



**PLANNING AND DEVELOPMENT SERVICES  
DEPARTMENT**

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**Item No. 16**

**TO:** Town Council

**FROM:** Michelle Haynes, Planning and Development Services Director and Sarah Abbott, Attorney, the law offices of J. David Reed

**DATE:** May 16, 2019

**RE:** Efficiency Lodge and Short-Term Accommodations Discussion regarding potential Community Development Code Amendments to clarify unit use restrictions- *continued from the March 21, 2019 Town Council Meeting*

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**INTRODUCTION**

The Town Council directed staff to begin an education and compliance work plan specific to Efficiency Lodge condominium units in the Town of Mountain Village. Efficiency Lodge units comprise 99% of the Town of Mountain Village's accommodations bed base. At the March 21, 2019 meeting town staff shared that we have a total inventory of 401 efficiency lodge units in the Mountain Village on eight properties. We discussed the use limitations and discussed clarifying the use limitation in the Community Development Code. Town Council directed staff to investigate the following issues:

- 1) At the Peaks, which is comprised of 142 efficiency lodge units, 3 hotel units and 32 lodge units (along with penthouse condominium units and commercial space), Town Council specifically asked staff to research and report back, whether efficiency lodge unit owners would have been aware of the unit designations and use limitations associated with the efficiency lodge and lodge units. (See attachment A)
- 2) The Town Council agreed that less than 30 consecutive days is consistent with accommodation use.
- 3) Town Council wanted more information before determining a maximum allowable use by renters or owners within a calendar year. The Town's policy has been no more than 60 days in a calendar year.

See memo from March 16, 2019 for background related to this worksession item (See attachment B)

**BACKGROUND**

Efficiency Lodge units pursuant to the Community Development Code (CDC) are defined as a one room space with a separate bath and limited kitchen facility ***used primarily for short-term accommodations*** (emphasis added). Limited kitchen facilities may include a sink, microwave, two-element burner, and six (6) cubic foot (maximum) refrigerator.

Efficiency Lodge units are restricted in their use, would typically demand a lesser value on the open real estate market due to their use limitations, have lesser parking requirements due to their

use, and have different building code compliance issues because they are classified as hotel rooms, not residences, and carry a lesser person equivalent as it relates to our overall density cap and accounting, than a condominium unit designation. The CDC prohibits a rezone and density transfer from Efficiency Lodge, Hotel or Hotel Efficiency to Condominium which further emphasizes the importance of the preservation of our accommodation units and use in the Mountain Village. In 1997 by ordinance the LUO at the time also prohibited efficiency lodge units, once rezoned from condominium, to be rezoned to any other designation.

### **SHORT TERM ACCOMMODATIONS DEFINITION**

The CDC notes that Efficiency Lodge units are, “primarily for short-term accommodations,” but does not specifically define “short term.” Pursuant to the Town’s business license and sales tax requirements, short-term accommodations use is defined as less than 30 consecutive days. The Town has also defined at a policy level that short-term accommodations use means less than 30 consecutive days and no more than a total of 60 days in a calendar year.

### **DISCUSSION**

Staff seeks Town Council direction specifically whether to amend the CDC to provide better clarity regarding unit designations limited to short term accommodation use and what that means. These include efficiency lodge (99% of all accommodation use unit designations), hotel and hotel efficiency unit designations. Specifically, points for discussion are the following:

- 1) Whether to change “primarily” to “exclusively”
- 2) Whether to clarify that “short term” means less than 30 consecutive days
- 3) Whether owners should be limited to an overall annual usage of 60 or 90 days
- 4) Whether owners should be permitted to use their units for up to 6 months if they can demonstrate that their unit is included in a rental pool

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### **Attachment:**

- A. Memo from Sarah H. Abbot, Attorney, J. David Reed’s Office, Notice to Peak Unit Owners Regarding Unit Zoning
- B. Staff memo dated March 21, 2019, worksession with Town Council, Efficiency Lodge and Short-Term Accommodations Discussion regarding potential Community Development Code amendments to clarify unit use restrictions.

/mbh & sha

# Memo

To: Mayor and Town Council  
From: Sarah H. Abbott  
Cc: Kim Montgomery and Michelle Haynes  
Date: May 8, 2019  
Re: Notice to Peaks Unit Owners Regarding Unit Zoning

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The purpose of this Memo is to analyze whether Peaks owners (both past and current) had record notice that either (i) their unit was zoned as an Efficiency Lodge Unit or (ii) the Town reserved the right to rezone their unit. After a review of the recorded documents, it is clear that owners did have record notice regarding the zoning of their units and that the Town reserved the right to amend certain zoning definitions.

## Analysis of Recorded Documents

In 2011, the declarant of the Peaks Resort completed a rezone and density transfer evidenced by a Second Amendment to the Condominium Plat for Doral Telluride Resort and Spa located on Lot 128, Town of Mountain Village, County of San Miguel, State of Colorado, which was recorded March 13, 2011 at Reception No. 416900 (the “**Replat**”).

In connection with the Replat, a First Amendment to Declaration of Covenants, Conditions and Restrictions Establishing a Plan for Condominium and Fractional Ownership of the Doral Telluride Resort and Spa, a Condominium, was recorded on the same date at Reception No. 416901 (the “**Amendment**”). Among other things, the Amendment established a “Unit Transient Usage Program” designed to manage units for rent for periods of thirty (30) days or less. It also provided that owners could not change door access mechanisms and that owners and occupants were required to check in and out of the front desk. An exhibit to the amendment outlined the residential units, allocated interests in the association, and sleeping capacity of each unit.

The second document recorded in connection with the Replat was the Declaration of Covenants, Conditions and Restrictions for Condominium-Hotel Operations of the Peaks Resort, recorded on the same date at Reception No. 416902 (the “**Operations Declaration**”). This document governs operational activities and related expenses for the Peaks with respect to certain specific units

defined as “Condo-Hotel Units.” These units are further described by their limited amenities, including kitchen facilities used primarily for short-term accommodations, and are those that were later rezoned to Lodge and Efficiency Lodge units.

The last document recorded in connection with the Replat was the Declaration of Covenants, Restrictions and Reservations (Density Transfer, Conveyed Land and New Development) recorded on the same date at Reception No. 416903 (the “**Density Transfer Declaration**”). This document applies to the same Condo-Hotel units covered by the last document mentioned, which it acknowledges are all zoned as “Condo Hotel Units” by the Town.

The Density Transfer Declaration specifically reserves to the declarant the right to apply for a rezone and density transfer of any or all of the Condo Hotel Units to Lodge Units and/or Efficiency Lodge Units, and states that, as of the effective date of the Density Transfer Declaration, “*substantially each of the uses, activities furnishings, finishes and equipment that are currently allowed to occur in a Condo Hotel Unit zoned as a ‘Hotel Unit’ will also be allowed to occur in a Condo Hotel Unit zoned a Lodge Unit’ and ‘Efficiency Lodge Unit,’ except that the Land Use Code may be amended from time to time by the Town of Mountain Village, which could modify some or all of such uses, activities furnishings, finishes and equipment occurring in a Condo Hotel Unit zoned a ‘Lodge Unit’ and ‘Efficiency Lodge Unit.’*” This language clearly and specifically places owners on notice that the Town can change its zoning definitions from time to time.

The Density Transfer Declaration also requires each owner of one of the Condo Hotel Units to acknowledge, consent and agree to the following: (i) that the declarant has reserved the right to submit a density transfer application to the Town affecting the owner’s unit; (ii) that the declarant is authorized to submit and pursue approval of such an application; (iii) that, if approved by the Town, a Condo Hotel Unit would be rezoned to Lodge Unit or Efficiency Lodge Unit, resulting in a surplus density that would be transferred to the density bank; (iv) that all of the uses and amenities available to a Condo Hotel Unit will be allowed in a Lodge Unit or Efficiency Lodge Unit *unless the Town amends the land use code to specify otherwise*; (v) that the owner does not have any interest in the excess density resulting from a rezone; and (iv) that each owner will execute a covenant restricting the use of the Condo Hotel to Lodge Unit or Efficiency Lodge Unit zoning. Each owner also authorized the declarant to act as its attorney-in-fact to apply for and complete rezoning and density transfers, and to cooperate with executing any further documents necessary to complete and evidence the restriction, among other things more fully described in the document.

The owner covenants were executed in 2011 but not recorded until 2015, when the Town adopted Ordinance 2015-10 approving a rezoning and density transfer for the Peaks. The rezoning application proposed to redesignate 174 Condo Hotel Units from hotels to 142 Efficiency Lodge Units and 32 Lodge Units and transfer 200.5 total person equivalents to the density bank (the “**Application**”). Recorded with the Ordinance approving the Application were approximately 100 executed Owner’s Acknowledgement, Consent and Authorization (Density Transfer, Conveyed Land and New Development), all with effective dates as of April 4, 2011 (the “**Consents**”).

The Consents evidenced each owner's acknowledgement that it was purchasing a specific unit that was burdened by a Density and New Development Covenant<sup>1</sup> and that such covenant disclosed information related to density transfers and new development. It required the owner/buyer to acknowledge that it reviewed the covenants in the Density and New Development Covenant and consented to and agreed to be bound by its terms, which terms specifically included short term accommodation limitations.

### Findings

Based on the foregoing, it is undisputed that Peaks owners had notice that the Town could change the uses, activities, furnishings, finishes and equipment of Lodge Units and Efficiency Lodge Units. There is no recorded document that specifically shows which units are zoned Lodge Units and which units are zoned Efficiency Lodge Units, but that is typical. Zoning is not normally part of a legal description for any property, regardless of where it is located. It is incumbent on the purchaser of property to research zoning and determine whether the property is suitable for its intended purpose.

<sup>1</sup> Defined as the Declaration of Covenants, Restrictions and Reservations (Density Transfer and Development Expansion). We cannot find a document with this name, but based on context believe it is meant to refer to the Density Transfer Declaration.