their size, a minimum size can be reinstated. This direction to remove minimum unit sizes will also affect the update to the Housing Rules and Regulations.

7. What methods for providing required housing mitigation will be allowed and preferred?

Direction: Prioritize production of units by the developer through standards that clearly establish the following order of preference and prohibit any method of meeting the housing mitigation requirement that is not on the list. (Alternative 7.B modified)

- 1) Any new unit; then
- 2) land dedication; then
- 3) use of a banked credit; then
- 4) restriction of an existing unit; then
- 5) payment of a fee.

Taking advantage of the opportunity for the applicant to build a new, affordable unit is the priority. The location of the unit will be determined by zoning. In areas most appropriate for a certain housing type, the zoning will be updated to allow or incentivize the provision of that housing type. The prioritization is based on the likelihood that the method of mitigation will result in a new, affordable unit. The prioritization will be executed through objective standards that an applicant must meet in order to move to a lower priority.

New development generates the need for new affordable workforce housing. Restricting existing units to be affordable into the future is important, but restricting an existing unit to address new demand is the loss of an opportunity to build a new affordable unit, which is our community's greatest need. The best case scenario is that the developer builds a new affordable unit and the existing unit is restricted through other tools. If the developer restricts the existing unit, that opportunity is lost. However, restriction of an existing unit is still better

than payment of an in-lieu fee because in-lieu fees are diminished in value by the time it takes to use them and the administration cost of turning them into actual housing.

8. What types of development should be exempt from housing mitigation requirements and why?

Direction: Exempt the list of development types below, which include development that is legally required to be exempt, residential development that provides affordable workforce housing, and nonresidential development with minimal impact. (Alternative 8.D)

- a. Existing development, unless it is razed, at which point any rebuild will be considered new development
- b. Development that has already provided housing mitigation
- c. Development that does not generate employees
- d. Housing that is deed-restricted to provide affordable, workforce housing, even if the restriction does not meet the Rules and Regulations
- e. Housing provided as part of a workforce housing incentive (example: Town floor area bonus incentive)
- f. Mobile Home Unit
- g. Accessory Residential Unit
- h. Dormitory or Group Home
- i. [County Only] Single-family homes less than 2,500 square feet (or a lower threshold)
- j. Agriculture
- k. Public/Semi-Public
- l. Home uses

Exemptions a-c are legally required. The provision in exemption 'a' that a razed site should be treated as vacant when it is redeveloped is a provision that staff and Clarion Associates will have to explore further to understand the extent to which existing development has to be exempt. Council and the Board are interested in a draft of such a standard, but are not committed to it.

The residential exemptions (exemptions d-i) all currently exist, although some need clarification. Mobile Home Parks, Accessory Residential Units, and Dormitory/Group Home uses all provide workforce housing solutions. While they do not have deed restrictions, the standards in the LDRs provide some assurance they will provide workforce housing that is affordable. The implication of this list of exemptions is that following types of new residential development, which are currently exempt, would no longer be exempt.

- Construction of any single family home (Town)
- A single lot split (Town)
- Live/Work Unit (Town)
- Apartment Building (Town)

The rationale behind the Town's exemption of apartment buildings in 2017 was to reduce the number of deed restricted units required to be in a large apartment building so that standard financing would be more readily available. The Town found that an apartment building with at least 20, small units would provide workforce housing solutions and was a desired type of development, so the Town removed the barrier represented by the

housing mitigation requirement. However, even without the current apartment building exemption, Alternative 3/4/5.C would reduce the housing mitigation requirement on a 100 unit apartment building in Town from 20 of the units having to be restricted to about 4 units having to be restricted. As a result, the exemption rationale from 2017 is no longer applicable.

The Town and County have provided different direction on whether to exempt small single family units (2,500 square feet, or a lesser amount) from the housing mitigation requirement. The Town, consistent with Alternative 3/4/5.C, finds that even a small unit has an impact and everyone should pull their weight. The fact that a small home has a small impact is reflected in the fact that the required housing mitigation would be small. The County finds that the exemption has been successful in removing a barrier to middle-class households who can get a toe into the market housing pool. The County is open to a discussion of reducing the exemption threshold to a square footage less than 2,500.

The nonresidential exemptions (exemptions j-l) all currently exist. Agricultural uses have land to provide housing and have a history of providing employee housing. The intent of a home use is to give businesses a place to start. Once they grow they have to move into a nonresidential building, and at that time will be required to provide mitigation.

The most significant implication of this list of exemptions is that private institutional and utility uses are no longer exempt. These uses were previously exempt because of their importance to the community. However, they also generate employees. Based on the employee generation numbers in the 2013 Nexus Study, public and private institutional development generated almost as much need for affordable workforce housing as commercial development from 2002 to 2014. While the exemption for private institutional and utility uses is removed, the exemption for Public/Semi-Public development is retained. The rationale for this is that the public does not have to require the public to provide workforce housing through regulations. If the public wants to ensure the public provides housing for its employees it can build it. The exemption does not preclude the public from doing the right thing and providing housing concurrent with public sector development. The exemption avoids a government entity getting held up in providing a public need because of the housing requirement.

9. What type of relief from the housing mitigation requirements should be allowed?

Direction: Allow structured, independent calculation as the only method to seek relief from the housing mitigation requirements. (Alternative 9.A)

Structured, independent calculation addresses the legal need to have a relief standard while also providing the greatest legal protection against gradual undermining of the regulation. All aspects of the housing mitigation requirements include relief provisions, there is no need for additional relief. There is an independent calculation to address relief from the calculation of the amount of the requirement, and the series of options for providing the required housing (Question 7) give relief from the requirement to build a new unit. Also, if an applicant believes the housing regulations deprive economically viable use of the site a Beneficial Use Determination can be requested.

10. How should the updated mitigation requirements be applied to approved, but not yet built, development?

Direction: A project with an existing approval should have to recalculate its housing mitigation requirement if a substantial amendment to the existing approval is proposed. Future approvals should require that housing mitigation requirements be calculated phase-by-phase based on the standard applicable at the time the phase is approved. (part of Alternative 10.B)

The Town and County should have an approach to update old approvals. However, the reality is that most of the significant old approvals, such as Resort master plans, are likely vested and can only be updated upon substantial amendment.

Legacy approvals that are silent on affordable housing mitigation would continue to be subject to updated regulations, as they are now. A recent example of this in the County was the development of “Lot 5” of the Jackson Hole Racquet Club (Teton Pines) Master Plan. That Master Plan predated affordable housing requirements and was silent on the issue of housing. When an application was submitted to subdivide “Lot 5” into the allowed density entitled by the Master Plan, it was subject to current affordable housing requirements. The implication of this policy is that it would modify the current standard, which is only the net change of a proposed amendment to an existing approval is subject to review. That standard would still apply to all other LDRs, but relative to the housing mitigation requirement the entire unbuilt portion of an approval would be subject to update to the current requirement if a substantial amendment is proposed to the original approval. “Substantial amendment” will be a well-defined threshold, that will be developed through the drafting the updated housing mitigation LDRs.

The biggest impact the Town and County can have on this topic is how future approvals are handled. Ensuring multi-phase projects are subject to updating housing requirements over the life of the approval is a topic that can be better addressed in future approvals to avoid having to re-answer this question for a new set of approvals.