



**Town of Estes Park
TOWN BOARD & PLANNING COMMISSION
JOINT STUDY SESSION**

**March 18, 2025 from 2:30 p.m. – 4:30 p.m.
Town Hall Board Room
170 MacGregor Ave, Estes Park**

Accessing Meeting Translations (*Accediendo a las Traducciones de la Reunión*) can be found on the Town website at www.estes.org/boardsandmeetings

Public comment is not typically heard at Study Sessions, but may be allowed by the Mayor with agreement of a majority of the Board. This study session will be streamed live and available at www.estes.org/videos

AGENDA

- Rezoning Criteria.
- Workforce, Affordable, and Attainable Housing Definitions.
- Frequency of Future Joint Meetings.

Informal discussion among Trustees and staff concerning agenda items or other Town matters may occur before this meeting at approximately 2:15 p.m.

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§ 11.4 ATTAINABLE/WORKFORCE HOUSING DENSITY BONUS

A. **Purpose.** This Section is intended to create an incentive to provide a variety of attainable and workforce housing for persons living and/or working in the Estes Valley.

(Ord. 2-02 §9; Ord. 28-16, § 1; Ord. 30-17, § 1(Exh.))

B. **Eligibility.** All residential subdivisions and developments in the RM (Multi-Family Residential) zoning district are eligible for the attainable or workforce housing density bonus set forth in this Section. This Section's density bonus for attainable or workforce housing shall not be available and shall not be applied in any zoning district except the RM (Multi-Family Residential) zoning district.

(Ord. 2-02 §9; Ord. 28-16, § 1; Ord. 30-17, § 1(Exh.))

C. **"Attainable" and "Workforce" Defined.** For purposes of this Code and Chapter, "attainable housing units" and "workforce housing units" shall mean the following:

1. **Renter-Occupied Attainable Housing Units.**

- a. Housing units that are attainable to households earning one hundred fifty percent (150%) of the Larimer County Area Median Income or below, adjusted for household size.
- b. To qualify as attainable units, housing costs (i.e., rent and utility expenses) must not exceed thirty percent (30%) of the maximum income for an imputed household size based on one hundred fifty percent (150%) of the Larimer County Area Median Income. The imputed household size is equal to one and one-half (1.5) times the number of bedrooms in the unit. For example, rent on a two-bedroom unit would be equal to thirty percent (30%) of the monthly income limit of a three-person family; for a three-bedroom unit the rent should not exceed thirty percent (30%) of the monthly income of a four-and-one-half-person family—the midpoint of the range of a four- and five-person family.
- c. If the property owner does not pay all utility expenses, then a utility allowance, computed by the Estes Park Housing Authority, must be subtracted from the housing cost to determine the maximum rent.

(Ord. 2-02 #9)

2. **Owner-Occupied Attainable Housing Units.**

- a. Housing units that are attainable to households earning one hundred fifty percent (150%) of the Larimer County Area Median Income or below, adjusted for household size.
- b. To qualify as attainable units, housing costs must not exceed forty percent (40%) of the one-hundred-fifty-percent Larimer County Area Median Income, adjusted for household size.

(Ord. 2-02 #9)

3. **Larimer County Area Median Income, Defined.** The Larimer County Area Median Income is the current applicable area median income for Larimer County published by the U.S. Department of Housing and Urban Development.

(Ord. 2-02 §9)

4. **Workforce Housing.** Housing units shall be eligible for the Maximum Permitted Density Bonus (Sec. 11.4.D) if at least one (1) resident in each housing unit annually submits an affidavit, including a copy of

a W-2 form, to the Town certifying that the resident is employed within the Estes Park School District R-3 Boundary Map.

(Ord. 2-02 §9; Ord. 28-16, § 1; Ord. 30-17, § 1(Exh.))

D. **Maximum Permitted Density Bonus.** Subject to the standards and review criteria set forth in this Section and Chapter, attainable or workforce housing units are eligible for a density bonus of up to two (2) times (two hundred percent [200%]) of the base Max. Net Density standard set forth in the Estes Valley Development Code.

(Ord. 28-16, § 1; Ord. 30-17, § 1(Exh.))

E. **Development and Design Standards.**

1. [Reserved.]

2. **Public Sewers and Water Required.** All developments containing attainable or workforce housing units approved under provisions of this Section shall be served by public central sewer service and public water service.

3. **Short-Term Rentals Prohibited.** Attainable or workforce housing units approved under provisions of this Section shall not be rented, leased or furnished for tenancies of less than thirty (30) days (see §5.1.B).

(Ord. 02-10 §1)

4. **Deed Restriction or Restrictive Covenant and Agreement Required.** Attainable or workforce housing units developed pursuant to this Section shall use one of the two mechanisms below to assure the availability of the units for sale or rent to persons meeting the income or workforce guidelines and definition set forth in §11.4.C above. The Community Development Director shall determine which one of the two mechanisms below is applicable:

a. **Deed Restriction.** Attainable or workforce housing units shall be deed restricted. The deed restriction shall be for a time period of no less than fifty (50) years. The deed restriction used to restrict the units shall be approved by the Town or County Attorney.

b. **Restrictive Covenant and Agreement.** A Restrictive Covenant and Agreement shall be entered into between the property owner and the Town or County. The Restrictive Covenant and Agreement shall be for a time period of no less than fifty (50) years, shall run with the land, and shall be binding on the owner and all subsequent owners and successors. The Restrictive Covenant and Agreement shall be in a form acceptable to the Town or County Attorney. Upon approval by the Town or County Attorney, the Restrictive Covenant and Agreement shall be subject to review by the decision-making body with the associated preliminary subdivision, or, if no subdivision approval is required, with the associated development plan. The Restrictive Covenant and Agreement shall be properly executed and recorded.

(Ord. 28-16, § 1; Ord. 30-17, § 1(Exh.); Ord. 03-18, § 1(Exh.))

(Ord. 13-99 §D.4, 11/3/99; Ord. 2-02 #9, 2/12/02; Ord. 8-05 #1, 6/14/05; Ord. 2-10 #1, 1/26/10; Ord. 28-16, § 1(Exh. A), 12/13/16; Ord. 30-17, § 1(Exh.), 11/14/17; Ord. 03-18, § 1(Exh.), 3/13/18)

§ 3.3 Code Amendments

- A. **Initiation.** Applications for text or Official Zoning Map amendments may be initiated by the following:
1. By motion of the Estes Valley Planning Commission;
 2. By request of either Board; or
 3. By application for a rezoning by the owner(s) of the property for which the amendment is requested.
- B. **Private-Party-Initiated Applications for Code Amendments (Rezoning).** All applications for text or Official Zoning Map amendments initiated pursuant to §3.3.A.3 above shall comply with the following requirements:
1. **Development Plan Required.** All applications seeking to amend this Code to allow a change from one (1) zone district to a different zone district or seeking to amend this Code by changing the permitted uses in any zone district shall be accompanied by a development plan. This requirement may be waived by Staff if it finds that the projected size, complexity, anticipated impacts or other factors associated with the proposed development or subdivision clearly justify such waiver.
 2. **Contents of Development Plan.** See Appendix B to this Code for submittal requirements.
 3. Within one (1) year from the effective date of this Code, any property owner may apply for rezoning on the basis that an error in the original zoning was made. Staff may waive the development plan requirements based upon the nature of the proposed request. Applicant must submit a statement of request setting forth information, data and reasons why the error exists.
- C. **Procedures for Approval.** All applications for text or Official Zoning Map amendments shall follow the standard development approval process set forth in §3.2 of this Chapter.
- D. **Standards for Review.** All applications for text or Official Zoning Map amendments shall be reviewed by the EVPC and Board(s) for compliance with the relevant standards and criteria set forth below and with other applicable provisions of this Code.
1. The amendment is necessary to address changes in conditions in the areas affected;
 2. The development plan, which the proposed amendment to this Code would allow, is compatible and consistent with the policies and intent of the Comprehensive Plan and with existing growth and development patterns in the Estes Valley; and
 3. The Town, County or other relevant service providers shall have the ability to provide adequate services and facilities that might be required if the application were approved.
- E. **Effect of Approvals and Lapse.** When a development plan is required by this Section, if an Applicant fails to either apply for a building permit or commence operation with regard to the rezoning approval consistent with such development plan within three (3) years from the effective date of the amendment, such development plan shall automatically lapse and become null and void. In the event a development plan has lapsed, the Board, at its discretion, may institute rezoning proceedings pursuant to the procedures and standards set forth in this Section to rezone the affected land areas.

(Ord. 07-14 §1)

- F. **Applications for Building Permits During Consideration of Application for Amendment to this Code.**
1. Whenever an ordinance or resolution has been introduced before the Boards that involves a change in zoning from a less restricted district to a more restricted district, or to set forth prohibited uses in any existing zone district, no building permit shall be issued for a period not to exceed one hundred twenty (120) days from the date of the introduction of such zoning amendment when such building permit

would authorize the construction of a building or the establishment of a use that would become nonconforming under the contemplated zoning amendment.

2. If such ordinance or resolution is not adopted within one hundred twenty (120) days, the appropriate public entity is authorized to accept applications and issue building permits regardless of the pendency of such amendment.

(Ord. 07-14 §1, 2/25/14)

Larimer county AMI (Average Median Income) 2024

<https://dlg.colorado.gov/area-median-income-limits-table>

Household Size	80% AMI	100% AMI	120% AMI	150% AMI
1	\$66,550	\$83,200	\$99,800	\$116,050
2	\$76,050	\$95,050	\$114,050	\$132,600
3	\$85,550	\$106,950	\$128,300	\$149,200
4	\$95,050	\$118,800	\$142,550	\$165,750
5	\$102,700	\$128,350	\$153,950	\$179,050
6	\$110,300	\$137,850	\$165,350	\$192,300
7	\$117,900	\$147,350	\$176,750	\$205,550
8	\$125,500	\$156,850	\$188,200	\$218,800

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PUBLIC COMMENT RECEIVED 2025-03-17

TO: Community Development Director, Town Trustees

FROM: Rebecca L. Urquhart, Attorney at Law (retired)

DATE: March 17, 2025

RE: Definition of Change of Conditions.

For the next scheduled Study Session, please consider these comments:

Current Code language:

EVDC Section 3.3 D currently requires these standards to be met to approve a re-zone, and reads as follows:

1. The amendment is necessary to address **changes in conditions** in the areas affected;
2. The development plan, which the proposed amendment to this Code would allow, is **compatible and consistent with the policies and intent of the Comprehensive Plan and with existing growth and development patterns in the Estes Valley**;

The issue for the Study Session is the definition of: “changes in conditions”, addressed below.

Note, however the Code requires both criteria for a re-zoning. The Town has often argued that policies, and the Comprehensive Plan compatibility (which now has some new zoning recommendations, but are not legally effective until adopted...the Plan is just guidance) is all that is needed. That is inaccurate. Both criteria must be met. So, the recent adoption of town wide PUD changes, RM density bonuses are not enough to allow a rezoning of a single parcel or two (spot re-zoning).

One of the leading cases on spot re-zoning finds that:

“In determining whether a rezoning application is proper, the local governing body usually asks whether the proposed zoning amendment will comply with the local land use plan. If not, the application will need to show either that an error was made in establishing the current zoning or there has been a change **in the conditions of the area** in question that supports a zoning change. See *Applebaugh v. San Miguel County Comm’rs*, 837 P.2d 304 (Colo. App. 1992).” (emphasis added) “

*IBC Denver II, LLC v. City of Wheat Ridge, Colorado Court of Appeals
[intermediate court], Decided April 3, 2008, 2008 WL 879748*

This appears to say all the application has to do is meet the land use plan, but that doesn't mean just the "guidance" of a Comprehensive Plan. It means is the area currently zoned in the manner requested. For example, an RM lot could be rezoned as a workforce housing project, and any non-residential area could be re-zoned as PUD, because those would meet the current code.

"Change of Conditions" definition:

Based on a leading Colorado Supreme Court case, the change of conditions was denied due to "obvious damage to surrounding property values and enjoyment," and incompatibility with contiguous land use. *Clark v. City of Boulder, 362 P.2d 160 (1961)*

The Town attorney has cited a Boulder case (which is home rule, not statutory like the Town of Estes Park, which has different legal standards for actions), reviewing *Clark v. Boulder*, that involved a Planned Unit Development. This case should also be restricted to only PUD adoptions.

But, the critical part of this case noted that "the character of the neighborhood bordering the proposed PD District brought about by previous adoption of ordinances". While it seems that the new density bonuses in RM zones does change the character somewhat, it applies to only existing RM zones (or when they are created. Any creation of a new RM zone should still meet the 2 criteria in the Code cited above). If the area in the neighborhood of a certain parcel was already RM, a density bonus does not meet a test of change in conditions.

Illegal spot re-zoning occurs if a parcel's zoning is changed to a use which has not occurred in the surrounding property. In other words, if there already was RM or commercial next to a residential lot, and a residential lot bordering that parcel the owner seeks to change to RM, PUD, or commercial, that pre-existing nearby zoning classification is not a "change". The owners next to that subject residential bought theirs with knowledge how close other, say, RM developments were, but if the lot next door was residential, they expected that lot to stay residential when they purchased. The character of the extended neighborhood might have had a mix, but unless the parcels contiguous, adjacent, or in the immediate area have changed, a rezone should not be allowed.

Changing a residential lot to non-residential use cause damage to the adjacent or contiguous owners – to either the property value or their enjoyment. Accordingly, I propose the "change of conditions" should be defined in the code as shown in red font,

below (either in the definitions section, or in the code section, the latter of which would be less misleading):

EVDC Section 3.3 D

1. The amendment is necessary to address changes in conditions **that cause damage to value or enjoyment to properties** in the areas affected. **The areas affected are those within the boundaries as specified in the general notice provision of the area in EVDC § 3.15 (B) 4, as measured from the parcel(s) in the subject code amendment application**
2. The development plan, which the proposed amendment to this Code would allow, is compatible and consistent with the policies and intent of the Comprehensive Plan and with existing growth and development patterns in the Estes Valley;