

ORDINANCE No. 29
Series of 2016

**AN ORDINANCE OF THE ASPEN CITY COUNCIL ADOPTING CODE
AMENDMENTS CHAPTER 26.710 – ZONE DISTRICTS.**

WHEREAS, in accordance with Sections 26.208 and 26.310 of the City of Aspen Land Use Code, the City Council of the City of Aspen directed the Community Development Department to craft code amendments to coordinate the Aspen Area Community Plan (AACP) and the Land Use Code related to parking and mobility, the mix of commercial uses, commercial design, and mountain view planes; and,

WHEREAS, the Community Development Department and a Consultant Team consisting of White & Smith, LLC; Alan Richman Planning Services; Nelson Nygaard; Rowland + Broughton; BendonAdams; Regeneration Development Strategies; and Karen Setterfield conducted existing conditions research and outreach with respect to commercial use mix, parking, mobility, commercial design, and mountain view planes; and,

WHEREAS, pursuant to Section 26.310.020(B)(1), the Community Development Department conducted extensive Public Outreach with community members, the Planning & Zoning Commission, the Historic Preservation Commission, and City Council regarding the commercial district, commercial design, parking and view plane regulations; and,

WHEREAS, from May through November, 2016, the City and the Consultant team conducted 20 public outreach events, an online public outreach and survey page with over 1,230 visits, eleven (11) focus group meetings with stakeholders and City officials, five (5) meetings with the Planning and Zoning Commission, four (4) meetings with the Historic Preservation Commission, and fourteen (14) public meetings with the City Council;

WHEREAS, the Aspen City Council met in work sessions on February 29, 2016, April 12, 2016, April 18, 2016, April 26, 2016, May 10, 2016, June 21, 2016, July 18, 2016, August 9, 2016, August 28, 2016, September 13, 2016, September 19, 2016, September 27, 2016, October 10, 2016, and November 2, 2016 and provided general direction on code amendments; and

WHEREAS, pursuant to Section 26.310.020(B)(2), during a duly noticed public hearing on October 24, 2016, the City Council approved Resolution No. 147, Series of 2016, by a four to zero (4 – 0) vote, requesting code amendments to the Land Use Code to implement the Aspen Area Community Plan; and,

WHEREAS, amending the Land Use Code so it better reflects the goals of the AACP is a City Council Top Ten Goal; and,

WHEREAS, the Aspen Area Community Plan (“Growth Management, The Commercial Sector,” page 20) documents that businesses providing basic necessities are at risk of being displaced by restaurants, retail spaces, and offices in high-profile locations with high rents, resulting in a continuing shift towards exclusivity; and

WHEREAS, the Aspen Area Community Plan (“Growth Management, The Commercial Sector,” page 20) calls for a diverse commercial mix to strength the City’s character, with more aggressive measures to ensure the needs of the community are met; and

WHEREAS, the Aspen Area Community Plan provides for regulatory tools, such as Growth Management, for the use of non-prime commercial space including basements, second floors and alleys (Growth Management Policy V.1.b); and

WHEREAS, the Aspen Area Community Plan calls for the City to explore creating a program to encourage limited-use commercial spaces, which would be charged lower rents or rents based on a percentage of sales (Growth Management Policy V.1.d); and

WHEREAS, the Aspen Area Community Plan calls for the City to explore adopting an Existing Use Zone District in specific areas in order to prohibit new uses from displacing existing ones, such as providing a limited list of commercial uses subject to a conditional use process (Growth Management Policy V.1.e); and

WHEREAS, the Aspen Area Community Plan provides for the City to identify products and services that are considered basic community needs (Growth Management Policy V.2.a); and

WHEREAS, the Aspen Area Community Plan provides for the City to incentivize the provision of on-site affordable housing. This could include prioritization in receiving a building permit, points in growth management, etc. (Growth Management Policy VII.2.d); and

WHEREAS, the Consultant Team conducted a study to identify the aggregate retail demand of local residents and determine whether there are adequate local-serving businesses to meet that demand, and if there are types of business that are over-represented in the downtown, along with zoning tools to manage those imbalances (see Aspen Area Community Plan, Growth Management Policies V.1.a, V.1.c); and

WHEREAS, the Consultant Team conducted a study that considered creating regulatory tools such as quotas, limited prohibitions, and zoning regulations to manage imbalances in the City’s commercial uses (see Aspen Area Community Plan, Growth Management Policy V.1.a); and

WHEREAS, the Aspen Area Community Plan provides for the City to establish lower maximum building heights to maintain Aspen’s small town character (Growth Management Policy I.6.a); and

WHEREAS, the Aspen Area Community Plan provides for the City to amend zoning, the Commercial Design Guidelines, Residential Design Guidelines and Historic Design Guidelines as needed to implement the policy to maintain Aspen’s small town character (Growth Management Policy I.6.a); and

WHEREAS, the Aspen Area Community Plan provides for the City to amend the Commercial Design Guidelines, Historic Design Guidelines and zoning as needed to ensure that the

Code supports innovative development that respects our architectural heritage in terms of site coverage, mass, scale, form and a diversity of heights (Growth Management Policy V.3.b); and

WHEREAS, the Vision (Residential Sector) provisions of the Aspen Area Community Plan provide for the City to limit mass and scale, and to preserve scenic mountain views; and

WHEREAS, the Community Development Director has recommended approval of the proposed amendments to the City of Aspen Land Use Code; and

WHEREAS, the Aspen City Council finds that the amendments meet or exceed all applicable standards pursuant to Chapter 26.310 and that the approval of the amendments is consistent with the goals and elements of the Aspen Area Community Plan; and

WHEREAS, the Aspen City Council finds that this Ordinance furthers and is necessary for the promotion of public health safety and welfare; and

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASPEN COLORADO THAT:

Section 1. Section 26.710.140, *Commercial Core (CC)*, shall be amended to read as follows:

26.710.140 Commercial Core (CC).

A. Purpose. The Commercial Core (CC) serves as the highest intensity commercial area, fulfilling the policies of the Aspen Area Community Plan geared towards a strong and sustainable local and visitor economy, a diversity of commercial opportunities and the maintenance of Aspen's historic character. The CC zone provides for the use of land for retail, service, commercial, and institutional purposes within mixed-use buildings oriented to local and tourist populations. The balance of uses is designed to enhance the business and commercial character in the historic core of the City and provide commercial opportunities proximate to multi-modal transit infrastructure. This mix of uses creates economic, cultural and social vitality,

B. Permitted uses. The following uses are permitted by right in the Commercial Core (CC) Zone District:

1. Uses allowed on basement floors: General retail, specialty retail, restaurant, bar and entertainment uses, office uses, and building elements necessary and incidental to uses on other floors. Lodging uses, only when the entire building is dedicated to lodging and associated commercial use.
2. Uses allowed on the ground floor: General retail, specialty retail, restaurant, bar and entertainment uses, and uses and building elements necessary and incidental to uses on other floors. Lodging uses, only when the entire building is dedicated to lodging and associated commercial use. Office uses are prohibited on the ground floor except within spaces set back a minimum of forty (40) feet from the front property line and recessed behind the front-most street-facing façade. This prohibition shall not apply to split-level

buildings (see definition) or properties north of Main Street. Parking shall not be allowed as the sole use of the ground floor. Automobile drive-through service is prohibited.

3. Uses allowed on upper floors: General retail, specialty retail, restaurant, bar and entertainment uses, office uses, lodging, and affordable multi-family housing.
4. Uses allowed on all floors: General retail, specialty retail, restaurant, bar and entertainment uses, arts, cultural, civic and community uses, public uses, academic uses, service uses, accessory uses and structures, storage accessory to a permitted use, and uses and building elements necessary and incidental to uses on other floors, including parking accessory to a permitted use.
5. Free-Market Residential Units: No new Free-Market Residential Units may be established. Free-Market Residential units are permitted on any level if they were legally established (having received a Certificate of Occupancy, Development Order, or applied for a Development Order) prior to Ordinance 25 (Series of 2012).
6. Affordable Housing Units: Affordable housing is permitted by right on upper floors where accessory to a commercial use on the property or required for on-site affordable housing mitigation requirements. Affordable housing created pursuant to this subsection is not eligible to be used for the creation of Certificates of Affordable Housing Credit, pursuant to Chapter 26.540, unless for a fraction of a unit.
7. Home Occupations and Vacation Rentals: Home Occupations and Vacation Rentals are permitted only in legally established residential units.

C. Conditional uses. The following uses are permitted as conditional uses in the Commercial Core (CC) Zone District, subject to the standards and procedures established in Chapter 26.425:

1. Gasoline service station.
2. Commercial parking facility, pursuant to Chapter 26.515.
3. Automobile showroom and dealership.

D. Dimensional requirements. The following dimensional requirements shall apply to all permitted and conditional uses in the Commercial Core (CC) Zone District. The dimensional standards and allotments provided in this section for commercial and mixed-use developments are the maximum allowable for the zone and may not be achieved for all developments. Site constraints, historic resources, on-site mitigation and replacement requirements, and other factors may prevent development from achieving some or all of the maximum allowable dimensional standards.

1. Minimum Gross Lot Area (square feet): No requirement.
2. Minimum Net Lot Area per dwelling unit (square feet): No requirement.
3. Minimum lot width (feet): No requirement.

4. Minimum front yard setback (feet): No requirement.
5. Minimum side yard setback (feet): No requirement.
6. Minimum rear yard setback (feet): No requirement
7. Minimum utility/trash/recycle area: Pursuant to Chapter 12.06.
8. Maximum height (feet): Twenty-eight (28) feet.
9. Minimum distance between buildings on the lot (feet): No requirement.
10. Public amenity space: Pursuant to Section 26.412.
11. Floor area ratio (FAR): The following FAR schedule applies to uses cumulatively up to a total maximum FAR of 2.25:1.
 - a. *Commercial uses*: 2.25:1.
 - b. *Arts, cultural, civic and community uses, public uses, recreational uses, academic uses, child care center and similar uses*: 2:1.
 - c. *Affordable multi-family housing*: Greater of existing FAR or 1:1.
 - d. *Lodging*: 0.5:1, which may be increased to 1.5:1 if the individual lodge units on the parcel average five hundred (500) net livable square feet or less, which may be comprised of lock-off units.
 - e. *Free-Market multi-family housing*: Limited to the existing free-market multi-family FAR. No expansion to FAR shall be permitted, except at-grade patios, and decks (other than roof-top decks), balconies, exterior stairways, trellis, and other similar features up to 15% of the total free-market residential floor area. Any subsequent reduction in floor area occupied by such residential use shall be deemed a new limitation and the use shall not thereafter be enlarged to occupy a greater floor area. Free-market residential units shall not be able to utilize any exemptions to floor area outlined in Section 26.575.020(D), *Measuring Floor Area*, except as noted above.
12. Maximum lodge unit size (square feet): 1,500. When units are comprised of lock-off units, this maximum shall apply to the largest possible combination of units.
13. Net Livable Area (square feet):
 - a) Category 1-7 Affordable multi-family housing: No limitation.
 - b) Resident Occupied Affordable multi-family housing: Individual units shall be limited to 2,000 sq. ft. of net livable area.

- c) Free-Market Residential: Overall net livable area for a building or project is limited to the existing net livable square footage. No expansion to overall net livable area shall be permitted, except for as described below. Any subsequent reduction in net livable area occupied by such residential use shall be deemed a new limitation and the use shall not thereafter be enlarged to occupy a greater net livable area. Individual units shall be limited to 2,000 sq. ft. of net livable area. Combination of Free-Market residential units is permitted, but subject to the net livable size limitations herein, as well as other provisions of this title.
- d) Expansions Allowed: Notwithstanding the above, individual multi-family unit sizes may be increased by extinguishing Historic Transferable Development Right Certificates (“certificate” or “certificates”), subject to the following:
 - 1) The transfer ratio is 500 sq. ft. of net livable area for each certificate that is extinguished.
 - 2) The additional square footage accrued may be applied to multiple units. However, the maximum individual unit size attainable by transferring development rights is 2,500 sq. ft. of net livable area (i.e., no more than 500 additional square feet may be applied per unit).
 - 3) This incentive applies only to individual unit size. Transferring development rights does not allow an increase in the Floor Area Ratio (FAR) of the lot or the use.

14. Commercial/residential ratio: When development includes mixed-uses, the total residential net livable area shall be no greater than 65% of the total above-grade commercial net leasable and lodge net livable area on the same parcel.

E. Compliance with City of Aspen Charter. Any property located east of Castle Creek that was in the Commercial Core (CC) zone district on January 1, 2015, is subject to the provisions of Article XIII Section 13.14, *Voter authorization of certain land use approvals*, of the City of Aspen Charter.

Section 2. Section 26.710.150, *Commercial (C-1)*, shall be amended to read as follows:

26.710.150. Commercial (C-1).

Purpose. The Commercial (C-1) zone district provides for a diversity of commercial uses in mixed-use buildings outside of the historic context of the Commercial Core (CC) zone district. The C-1 zone advances Aspen Area Community Plan policies geared toward a strong and sustainable local and visitor economy, a diversity of commercial opportunities and the maintenance of Aspen as a recreation and cultural destination. The C-1 zone creates economic vitality by providing a mix of commercial uses with greater flexibility in architecture and design, enhancing Aspen’s community character. The C-1 creates a transition from the more intense activity of the CC zone district to the surrounding mixed-use, residential and lodge related uses.

B. Permitted uses. The following uses are permitted by right in the Commercial (C-1)

Zone District:

1. Uses allowed on all floors: General retail, specialty retail, restaurant, bar and entertainment uses, service uses, lodging uses, office uses, arts, cultural, civic and community uses, public uses, recreational uses, academic uses, bed and breakfast, accessory uses and structures, and uses and building elements necessary and incidental to uses on other floors, including parking accessory to a permitted use, storage accessory to a permitted use. Parking shall not be allowed as the sole use of the ground floor. Automobile drive-through service is prohibited.
2. Uses allowed on upper floors: Affordable multi-family housing.
3. Free-Market Residential Units: No new Free-Market Residential Units may be established. Free-Market Residential units are permitted on any level if they were legally established (having received a Certificate of Occupancy, Development Order, or applied for a Development Order) prior to Ordinance 25 (Series of 2012).
4. Affordable Housing Units: Affordable housing is permitted by right where accessory to a commercial use on the property or required for on-site affordable housing mitigation requirements. Affordable housing created pursuant to this subsection is not eligible to be used for the creation of Certificates of Affordable Housing Credit, pursuant to Chapter 26.540, unless for a fraction of a unit.
5. Home Occupations and Vacation Rentals: Home Occupations and Vacation Rentals are permitted on any building level only in legally established residential units.

C. Conditional uses. The following uses are permitted as conditional uses in the Commercial (C-1) Zone District, subject to the standards and procedures established in Chapter 26.425:

1. Affordable multi-family housing or home occupations on the ground floor.
2. Commercial parking facility, pursuant to Section 26.515.
3. Automobile showroom and dealership.

D. Dimensional requirements. The following dimensional requirements shall apply to all permitted and conditional uses in the Commercial (C-1) Zone District. The dimensional standards and allotments provided in this section for commercial and mixed-use developments are the maximum allowable for the zone and may not be achieved for all developments. Site constraints, historic resources, on-site mitigation and replacement requirements, and other factors may prevent development from achieving some or all of the maximum allowable dimensional standards.

1. Minimum Gross Lot Area (square feet):
 - a. *Bed and breakfast:* 3,000.

- b. *All other uses*: No requirement.
2. Minimum Net Lot Area per dwelling unit (square feet):
 - a. *Bed and breakfast*: Same as R-6 Zone District.
 - b. *All other uses*: No requirement.
3. Minimum lot width (feet):
 - a. *Bed and breakfast*: Same as R-6 Zone District.
 - b. *All other uses*: No requirement.
4. Minimum front yard setback (feet):
 - a. *Bed and breakfast*: Same as R-6 Zone District.
 - b. *All other uses*: No requirement.
5. Minimum side yard setback (feet):
 - a. *Bed and breakfast*: Same as R-6 Zone District.
 - b. *All other uses*: No requirement.
6. Minimum rear yard setback (feet):
 - a. *Bed and breakfast*: Same as R-6 Zone District.
 - b. *All other uses*: No requirement.
7. Minimum utility/trash/recycle area: Pursuant to chapter 12.06
8. Maximum height:
 - a. *Bed and breakfast*: Same as R-6 Zone District.
 - b. *All other uses*: Twenty-Eight (28) feet
9. Minimum distance between buildings on the lot (feet):
 - a. *Bed and breakfast*: Same as R-6 Zone District.
 - b. *All other uses*: No requirement.
10. Public amenity space: Pursuant to Section 26.412.
11. Floor area ratio (FAR): The following FAR schedule applies to uses cumulatively up to a total maximum FAR of 2:1.
 - a. Commercial uses: 2:1.
 - b. Arts, cultural, civic and community uses, public uses, recreational uses, academic uses, and similar uses: 1.75:1.
 - c. Affordable multi-family housing: Greater of existing FAR or 1:1

- d. Lodging: .5:1, which may be increased to 1.5:1 if the individual lodge units on the parcel average five hundred (500) net livable square feet or less, which may be comprised of lock-off units.
 - e. Bed and breakfast (as the sole use of parcel and not cumulative with other uses): Eighty percent (80%) of allowable floor area of a same-sized lot located in the R-6 Zone District. (See R-6 Zone District.) Extinguishment of historic TDRs shall not permit additional FAR for single-family or duplex development.
 - f. Free-Market multi-family housing: Limited to the existing free-market multi-family FAR. No expansion to FAR shall be permitted except at-grade patios, and decks (other than roof-top decks), balconies, exterior stairways, trellis, and other similar features up to 15% of the total free-market residential floor area. Any subsequent reduction in floor area occupied by such residential use shall be deemed a new limitation and the use shall not thereafter be enlarged to occupy a greater floor area. Free-market residential units shall not be able to utilize any exemptions to floor area outlined in Section 26.575.020(D), *Measuring Floor Area*, except as noted above.
12. Maximum lodge unit size (square feet): 1,500. When units are comprised of lock-off units, this maximum shall apply to the largest possible combination of units.
13. Net Livable Area (square feet):
- a) Category 1-7 Affordable multi-family housing: No limitation.
 - b) Resident Occupied Affordable multi-family housing: Individual units shall be limited to 2,000 sq. ft. of net livable area.
 - c) Free-Market Residential: Overall net livable area for a building or project is limited to the existing net livable square footage. No expansion to overall net livable area shall be permitted. Any subsequent reduction in net livable area occupied by such residential use shall be deemed a new limitation and the use shall not thereafter be enlarged to occupy a greater net livable area. Individual units shall be limited to 2,000 sq. ft. of net livable area. Combination of Free-Market residential units is permitted, but subject to the net livable size limitations herein, as well as other provisions of this title.
 - d) Expansions Allowed: Notwithstanding the above, individual multi-family unit sizes may be increased by extinguishing Historic Transferable Development Right Certificates (“certificate” or “certificates”), subject to the following:
 - 1) The transfer ratio is 500 sq. ft. of net livable area for each certificate that is extinguished.
 - 2) The additional square footage accrued may be applied to multiple units. However, the maximum individual unit size attainable by transferring development rights is 2,500 sq. ft. of net livable area (i.e., no more than 500 additional square feet may be applied per unit).

- 3) This incentive applies only to individual unit size. Transferring development rights does not allow an increase in the Floor Area Ratio (FAR) of the lot or the use.

14. Commercial/residential ratio: When development includes mixed-uses, the total residential net livable area shall be no greater than 65% of the total commercial net leasable and lodge net livable area on the same parcel.

E. Compliance with City of Aspen Charter. Any property located east of Castle Creek that was in the Commercial (C-1) zone district on January 1, 2015, is subject to the provisions of Article XIII Section 13.14, *Voter authorization of certain land use approvals*, of the City of Aspen Charter.

Section 3. Section 26.710.160, *Service/Commercial/Industrial (SCI)*, shall be amended to read as follows:

26.710.160 Service/Commercial/Industrial (S/C/I).

A. Purpose. The S/C/I zone supports Aspen Area Community Plan policies related to a sustainable, local serving economy and the preservation of a diversity of commercial opportunities for locals and visitors. In response to the decreased intensity of commercial uses in the zone and relative distance from the CC and C1 zones, both multi-modal and automobile parking improvements are appropriate on site in the S/C/I. In order to enhance the City’s commercial diversity, the zone allows for uses not found in other zones including light industrial, manufacturing, production, repair and similar service-related uses. The S/C/I zone is designed to provide commercial space to those uses not appropriate in other commercial zones, but which provide an essential or unique service to support the local economy. Flexibility and adaptability are important features of the zone to respond to changing commercial sector dynamics and meet the space needs of the City’s service, creative and production economies.

B. Permitted and Conditional Uses.

1. The following uses may have, in combination, a limited percent of the floor area, devoted to retail sales, showroom, or customer reception, and such uses shall be ancillary to the primary commercial use. This floor area percentage may be increased through Special Review by the Planning and Zoning Commission, pursuant to Section 26.430.050, and according to the standards of Section 26.710.160(E)1.

<p>% retail sales, showroom, or customer reception <i>(maximum – net leasable area)</i></p>	<p>Uses include the manufacturing, repair, customization, servicing, alteration, detailing, rental or sale of consumer goods, such as:</p>
<p>100%</p>	<ul style="list-style-type: none"> • Vehicle sales. • Building materials, components, hardware, fixtures, interior finishes and equipment. • Fabric and sewing supply. • Household appliances such as ranges, refrigerators, dishwashers, etc.

<p>% retail sales, showroom, or customer reception <i>(maximum – net leasable area)</i></p>	<p>Uses include the manufacturing, repair, customization, servicing, alteration, detailing, rental or sale of consumer goods, such as:</p>
	<ul style="list-style-type: none"> • Outdoor recreational items, which may be in combination with a service use related to guiding or touring.
<p>25%</p>	<ul style="list-style-type: none"> • Animal boarding facility. • Animal grooming establishment. • Artist studio. • Brewery and brewing supply. • Coffee roasting and supply. • Commercial dry cleaning. • Commercial Kitchen or Bakery. • Design Studio (limited to the Andrews-McFarlin Subdivision). • Laundromat. • Locksmith. • Marijuana Cultivation Facility, Marijuana Product Manufacturing Facility, or Marijuana Testing Facility. • Consumer electronics service and repair. • Post Office branch. • Printing and copy center. • Shipping, packing and receiving services. • Veterinary clinic.
<p>10%</p>	<ul style="list-style-type: none"> • Automobile washing facility. • Building/landscape maintenance facility. • Warehousing and storage.

2. Primary Care Physician’s Office Uses permitted:
 - a. On Upper Floors, pursuant to Section 26.710.160 (D)11(b).
 - b. Limited to a cap of 3,500 square feet at the Obermeyer Place PD, upon execution of an Insubstantial PD Amendment.

3. Permitted Accessory Uses:
 - a) Service yard accessory to a permitted use.
 - b) Sales and rental accessory and incidental to a permitted use.
 - c) Accessory buildings and uses.
 - d) Home occupations and Vacation Rentals: Home Occupations and Vacation Rentals are permitted only in legally established residential units.
 - e) Offices, accessory to a permitted or conditional use, may occupy up to 10% of a commercial unit.

C. Conditional uses. The following uses are permitted as conditional uses in the Service/Commercial/ Industrial (SCI) zone district, subject to the procedures established in Chapter 26.425.050 Procedures for Review, and the standards established in Section 26.710.160(F).

1. Affordable Housing Units: Affordable housing is permitted as a conditional use where accessory to a commercial use on the property or required for on-site affordable housing mitigation requirements. See 26.710.160.D.11 for affordable housing Floor Area Ratio requirements. Affordable housing created pursuant to this subsection is not eligible to be used for the creation of Certificates of Affordable Housing Credit, pursuant to Chapter 26.540, unless for a fraction of a unit.
2. Free-Market Residential Units: No new Free-Market Residential Units may be established. Free-Market Residential units are permitted on any level if they were legally established (having received a Certificate of Occupancy, Development Order, or applied for a Development Order) prior to Ordinance 29, Series 2016.
3. Consignment retail establishment.
4. Commercial Parking Facility, pursuant to Section 26.515.
5. Gasoline service station.
6. Grocery store.

D. Dimensional requirements. The following dimensional requirements shall apply to all permitted and conditional uses in the Service/Commercial/ Industrial (SCI) zone district. The dimensional standards and allotments provided in this section for commercial and mixed-use developments are the maximum allowable for the zone and may not be achieved for all developments. Site constraints, historic resources, on-site mitigation and replacement requirements, and other factors may prevent development from achieving some or all of the maximum allowable dimensional standards.

1. Minimum Gross Lot Area (square feet): 3,000
2. Minimum Net Lot Area per dwelling unit (square feet): No requirement.
3. Minimum lot width (feet): No requirement.
4. Minimum front yard setback (feet): No requirement.
5. Minimum side yard setback (feet): No requirement.
6. Minimum rear yard setback (feet): No requirement.
7. Minimum Utility/Trash/Recycle area: Pursuant to Chapter 12.06.
8. Maximum height: Thirty-five (35) feet.

9. Minimum distance between buildings on the lot (feet): No Requirement.
10. Pedestrian Amenity Space: Pursuant to Section 26.412.
11. Floor Area Ratio (FAR): The following FAR schedule applies to uses cumulatively up to a total maximum FAR of 2.25:1. Achieving the maximum floor area ratio is subject to compliance with applicable design standards, view plane requirements, public amenity requirements and other dimensional standards. Accordingly, the maximum FAR is not an entitlement and is not achievable in all situations.
- a. *Commercial Uses:* 2.25:1.
 - b. *Primary Care Physician's Office uses:* .25:1 FAR, only if a minimum of .75:1 FAR of Commercial uses, listed in Section 26.710.160(B)1-3, exist on the same parcel.
 - c. *Affordable Multi-Family Housing:* Greater of existing FAR or .5:1.
 - d. *Free-Market Multi-Family Housing:* Limited to the existing free-market multi-family FAR. No expansion to FAR shall be permitted except at-grade patios, and decks (other than roof-top decks), balconies, exterior stairways, trellis, and other similar features up to 15% of the total free-market residential floor area. Any subsequent reduction in floor area occupied by such residential use shall be deemed a new limitation and the use shall not thereafter be enlarged to occupy a greater floor area. Free-market residential units shall not be able to utilize any exemptions to floor area outlined in Section 26.575.020(D), Measuring Floor Area, except as noted above.
12. Maximum multi-family residential dwelling unit size (square feet):
- a) Category 1-7 Affordable multi-family housing: No limitation.
 - b) Resident Occupied Affordable multi-family housing: Individual units shall be limited to 2,000 sq. ft. of net livable area.
 - c) Free-Market multi-family housing: Individual units shall be limited to 2,000 sq. ft. of net livable area. Combination of Free-Market residential units is permitted, but subject to the net livable size limitations herein, as well as other provisions of this title.
 - d) Expansions Allowed: Notwithstanding the above, individual multi-family unit sizes may be increased by extinguishing Historic Transferable Development Right Certificates ("certificate" or "certificates"), subject to the following:
 - 1) The transfer ratio is 500 sq. ft. of net livable area for each certificate that is extinguished.
 - 2) The additional square footage accrued may be applied to multiple units. However, the maximum individual unit size attainable by transferring

development rights is 2,500 sq. ft. of net livable area (i.e., no more than 500 additional square feet may be applied per unit).

- 3) This incentive applies only to individual unit size. Transferring development rights does not allow an increase in the Floor Area Ratio (FAR) of the lot or the use.

E. Special Review Standards. Whenever the dimensional standards of a proposed development within the SCI Zone District are subject to Special Review, the development application shall be processed as a Special Review, pursuant to Section 26.430.050. The following additional criteria apply:

1. To increase the allowable percentage of interior space assigned to retail, showroom, or customer reception area, the applicant shall demonstrate the need and appropriateness for such additional space and shall demonstrate consistency with the purpose of the SCI Zone District.
2. The additional approved percentage for a specific use shall be limited to that use and not applicable to subsequent uses in the same space.

F. Conditional Use Review Standards.

1. Retail, Showroom or Customer Reception Area. In addition to meeting the standards in Chapter 26.425, *Conditional Use*, the following Standards shall be met:

- a. For consignment retail establishment, commercial parking facility (pursuant to Chapter 26.575), and gasoline service station, the Commission shall establish the appropriate amount of floor area to be devoted to retail sales, showroom, or customer reception as a condition of conditional use review.
- b. To establish the allowable percentage of interior space assigned to retail, showroom, or customer reception area, the applicant shall demonstrate the need and appropriateness for the space and shall demonstrate consistency with the purpose of the SCI Zone District. The approved percentage for a specific use is limited to that use and not applicable to subsequent uses in the same space.

2. Multi-Family Housing. In addition to meeting the standards in Chapter 26.425, *Conditional Use*, the following Standards shall be met.

- a. The applicant must demonstrate that the residential use and individual units are substantially removed and physically separated from Commercial Uses on the same parcel, to the extent practicable, so as to isolate residential uses from commercial impacts and to adequately provide for on-loading, off-loading, circulation and parking for commercial uses.

G. Compliance with City of Aspen Charter. Any property located east of Castle Creek that was in the Service/Commercial/Industrial (S/C/I) zone district on January 1, 2015, is subject to the provisions of Article XIII Section 13.14, *Voter authorization of certain land use approvals*, of the City of Aspen Charter.

Section 4. Section 26.710.170, *Neighborhood Commercial (NC)*, shall be amended to read as follows:

26.710.170 Neighborhood Commercial (NC).

A. Purpose. The Neighborhood Commercial (NC) zone supports Aspen Area Community Plan policies related to a sustainable, local serving economy and the preservation of a diversity of commercial opportunities for locals and visitors. The zone district provides opportunities for mixed-use development in close proximity to downtown at higher intensity than the Mixed Use or surrounding residential neighborhood zone districts. The NC allows for a mix of essential goods and services oriented businesses in close proximity to multi-modal transit infrastructure.

The mix of uses in the NC is designed to provide for the daily needs of residents and visitors in a built environment that enhances the community character of Aspen. Greater design flexibility and increased setbacks from the CC and C1 zones allows for mixed-use development which creates a transition from the downtown commercial areas and can accommodate retail, service commercial, food service and related uses in conjunction with affordable housing on upper floors as an ancillary use to the primarily commercial purpose of the zone. Limited on-site parking is appropriate in conjunction with high traffic volume or residential uses and in addition to multi-modal improvements.

B. Permitted uses. The following uses are permitted as of right in the Neighborhood Commercial (NC) Zone District:

1. Uses allowed on all building levels: General retail, restaurant, bar and entertainment uses, service uses, office uses, arts, cultural, civic and community uses, public uses, recreational uses, academic uses, accessory uses and structures, uses and building elements necessary and incidental to uses on other floors, including parking accessory to a permitted use, storage accessory to a permitted use.
2. Uses allowed on upper floors: Affordable multi-family housing is permitted by right where accessory to a commercial use on the property or required for on-site affordable housing mitigation requirements. See 26.710.170.D.11 for affordable housing Floor Area Ratio requirements. Affordable housing created pursuant to this subsection is not eligible to be used for the creation of Certificates of Affordable Housing Credit, pursuant to Chapter 26.540, unless for a fraction of a unit.
3. Free-Market Residential Units: No new Free-Market Residential Units may be established. Free-Market Residential units are permitted on any level if they were legally established (having received a Certificate of Occupancy, Development Order, or applied for a Development Order (prior to Ordinance 29, Series of 2016)).
4. Home Occupations and Vacation Rentals: Home Occupations and Vacation Rentals are permitted only in legally established residential units.

C. Conditional uses. The following uses are permitted as conditional uses in the Neighborhood Commercial (NC) Zone District, subject to the standards and procedures established in Chapter 26.425:

1. Commercial parking facility, pursuant to Chapter 26.515.
2. Automobile showroom and dealership.

D. Dimensional requirements. The following dimensional requirements shall apply to all permitted and conditional uses in the Neighborhood Commercial (NC) Zone District. The dimensional standards and allotments provided in this section for commercial and mixed-use developments are the maximum allowable for the zone and may not be achieved for all developments. Site constraints, historic resources, on-site mitigation and replacement requirements, and other factors may prevent development from achieving some or all of the maximum allowable dimensional standards.

1. Minimum Gross Lot Area (square feet): No requirement.
2. Minimum Net Lot Area per dwelling unit (square feet): No requirement.
3. Minimum lot width (feet): No requirement.
4. Minimum front yard setback (feet): five (5).
5. Minimum side yard setback (feet): five (5).
6. Minimum rear yard setback (feet): five (5).
7. Minimum utility/trash/recycle area: Pursuant to Chapter 12.06.
8. Maximum height: twenty-eight (28) feet.
9. Minimum distance between buildings on the lot (feet): No requirement.
10. Public amenity space: Pursuant to Section 26.412.
11. Floor area ratio (FAR): The following FAR schedule applies to uses cumulatively up to a total maximum FAR of 1.5:1. Achieving the maximum floor area ratio is subject to compliance with applicable design standards, view plane requirements, public amenity requirements and other dimensional standards. Accordingly, the maximum FAR is not an entitlement and is not achievable in all situations.
 - a. *Commercial uses:* 1.5:1.
 - b. *Arts, cultural, civic and community uses, public uses, recreational uses, academic uses, and similar uses:* 1:1.
 - c. *Affordable multi-family housing:* Greater of existing FAR and .5:1.

- d. *Free-market multi-family housing*: Limited to the existing free-market multi-family FAR. No expansion to FAR shall be permitted except at-grade patios, and decks (other than roof-top decks), balconies, exterior stairways, trellis, and other similar features up to 15% of the total free-market residential floor area. Any subsequent reduction in floor area occupied by such residential use shall be deemed a new limitation and the use shall not thereafter be enlarged to occupy a greater floor area. Free-market residential units shall not be able to utilize any exemptions to floor area outlined in Section 26.575.020(D), Measuring Floor Area, except as noted above.

12. Maximum multi-family residential dwelling size (square feet):

- a) Category 1-7 Affordable multi-family housing: No limitation.
- b) Resident Occupied Affordable multi-family housing: Individual units shall be limited to 1,500 sq. ft. of net livable area.
- c) Free-Market multi-family housing: Individual units shall be limited one thousand five hundred (1,500) square feet of net livable area. Combination of Free-Market residential units is permitted, but subject to the net livable size limitations herein, as well as other provisions of this title.
- d) Expansions Allowed: Notwithstanding the above, individual multi-family unit sizes may be increased by extinguishing Historic Transferable Development Right Certificates (“certificate” or “certificates”), subject to the following:
 - 1) The transfer ratio is 500 sq. ft. of net livable area for each certificate that is extinguished.
 - 2) The additional square footage accrued may be applied to multiple units. However, the maximum individual unit size attainable by transferring development rights is 2,000 sq. ft. of net livable area (i.e., no more than 500 additional square feet may be applied per unit).
 - 3) This incentive applies only to individual unit size. Transferring development rights does not allow an increase in the Floor Area Ratio (FAR) of the lot or the use.

13. Commercial/residential ratio: When development includes mixed-uses the total residential net livable area shall be no greater than 65% of the total commercial net leasable and lodging net livable on the same parcel.

E. Compliance with City of Aspen Charter. Any property located east of Castle Creek that was in the Neighborhood Commercial (NC) zone district on January 1, 2015, is subject to the provisions of Article XIII Section 13.14, *Voter authorization of certain land use approvals*, of the City of Aspen Charter.

Section 5. Section 26.710.180, *Mixed-Use (MU)*, shall be amended to read as follows:

26.710.180 Mixed-Use (MU).

A. Purpose. The Mixed Use (MU) zone serves as a transition from the more intense commercial areas of the CC and C-1 zones, and the residential and lodging zones surrounding Main Street. By allowing for a mix of commercial and residential uses and smaller-scale development, the Mixed Use zone reflects Aspen's historic character and provides different economic and residential opportunities from more traditional commercial zones. Particularly along Main Street, the Mixed Use zone serves as a buffer from the traffic of Highway 82 while allowing for smaller scale commercial and residential opportunities.

Buildings in the Mixed Use zone consist primarily of commercial, service and office uses on the ground floor, and residential and office uses on upper floors and off of the primary street frontage. Uses in the MU zone should not erode the character of the neighborhood or create excessive impacts to the surrounding residential and lodging zone. Standalone residential uses are permitted on properties as a reflection of the historic residential nature of the zone district.

B. Permitted uses. The following uses are permitted as of right in the Mixed-Use (MU) Zone District:

1. On historic landmark properties: Bed and breakfast.
2. General retail uses.
3. Specialty retail uses.
4. Restaurant, bar and entertainment uses.
5. Service uses.
6. Office uses.
7. Lodging.
8. Arts, cultural, civic and community uses.
9. Public uses.
10. Recreational uses.
11. Academic uses.
12. Affordable multi-family residential.
13. Free-market multi-family housing is permitted in a mixed use building if the housing was legally established (having received a Certificate of Occupancy, Development Order, or applied for a Development Order) prior to Ordinance 29, Series 2016. No new Free-Market Residential Units may be established in mixed-use buildings.
14. Free-market multi-family residential when a stand-alone use, or in conjunction with affordable multi-family residential.
15. Single-family residence, Duplex residence, or Two (2) detached single-family residences. Accessory dwelling unit in a separate building accessed off the rear of a lot as an accessory use.
16. Home occupations.
17. Accessory uses and structures.

- 18. Storage accessory to a permitted use.
- 19. Vacation rentals. Pursuant to Section 26.575.220

C. Conditional uses. The following uses are permitted as conditional uses in the Mixed-Use (MU) Zone District, subject to the standards and procedures established in Chapter 26.425:

- 1. Commercial parking facility, pursuant to Chapter 26.515.
- 2. Automobile showroom and dealership.

D. Dimensional requirements. The following dimensional requirements shall apply to all permitted and conditional uses in the Mixed-Use (MU) Zone District. The dimensional standards and allotments provided in this section for commercial and mixed-use developments are the maximum allowable for the zone and may not be achieved for all developments. Site constraints, historic resources, on-site mitigation and replacement requirements, and other factors may prevent development from achieving some or all of the maximum allowable dimensional standards.

- 1. Minimum Gross Lot Area (square feet): 3,000.
- 2. Minimum Net Lot Area per dwelling unit (square feet):
 - a. *Detached residential dwellings:* 4,500. 3,000 for historic landmark properties.
 - b. *Duplex dwellings (square feet):* 4,500. 3,000 for historic landmark properties.
 - c. *All other uses:* Not applicable.
- 3. Minimum lot width (feet): 30.
- 4. Minimum front yard setback (feet): 10, which may be reduced to 5, pursuant to Special Review, Chapter 26.430.
- 5. Minimum side yard setback (feet): 5.
- 6. Minimum rear yard setback (feet): 5.
- 7. Minimum utility/trash/recycle area: Pursuant to Chapter 12.06.
- 8. Maximum height:
 - a. *Detached residential and duplex dwellings:* 25 feet.
 - b. *All other uses:* 28 feet.
- 9. Minimum distance between buildings on the lot (feet): 10.
- 10. Public amenity space: Pursuant to Section 26.412.
- 11. Floor Area Ratio (FAR):
 - a. The following FAR schedule applies to uses cumulatively and individually when part of a commercial, lodging, or mixed-use development, as follows:

Use	Maximum <i>(allowed by right)</i>	Maximum by special review <i>(see Subsection 26.430.040.A)</i>
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		Main Street Historic District	All Other Locations
Cumulative total of all uses	1:1	1.25:1	1.5:1
Commercial	1:1	1.25:1	1.5:1
Civic	1:1	1.25:1	1.5:1
Lodging	0.75:1	1:1	1:1
Affordable Housing	No limitation other than cumulative total of all uses		

- b. The following FAR schedule applies to affordable housing and free-market residential uses when developed as the only use of the parcel:
- i. *Affordable Housing, multi-family housing*: Limited to cumulative total outlined in Section 26.710.180.11.a, above.
 - ii. *Free-market, affordable housing*: 0.5:1, which may be increased to 0.75:1 if affordable housing floor area equal to 100% of the free-market residential floor area is developed on the same parcel.
- c. The following FAR schedule applies to single-family and duplex uses when developed as the only use of the parcel:
- i. *Detached residential and duplex dwellings established prior to the adoption of Ordinance No. 7, Series of 2005*: 100% of the allowable floor area of an equivalent-sized lot located in the R-6 Zone District. (See R-6 Zone District.) Receipt of a development order shall constitute the date the use was established. Replacement after demolition shall not effect a new establishment date for the purposes of this Section. City historic transferable development rights shall not permit additional floor area for detached residential and duplex dwellings.
 - ii. *Detached residential and duplex dwellings established after the adoption of Ordinance No. 7, Series of 2005*: 80% of the allowable floor area of an equivalent-sized lot located in the R-6 Zone District. (See R-6 Zone District.) City historic transferable development rights shall not permit additional floor area for detached residential and duplex dwellings.

12. Maximum multi-family residential dwelling unit size (square feet):

- a) Category 1-7 Affordable multi-family housing: No limitation.
- b) Resident Occupied Affordable multi-family housing: Individual units shall be limited to 2,000 sq. ft. of net livable area.
- c) Free-Market multi-family housing: Individual units shall be limited to 2,000 sq. ft. of net livable area. Combination of Free-Market residential units is permitted, but subject to the net livable size limitations herein, as well as other provisions of this title.

- d) Expansions Allowed: Notwithstanding the above, individual multi-family unit sizes may be increased by extinguishing Historic Transferable Development Right Certificates (“certificate” or “certificates”), subject to the following:
- 1) The transfer ratio is 500 sq. ft. of net livable area for each certificate that is extinguished.
 - 2) The additional square footage accrued may be applied to multiple units. However, the maximum individual unit size attainable by transferring development rights is 2,500 sq. ft. of net livable area (i.e., no more than 500 additional square feet may be applied per unit).
 - 3) This incentive applies only to individual unit size. Transferring development rights does not allow an increase in the Floor Area Ratio (FAR) of the lot or the use.

13. Commercial/residential ratio: When development includes mixed-uses, the total residential net livable area shall be no greater than 150% the total commercial net leasable and lodging net livable area located on the same parcel.

E. Compliance with City of Aspen Charter. Any property located east of Castle Creek that was in the Mixed-Use (MU) zone district on January 1, 2015, is subject to the provisions of Article XIII Section 13.14, *Voter authorization of certain land use approvals*, of the City of Aspen Charter.

Section 6. Chapter 26.710 of Part 700 of Title 26 shall be amended by adding the following new Section 26.710.340, *Essential Business Overlay (EBO) Zone District*, to read as follows:

26.710.340 Essential Business Overlay (EBO) Zone District.

A. Purpose. The purpose of the Essential Business Overlay (EBO) Zone District is to encourage businesses that accommodate the basic consumer needs of Aspen residents and visitors. The EBO provides alternative use standards from the underlying zoning to allow redevelopment to create spaces useful to locally serving, non-traditional or other uses not anticipated in the zoning code. The EBO also provides opportunities for public-private partnerships, where agencies and developers partner to create useful, non-traditional spaces, including live-work, business incubators and other mixed-use development models. This zone is a voluntary overlay that may be applied to properties in the S/C/I and NC zones to enable quality redevelopment and achieve desired use and design outcomes. The EBO is applied through the rezoning process. Approval is contingent upon meeting the criteria in Section 26.310.

B. Permitted and conditional uses.

1. **Permitted Uses:** Those allowed in the underlying zone district. In addition, General Retail uses, Service/Commercial/Industrial uses, Service uses, and farmer’s markets are permitted uses.
2. **Conditional Uses:** Those allowed as conditional uses in the underlying zone district, as well as restaurant, bar, and entertainment uses for the SCI zone district.

- Residential uses are not permitted in the EBO Zone, unless the uses are accessory to a commercial use on the property or part of a live-work arrangement where the predominant uses on the site are commercial, and the uses are approved as a condition of rezoning (see subsection C.2 below). The EBO zone may not be applied to an existing residential use, unless the applicant for rezoning enters into a binding commitment to demolish or redevelop the residential uses for a use permitted in the EBO Zone, or the residential use is approved as part of the rezoning.

C. Dimensional requirements. The dimensional requirements for all uses in the Essential Business Overlay (EBO) Zone District shall be the dimensional requirements established for those uses in the underlying zone district, except as provided below.

- The following dimensional standards apply:

Minimum Gross Lot Area (square feet):	No requirement.
Minimum Net Lot Area per dwelling unit (square feet):	No requirement.
Minimum lot width (feet):	No requirement.
Minimum front yard setback (feet):	No requirement.
Minimum side yard setback (feet):	No requirement.
Minimum rear yard setback (feet):	No requirement.
Minimum Utility/Trash/Recycle area:	Pursuant to Chapter 12.06.
Maximum height:	Limited to underlying zoning.
Minimum distance between buildings on the lot (feet):	No requirement.
Pedestrian Amenity Space:	Pursuant to Section 26.412.
Floor Area Ratio (FAR)	Limited to underlying zoning.
Minimum Commercial FAR	1:1

- The applicant may apply for alternative dimensional requirements as a condition of rezoning, taking into consideration neighborhood compatibility and the dimensional requirements of surrounding zone districts. Under no circumstances shall the overall FAR allowed in the underlying zone district be exceeded. In addition, no reductions in required mitigation may be requested through the EBO rezoning.

D. Transportation and Parking Management. See Chapter 26.515, except that the maximum spaces allowed (Section 26.515.040.E, Table 26.515-1) do not apply to the EBO district.

Section 7: Any scrivener’s errors contained in the code amendments herein, including but not limited to mislabeled subsections or titles, may be corrected administratively following adoption of the Ordinance.

Section 8: Effect Upon Existing Litigation.

This ordinance shall not affect any existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances repealed or amended as herein provided, and the same shall be conducted and concluded under such prior ordinances.

Section 9: Severability.

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional in a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions thereof.

Section 10: Effective Date.

In accordance with Section 4.9 of the City of Aspen Home Rule Charter, this ordinance shall become effective thirty (30) days following final passage.

Section 11:

A public hearing on this ordinance shall be held on the 28th day of November, 2016, at a meeting of the Aspen City Council commencing at 5:00 p.m. in the City Council Chambers, Aspen City Hall, Aspen, Colorado, a minimum of fifteen days prior to which hearing a public notice of the same shall be published in a newspaper of general circulation within the City of Aspen.

INTRODUCED, READ, AND ORDERED PUBLISHED as provided by law, by the City Council of the City of Aspen on the 14th day of November, 2016.

Attest:

Linda Manning, City Clerk

Steven Skadron, Mayor

FINALLY, adopted, passed and approved this 23rd day of January 2017.

Attest:

Linda Manning, City Clerk

Steven Skadron, Mayor

Approved as to form:

James R. True, City Attorney