AGENDA

Planning and Zoning Commission

September 4, 2024 – REGULAR MEETING

5:30 PM

The New Business items have been placed on the agenda in the order they were received. Please note that at 8:00 p.m., the Commission will evaluate the remainder of the agenda to determine if time constraints will permit the full agenda to be heard at this meeting. All items not heard at this meeting will be postponed to the next regularly scheduled PC/BOA meeting.

NOTICE: THE VIDEO AND AUDIO FOR THIS MEETING ARE STREAMED TO THE PUBLIC VIA THE INTERNET AND MOBILE DEVICES WITH VIEWS THAT ENCOMPASS ALL AREAS, PARTICIPANTS AND AUDIENCE MEMBERS

PLEASE SILENCE ALL ELECTRONIC DEVICES DURING THE MEETING

1. ZOOM LINK FOR PUBLIC PARTICIPATION

The Town reserves the right to close Public Comment via Zoom at any time. In-person comment will continue to be taken and written comments can always be submitted to the Planning Department at planning@jacksonwy.gov.

I. To join, click link or copy it to your browser: https://us02web.zoom.us/j/83877294139?pwd=6oSsxlfr5uO5kgm8dmpFPxaC5oZgX7.1

   Or join at zoom.com with Webinar ID: **838 7729 4139** and Password: **83001**

2. CALL TO ORDER
3. ROLL CALL
4. MATTERS FROM THE PUBLIC
5. APPROVAL OF MINUTES
6. OLD BUSINESS
7. NEW BUSINESS
8. BOARD OF ADJUSTMENT
9. PLANNING COMMISSION
   I. P24-094 LDR Text Amendment - Housing Mitigation Change of Use (Katelyn Page)
10. AGENDA FOLLOWUP
11. MATTERS FROM THE COMMISSION
12. MATTERS FROM STAFF
13. ADJOURN

STAFF REPORT

Meeting Date:	September 4, 2024	Meeting Title:	Regular Planning Commission
Submitting Department:	Planning Department	Presenter:	Katelyn Page
Agenda Item:	P24-094: LDR Text Amendment to Introduce Exemptions to Affordable Housing Mitigation Requirement	Public Comment:	Yes

Purpose & Policy Considerations.
All Text Amendments to the Town of Jackson Land Development Regulations (LDRs) require review and recommendation by the Planning Commission (PC) according to LDR Section 8.7.2. The Town Council makes the final decision on all LDR Text Amendments.

Requested Action.
This is a staff initiated request. Staff proposes a Text Amendment to the LDRs to add two exemptions to the Town's affordable workforce housing mitigation requirements for certain changes of use and small residential additions. The proposed amendment would modify the following LDR Sections:

- 6.3.2.C – Affordable Workforce Housing Standards (Exemptions)
- 6.3.3.A.4 – Amount of Affordable Workforce Housing Required (Change of Use)

Recommendation.
The Planning Director recommends **approval** of LDR Text Amendment P24-094 as presented in this staff report.

Key Policy Question.
Does the PC support the proposed changes which would reduce the burden of housing mitigation on business owners and tenants and small residential additions but would also cause some reduction in money going into the affordable housing fund.

Background.
In July 2023, staff presented a set of policy-level questions to the JIM related to the proposed update of the Town's and County's housing mitigation LDRs. This presentation included summarizing and explaining the results of the newly updated housing mitigation nexus study on which any updated mitigation standards and requirements would be based. As part of that JIM discussion, staff asked the JIM whether it wanted to exempt commercial change of use applications and de-minimis residential additions from housing mitigation requirements. Staff recommended approval of both exemptions. The stakeholder group (an advisory group of professional and/or interested entities in affordable housing development) and Housing staff supported a more limited version of change of use exemption (i.e., within consolidated commercial categories but not necessarily across all commercial categories) and supported a de minimis exemption for single-family homes. Taking this information into consideration, both the Board of County Commissioners and Town Council agreed with Planning staff's recommendation to provide a broad exemption across all commercial uses and a de minimis residential exemption in the Town (the County already exempts homes of 2,500sf or less). It was acknowledged

that the change of use exemption was more applicable in the Town and that the Town would probably take the lead on this change.

Based on this feedback, the consultant for the housing mitigation LDR update drafted redline text to reflect the JIM's direction. Staff from the planning and housing departments reviewed and edited the redline text until the edits were generally incorporated into a final draft. However, before the consultant's text could be shared with the public, the Town and County halted all further work on the housing mitigation update due mostly to uncertainty created by the state's Regulatory Reduction Task Force and other state efforts that indicated that the state might pass new legislation that, among other things, would limit and override housing mitigation fees and requirements from local communities.

However, despite the halt in the housing mitigation LDR update, Town planning staff still believe that it is in the public interest to move forward with the previously supported exemptions for change of use and de-minimis residential additions because negative financial impacts continue to hit local businesses and landowners, especially because rents and costs of construction have risen dramatically in the last 12 months. For these reasons, staff initiated this proposed amendment by presenting to the PC the same redline text drafted by the consultant and reviewed by staff (now modified slightly to reflect PC's direction).

With this background, the PC reviewed the proposed amendment at its August 7, 2024, regular meeting. A copy of that staff report is attached hereto. During discussion, the PC expressed concerns that including the 25% percentage cap on exempt floor area for small residential additions would unfairly limit this option for smaller homes (e.g., those around 1,000sf – 1,500sf) and would mostly benefit larger homes (those over 2,500 sf). Thus, for small residential additions, the PC directed staff to consider options to better target the exemption for smaller existing "workforce" homes rather than incentivizing additions to larger units and felt that a floor area around 2,500sf was a reasonable "break point" in defining small versus large dwelling units.

For commercial changes of use, the PC agreed that newly constructed floor area should continue to be mitigated but supported an exemption for changes of use between all non-residential (i.e., commercial) uses on existing floor area. However, the PC asked whether the change of use exemption could be applied to existing businesses only and not to new businesses because they felt new businesses might, in fact, be adding more new employees that should be mitigated compared to existing businesses. The PC directed staff to further consider methods of capturing mitigation for new businesses while limiting impact to existing business during the change of use process.

<u>Changes Since August 4, 2024, Planning Commission</u>
In response to PC direction staff recommends the following changes to the proposed text:

- Remove 25% maximum from the proposed text for small residential additions.
- Introduce a limit of 2,500sf for small residential exemption applicability.
- Use "non-residential" instead of "commercial and lodging" to clarify intended use categories.

Additional minor changes were made to proposed text for clarity and consistency in the LDRs. All newly proposed changes are summarized in Table 1 below. Please refer to the attached redline draft for full language of the proposed text.

Table 1
Summary of Proposed Redline Updates Since August 7, 2024

LDR Section	Regarding	Previously Proposed Language	Proposed Change
6.3.2.C.8 6.3.3.A.4	Exemptions – Changes in Use. Amount of Required Mitigation – Change of Use.	Requires mitigation between all commercial uses.	Clarifies text as "non-residential uses" rather than "commercial and lodging" to better match intent of exemption and requirement. No change in meaning or substance.
6.3.2.C.9	Affordable Workforce Housing Standards Exemption – Small Residential Exemptions.	One-time residential addition equal to the *lesser of 500sf or 25%* of the habitable floor area of existing unit.	For existing dwelling units less than 2,500sf, a one-time addition of up to 500sf with no % limit. No exemption for dwelling units equal to or greater than 2,500sf.
6.3.3.A.4	Amount of Affordable Workforce Housing Required for Change of Use (Requirement)	Change of use example between retail and restaurant	Expands on non-residential use categories in examples.

Analysis.
Planning Staff recommend approval of all proposed changes. The proposed amendment introduces flexibility for property owners and tenants when seeking certain changes of use or small residential additions.

To estimate how much fee money might be lost if the proposed two exemptions are adopted, staff analyzed the past five years of total affordable workforce housing mitigation fees received by the Town and then compared that amount to just the fees paid for by change of use applications – nonresidential changes of use – and small residential additions of 500sf or less to structures less than 2,500sf

Table 2
Mitigation received by the Town for FY2020-2024

Fiscal Year	Total Mitigation Fees Received*	Mitigation Fees from Changes of Use or Small Residential Additions (As % of Total Mitigation Received)
FY2024	$743,453	$14,080 (1.9%)
FY2023	$910,585	$3,495 (0.4%)
FY2022	$431,234	$59,651 (13.8%)
FY2021	$686,444	$28,825 (4.1%)
FY2020	$291,029	$8,817 (3.0%)
5 Year Avg	$612,549	$22,974 (4.7%)

*Includes fees for all new construction, changes of use, and additions.

It is worth noting that for FY25, which started in July 2024, we have one proposed change of use project under review for a wildlife tour operator that would have a change of use fee of approximately $200,000 - $250,000, one of the larger such fees that we have seen. In that instance, the wildlife tour operator business relocated to a property with existing mitigation credit for Heavy Retail/Service, a use which is mitigated at a much lower rate than Outfitter/Tour Operator.

<u>Nonresidential Change of Use</u>
For change of uses, the primary justification for the proposed exemption is to reduce the financial impact on existing businesses relocating within Town, especially when a move is forced by a lease not being renewed or when rent is increased beyond their ability to pay. It is frequently the case that businesses, rather than property owners, pay for the mitigation fee for a change of use and thus many businesses cannot afford to move, or are reluctant to do so, as a result. Furthermore, a relocated business often has to make significant and costly improvements to the new tenant space (that then become the landlord's property) and so an additional mitigation fee can be overly burdensome.

Most problematic, because the change of use fee amount is based on the amount of mitigation credit that already exists on the new property or tenant space, the mitigation fee is not based on the impact of the business itself but on where credits exist. Thus, for example, a business could pay no fee to relocate into one tenant space but have to pay a much higher fee to move across the street or even next door. Another possibility is that the same business might have to pay the same mitigation fee multiple times (i.e., every time it moves) if there is not sufficient credit at each new location. This creates an uneven playing field where businesses that can find properties with credits have a competitive advantage over those who cannot find such properties.

Based on Table 2 above, approval of the proposed two exemptions would result in an estimated average annual loss of about $23,000 or 4.7% of all housing mitigation fees collected by the Town each year. Planning staff find that this amount, while not insignificant, is a small portion of the Housing Department's housing budget and is a small price to pay in relation to the significant impact paying these fees has on individual businesses. It is important to note too that this average can change over time, especially if there is one or two large change of use fee requirements in a year. As mentioned above, an existing wildlife tour operator would likely have a fee of $200,000 to $250,000 for the current year if this exemption is not approved. Also, there was a change of use fee of about $165,000 for restaurant back in 2016 that received a lot of Council attention and that closed around five years later, leaving that significant credit with the landowner because mitigation credits are not owned by the business but stay with the landowner.

In summary, the majority of changes of use in the five year time period analyzed (FY2020-FY2024) resulted in no required mitigation due to no net mitigation requirement (e.g., service to retail use currently mitigated at the same rate) or because of an existing mitigation credit at the property (e.g.: existing credits for a previous use). In addition, the majority of changes of use involved existing floor area, not newly constructed floor area. It is typical to have anywhere from one to three nonresidential (change of) use permits a year which require mitigation fees from approximately $1,000 to $10,000. Over the time period studied, the largest mitigation requirement was $58,989 for Heavy Retail / Service to Office use. However, much larger fees are possible and have happened as mentioned above. It is staff's experience that the majority of the high mitigation requirements for changes of use – approximately $100,000 to $250,000 – occur when Retail, Office, and, notably, Outfitter/Tour Operator uses seek to locate in existing floor area with existing credits for Heavy Retail / Service or an Industrial use which are currently mitigated at lower rates than most other nonresidential uses. Over the same time period, staff can point to projects that did not move forward, presumably impacted by mitigation levels. In another case, the scope of work for a construction project involving a change of use and renovation was altered to fulfill required mitigation via a unit provision on-site rather than fee in lieu of approximately $236,000.

One PC recommendation from the August 7, 2024, meeting was to direct staff to consider mitigation avenues that are more advantageous to local and/or existing businesses than to new and/or non-local businesses. Staff's recommendation is that Town should not make such a distinction. The nexus study, on which mitigation standards and requirements are based and legal support for the mitigation program is tied to, does not differentiate between such business characteristics and instead is based on business use and floor area. The Town Attorney advises against creating such distinction between business types based on concerns about equal treatment. Additionally, it is practically and administratively difficult to track such business characteristics. Thus, it is staff's recommendation to maintain the current practice of basing mitigation on use and floor area.

<u>Residential exemption for additions of 500sf or less</u>
For small residential additions of 500sf or less to structures less than 2,500sf, the proposed amendment would reduce the mitigation requirement for property owners and tenants when constructing small additions to existing homes. An example of a small addition would be enclosing a porch to create habitable floor area to accommodate a laundry room or bedroom. For reference, under currently mitigation requirements, the LDRs require a $3,569.04 fee (0.013 units) for a 500sf addition to a 1,000sf detached dwelling. This scenario would be exempt under the proposed amendment.

This proposed amendment would reduce the expense of building small additions, many times helping residents to remain in the community in existing housing stock as their housing needs evolve. The intent is to relieve some financial impact from development, facilitate reasonable expansion of floor area, and offer housing solutions locally for owners and tenants of small residential dwelling units while continuing to capture appropriate mitigation for additions to larger dwelling units.

One PC recommendation from the August 7, 2024, meeting was to direct staff to consider options to better target the exemption for smaller existing “workforce” homes while not incentivizing additions to larger units. The PC felt 2,500sf was an appropriate “break point” between small and large homes. This is based in part on consistency with some building and energy code regulations as well as a current de-minimis exemption in Teton County where no mitigation is required for units less than 2,500sf. For dwelling units less than 2,500sf, staff recommends an exemption for additions of 500sf or less. For dwelling units 2,500sf or larger, staff recommends no exemption to current mitigation fees.

The majority of residential construction permits in the five-year time period analyzed (FY2020-FY2024) involved new constriction, renovations, or large additions. Staff estimates that small residential additions (approximately 500sf or less) account for around 5-10% of *residential* construction permits per year and contribute to only 0.5%-3% of the total mitigation fees received by the Town.

The proposed residential exemption directly supports Comprehensive Plan policies to preserve and enhance existing stable neighborhoods, promote infill development, provide workforce housing solutions locally, and house at least 65% of workforce locally. The proposed change of use exemption directly supports Comprehensive Plan policies to enhance quality and development of Complete neighborhoods and provide predictability in land use decisions. Staff find the proposed amendments meet the findings of approval required by LDR Sec. 8.7.2 as described below.

Public Comment.
No public comment was received by staff at the time of this report.

Staff Findings.
Pursuant to Section 8.7.2 of the Town of Jackson Land Development Regulations, the advisability of amending the text of these LDRs is a matter committed to the legislative discretion of the Town Council and is not controlled by any one factor. In deciding to recommend adopting, modifying, or denying a proposed LDR Text Amendment the Planning Commission shall consider factors including, but not limited to, the extent to which the proposed amendment:

1. ***Is consistent with the purposes and organization of the LDRs;***

   Complies. The purposes of the LDRs per Division 1.3 are generally to implement the Comprehensive Plan and to promote the health, safety, and general welfare of the present and future inhabitants of the community. The proposed amendments directly support Comprehensive Plan Policies 3.3.b (Provide predictability in land use decisions), 4.1.c (Promote compatible infill and redevelopment that fits Jackson’s neighborhoods), 4.3.a (Preserve and enhance stable subareas), 5.1.a (House at least 65% of the workforce locally), and 5.2.c (Provide workforce housing solutions locally). Staff finds the proposed amendment improves the ability of the LDRs to support the above policies.

2. ***Improves the consistency of the LDRs with other provisions of the LDRs;***

   Complies. There are no inconsistencies of the LDRs regarding housing mitigation requirements that the proposed amendment needs to improve. Rather, the introduction of the two exemptions create consistency with other exemptions to required housing mitigation (ex: day care or early childhood education use) currently available that are intended to support certain desirable uses, businesses, and residents within the Town.

3. ***Provides flexibility for landowners within standards that clearly define desired character;***

   Complies. The proposed amendment increases such flexibility for property owners and tenants by simplifying change of use and small residential addition mitigation requirements and providing predictability in land use decisions in currently defined character zones in the Town of Jackson.

4. ***Is necessary to address changing conditions, public necessity, and/or state or federal legislation;***

   Complies. The amendment responds to increased cost of construction for residential uses property owners and local workforce by creating an exemption for small additions. It also responds to the reality that tenants, rather than property owners, typically bear the cost of commercial changes of use within the Town of Jackson.

5. ***Improves implementation of the Comprehensive Plan; and***

   Not Applicable. Not applicable per Wyoming State statute.

6. ***Is consistent with other adopted Town Ordinances.***

   Complies. The proposed amendment does not conflict with any other Town Ordinances.

Fiscal Impact.
Staff estimates the proposed amendment will have a fiscal impact of approximately $10,000-$60,000 per year. This estimate captures average mitigation received from small residential additions and commercial changes of use which averaged approximately $23,000 per year over the last five fiscal years. However, staff notes this amount will fluctuate as it is dependent on the amount and scope of building permits issued by the Town of Jackson in any given year. Additionally, this estimate does not include larger, infrequent occurrences of commercial changes of use requiring higher mitigation fees. Staff found there are approximately one or two of such changes of use every five to ten years and feels including such outliers in fiscal impact analysis for a typical year was inaccurate.

Staff Impact.
The amount of Staff time to review this Text Amendment, including research and report drafting, is approximately 32 hours.

Attachments or Links.
Redline Text Amendment
Blackline Text Amendment
Department Reviews and Housing Dept. Memo
August 7, 2024, PC Staff Report

Suggested Motion.

I move to **recommend approval** to the Town Council of LDR Text Amendment P24-094 based upon the findings presented in the staff report, the departmental reviews, and subject to this staff report dated September 4, 2024.

Blueline – Proposed updates to text since August 7, 2024, PC Meeting

6.3.2. Applicability.

C. Exemptions

8. **Changes in Use**. Changes in uses between all ~~commercial and lodging uses~~ nonresidential uses that occur two (2) or more years after the existing building received initial Certificate of Occupancy.

9. **Small Residential Additions.** A one-time addition ~~to dwellings equal to the lesser~~ of up to 500 sq ft ~~or 25% of the habitable floor area of the existing dwelling unit~~, for dwelling units less than 2,500sf of habitable floor area. One addition per dwelling unit is exempt; further additions are required to comply with the requirements of this Division.

~~6~~.10. **Mobile Home.** A mobile home (6.1.4.E) or mobile home park (Section 7.1.4).

~~7. 11 **Reserved.**~~

~~8.~~ 12 11 **Group Home.** A group home (6.1.4.G).

~~9.~~ 13 12.**Daycare.** A day care or early childhood education use.

~~10.~~14 13.**Accessory Use.** An accessory use (Section 6.1.11).

~~11~~. 15 14.**Temporary Use.** A temporary use (Section 6.1.12).

~~12~~. 16 15.**Workforce Housing Unit Incentive.** A residential unit approved pursuant to Division 7.8, whether deed restricted or not.

~~13.~~ 17 16.**Public/Semi-Public Zone.** Employee generating development in the public/semi-public zone.

~~14~~. 18 17.Short-term rental unit in the following residential zones: NL-1, NL-2, NL-3, NL-4, NL-5, NM-1, NM-2, NH-1, MHP, OR, and R.

6.3.3. Amount of Affordable Workforce Housing Required.

A. Requirement

4. **Change of Use.** In the case of a change of use from a residential use to a ~~commercial or lodging~~ nonresidential use, or between all ~~commercial and lodging~~ nonresidential uses in buildings for which the initial Certificate of Occupancy was issued within the past 2 years, the amount of affordable workforce housing required shall be the difference between the requirement for the proposed use and the requirement for the existing use (6.3.2.A.1). Where a change in use includes additional square feet, the additional square feet shall be mitigated at the mitigation rate for the proposed use.

~~*EXAMPLE: A proposal to use a 2,000 sf retail space as an office would be required to include 0.062 affordable workforce housing units (0.000247*2,000 - 0.000247*2,000 = 0.062).*~~

EXAMPLE 1: *A 2,000 sf ~~retail~~ amusement space was built in 2020. In 2021, only one year after the Certificate of Occupancy was issued, a proposal to use the 2,000 sf ~~retail~~ amusement space as a restaurant would be required to include 0.766 ~~0.904~~ affordable workforce housing units (0.000599*2000 – 0.000216*2000 =0.766 ~~(0.000784*2,000 - 0.000332*2,000 = 0.766).~~*

EXAMPLE 2: *A 2,000 sf ~~retail~~ amusement space was built in 2020. In 2023, three years after the Certificate of Occupancy was issued, a proposal to use the 2,000 sf ~~retail~~ amusement space as a restaurant and to add 1,000 sf of space is submitted. No mitigation is required for the change of use from ~~retail~~ amusement to restaurant because CO was issued over 2 years ago. For the 1,000 sf addition of space to use as a restaurant, ~~0.784~~ 0.599 affordable workforce housing units ~~(0.000784*1,000 = 0.784).~~ (0.000599*1000=0.599)*

6.3.2. Applicability.

C. Exemptions

8. **Changes in Use**. Changes in uses between all nonresidential uses that occur two (2) or more years after the existing building received initial Certificate of Occupancy.
9. **Small Residential Additions.** A one-time addition of up to 500 sf for dwelling units less than 2,500sf of habitable floor area. One addition per dwelling unit is exempt; further additions are required to comply with the requirements of this Division.
10. **Mobile Home.** A mobile home (6.1.4.E) or mobile home park (Section 7.1.4).
11. **Group Home.** A group home (6.1.4.G).
12. **Daycare.** A day care or early childhood education use.
13. **Accessory Use.** An accessory use (Section 6.1.11).
14. **Temporary Use.** A temporary use (Section 6.1.12).
15. **Workforce Housing Unit Incentive.** A residential unit approved pursuant to Division 7.8, whether deed restricted or not.
16. **Public/Semi-Public Zone.** Employee generating development in the public/semi-public zone.
17. Short-term rental unit in the following residential zones: NL-1, NL-2, NL-3, NL-4, NL-5, NM-1, NM-2, NH-1, MHP, OR, and R.

6.3.3. Amount of Affordable Workforce Housing Required.

A. Requirement

4. **Change of Use.** In the case of a change of use from a residential use to a nonresidential use, or between all nonresidential uses in buildings for which the initial Certificate of Occupancy was issued within the past 2 years, the amount of affordable workforce housing required shall be the difference between the requirement for the proposed use and the requirement for the existing use (6.3.2.A.1). Where a change in use includes additional square feet, the additional square feet shall be mitigated at the mitigation rate for the proposed use.

    EXAMPLE 1: *A 2,000 sf amusement space was built in 2020. In 2021, only one year after the Certificate of Occupancy was issued, a proposal to use the 2,000 sf amusement space as a restaurant would be required to include 0.766 affordable workforce housing units (0.000599*2000 – 0.000216*2000) =0.766.*

    EXAMPLE 2: *A 2,000 sf amusement space was built in 2020. In 2023, three years after the Certificate of Occupancy was issued, a proposal to use the 2,000 sf amusement space as a restaurant and to add 1,000 sf of space is submitted. No mitigation is required for the change of use from amusement to restaurant because CO was issued over 2 years ago. For the 1,000 sf addition of space to use as a restaurant, 0.599 affordable workforce housing units (0.000599*1000=0.599).*

PERMIT NOTES

Report Run On: Friday, 30 August 2024 09:12

Permit # P24-094 **Parcel # :**

Site Address:

Project Name: Housing Mitigation - Change of Use and Small Residential Additions

Note Type	Note Code	Text	Created By	Begin Date	End Date
GENERAL		See staff report	KPAGE@JACKSONWY.GOV	08/02/24	8/2/24

MEMORANDUM

To: Katelyn Page
Town of Jackson Planning and Building

From: April Norton
Jackson/Teton County Housing Department

Re: Housing Department Review of LDR Text Amendment to Add Exemptions to Affordable Housing Mitigation Requirements (P24-094)

Date: August 30, 2024

This proposed LDR text amendment was generated by Planning Staff for consideration by Town Council as housing mitigation for business turnover and small residential livability improvements continue to present as key issues for current planning applications. Currently, housing mitigation requirements may be generated by both new development (building new enclosed habitable square footage) and new uses in a space they did not previously exist (changes in use within an existing building). This proposal impacts mitigation requirements for both new development in the form of small residential additions and changes in use in the form of nonresidential change of use within existing buildings.

Changes in Nonresidential Use. Currently, LDR Sec. 6.3.3.A.4 designates the housing mitigation requirement for a change of use within an existing building to be the difference between the existing use and the proposed use. By this standard, and LDR Sec. 6.3.2.A.1 "Existence" definition to establish "credits" for the site, only a change in use that generates more local workers than any previous historical use (back to December 18, 1995) on the site is required to provide housing mitigation. This standard is based on the nexus between employment generation intensity variation by land use and the community housing need generated by adding more local workers. As a result, the landowner or business owner is required to offset a portion of that community housing impact. For example, currently an existing 5,000sf mini-storage warehouse building being converted into a restaurant generates a 2.961-unit housing mitigation requirement. Almost as much as a newly built 5,000sf restaurant which generates a 2.994-unit housing mitigation requirement. The Town's Affordable Housing Calculator which is informed and supported by the Employee Generation by Land Use Study ("Nexus Study") tells us this is because a 5,000sf mini-storage warehouse use only requires 0.205 employees to serve that use (including construction workers, Fire/EMS, law enforcement, and employees of the business) but a 5,000sf restaurant needs close to 20 employees.

In their work updating the Nexus Study last year, Planning Staff, consultants, and the project Stakeholder group identified reduction in the financial impact to businesses and simplified administration as benefits of amending mitigation policy for change of use. Housing Department staff offers the following considerations for review of the proposed waiver of mitigation requirements for nonresidential changes of use.

Mitigation is tied to location: The current Town and County housing mitigation policy is based on an association between a physical site and the land use (and thereby employee generation) on that site. While a more complex housing mitigation program may account for relocation, dissolution and initiation of uses and employee generation on a community-wide scale independent of precise location, our effective mitigation program requires physical development (square footage) to generate a measure of new employees and ties that measure to a precise physical location. Deviation from this mitigation-location association warrants a comprehensive review and update of the Town's housing mitigation program (discussed further in the two points below) or is a policy direction outside of the direct land use-employee generation nexus, similar to current exemptions for daycares or public-semi-public zones, etc.

Comprehensive regulatory update still needed: An updated Employee Generation by Land Use Study (Nexus Study) was completed by Economics & Planning Systems, Inc. last year with substantial support from Planning Staff and a local citizen Stakeholder group. A draft redline of proposed amendments to LDR Division 6.3 Affordable Workforce Housing Standards was also prepared for future consideration by Town Council. Policy backed by relevant, contemporary data supports the defensibility of housing mitigation programs.

"Existence"/"Credit" policy should be concurrently examined: If the association between employees generated by use and physical location is eliminated for changes in nonresidential uses, it presents the question of whether the "Existence" standard in LDR Sec. 6.3.2.A.1 should also be considered for amendment. Continuing to assess a "credit" for prior higher-intensity employee generating uses on a specific site affirms the tie between housing mitigation requirements and physical location. As an example, if a high employee generating use, like Outfitter/Tour Operator or Restaurant/Bar relocates and receives a housing mitigation exemption for a change of use at their new site, should a "credit" for that use remain tied to their previous location or is the mitigation credit now tied to the business/use regardless of physical location?

Stakeholder Recommendation: The Housing Mitigation Policy Stakeholders, in their work last year, proposed a less severe amendment than Planning staff recommended to the change of use policy topic.

POLICY TOPIC	CURRENT POLICY	STAKEHOLDER RECOMMENDATION	BENEFITS	DRAWBACKS	CONSIDERATIONS	STAFF RECOMMENDATIONS
CHANGE OF USE (LDR §6.3.3.A.4)	If a higher employee-generating use moves into a space built for a lower employee-generating use, the business must fill the gap in mitigation.	**Reduce the need for "change of use"** **1. Consolidate commercial uses into fewer categories while retaining residential separate** (see Mitigation Rates policy, above) **2. Retain change of use between defined categories**	☑ Reduces the impacts on local businesses ☑ Simplifies administration	☒ Consolidated category loses the nuances of impact from the individual categories ☒ The updated mitigation rate for the consolidated category may result in a higher rate for some business types and a lower rate for others compared to the current LDR. Businesses that paid higher rates in the past may perceive a reduction as unfair.	Current issue of concern: Businesses (rather than the developer of the building) pay for change of use mitigation – either directly or through landlord charges. Many businesses cannot afford to move as a result. The four proposed commercial categories will decrease "change of use" between commercial uses by roughly 80 to 90%. (Town).	Staff supports getting rid of change of use between commercial uses because of its impact on individual businesses. Staff recommends eliminating all change of use mitigation requirements except for changes from a residential to a lodging or commercial use.

(Excerpted from Summary of Stakeholder Recommendations table from 7/12/23 JIM Packet)

Small Residential Additions. Small additions to existing residences (including detached or attached dwellings, apartments, mobile homes or group homes) often allow for improved livability and housing stability for local households. In a market environment with limited options for lower and middle income households, it may be a workforce stabilizing influence to allow for small additions without incurring additional fees as households grow and change.

Thank you for the opportunity to review. Please contact me with any questions.

STAFF REPORT

Meeting Date:	August 7, 2024	Meeting Title:	Regular Planning Commission
Submitting Department:	Planning Department	Presenter:	Katelyn Page
Agenda Item:	P24-094: LDR Text Amendment to Introduce Exemptions to Affordable Housing Mitigation Requirement	Public Comment:	Yes

Purpose & Policy Considerations.
All Text Amendments to the Town of Jackson Land Development Regulations (LDRs) require review and recommendation by the Planning Commission according to LDR Section 8.7.2. The Town Council makes the final decision on all LDR Text Amendments.

Requested Action.
This is a staff initiated request. Staff proposes a Text Amendment to the LDRs to add two exemptions from the Town's affordable workforce housing mitigation requirements for certain changes of use and small residential additions. The proposed amendment would modify the following LDR Sections:

- 6.3.2.C – Affordable Workforce Housing Standards (Exemptions)
- 6.3.3.A.4 – Amount of Affordable Workforce Housing Required (Requirement)

Recommendation.
The Planning Director recommends **approval** of LDR Text Amendment P24-094 as presented in this staff report.

Key Policy Question.
Does the Planning Commission support the proposed changes which would reduce the burden of housing mitigation on small business owners and small residential additions but would also cause some reduction in money going into the affordable housing fund.

Background.
The Town of Jackson and Teton County first adopted Affordable Workforce Housing Standards and associated mitigation policies in 1995. Establishing a legal nexus between the impacts of employee generation from new development and the need for affordable housing forms an essential part of the Town of Jackson and Teton County housing programs and requires frequent and timely revisions and modifications to stay current with the evolving community and economy.

In 2022, the 2013 Employee Generation and Affordable Housing Nexus Study (Nexus Study) was updated, as directed by Town and County elected officials and reflected the most recent data available to help determine potential updated levels of mitigation. Concurrent with the update to the Nexus Study, a stakeholder group composed of a variety of representatives of development, housing, and related interests was used to evaluate the effectiveness of the current mitigation program and identify potential areas of improvement. The process resulted in recommendations on housing standards and mitigation to Town and County officials presented during a JIM Workshop July 12-13, 2023.

One of the primary recommendations from the stakeholder group was to reduce or eliminate the often high mitigation fees required when an existing or new business moves into a new tenant space (i.e., "change of use" fees). Another recommendation of the stakeholder group was to exempt small residential additions from housing mitigation fees to not penalize homeowners for making small improvement to their homes. Both recommendations had initial support from Town and County officials during July 12-13, 2023, JIM Workshop proceedings and directed staff to create a redline draft of all the approved changes.

Ultimately, Town (and County) officials chose not to move forward with updating its housing mitigation requirements in the LDRs due to uncertainty created by the State Regulation Task Force's proposals to replace local housing mitigation impact fees with a state standard. Specifically, the Town Council chose to remove the housing mitigation LDR update from the Planning Department's 2024 workplan effectively tabling housing mitigation research and discussion by Town staff for the time being.

However, as long as the hold on the housing mitigation update continues, business owners and homeowners continue to face costly mitigation fees for moving or establishing businesses and minor home additions that often create significant financial burdens on people of modest means. To address this ongoing problem, planning staff are bringing the two proposed LDRs amendments forward for Planning Commission consideration because the changes are warranted at this time and should not wait until the full recommended list of changes is revisited by Town and County officials at a future date.

<u>Proposed Amendment</u>

This staff initiated proposed LDR Text Amendment includes two exemptions to the Town's housing mitigation requirements. The first proposed exemption would remove the housing mitigation requirement for change of use between all commercial and lodging uses that occur two or more years after a building receives initial Certificate of Occupancy. "All commercial and lodging uses" extends to all non-residential uses defined by LDR Division 6.1 – Allowed Uses. Note that a change of use from a residential use to a commercial use (e.g., residential condo to a short-term rental) would NOT be covered by the exemption. Including the time period of two or more years helps ensure that speculative commercial development does not avoid the mitigation fees currently in place by designating a use mitigated at a lower rate during construction then changing to a higher mitigated use immediately following Certificate of Occupancy. The second proposed exemption would remove the housing mitigation requirement for one residential addition equal to or less than 500 sq ft or 25% of the habitable floor area of the existing dwelling unit.

Table 1 on the following page summarizes the proposed changes. Please refer to the attached redline draft for full language of the proposed text.

Table 1
Summary of Proposed Changes

LDR Section	Regarding	Current Language	Proposed Language
6.3.2.C	Affordable Workforce Housing Standards (Exemptions)	Does not include changes in use or small residential additions (i.e., requires housing mitigation fees in both cases).	1. Change of uses between all commercial and lodging uses that occur two (2) or more years after the existing building received initial Certificate of Occupancy. 2. A one-time addition to dwellings equal to the lesser of 500 sq ft or 25% of the habitable floor area of the existing dwelling unit. One addition per dwelling unit is exempt; further additions are required to comply with the requirements of this Division. 3. Adjust numbering of existing exemptions thereafter.
6.3.3.A.4	Amount of Affordable Workforce Housing Required for Change of Use (Requirement)	Amount of mitigation required for change of use shall be the difference between the requirement for the proposed use and the requirement for the existing use.	Clarifies change of use examples. See redline for draft language for full text of examples. Example 1: Change of use from retail to restaurant only one year after initial Cert. of Occupancy. Example 2: Change of use from retail to restaurant plus expanded floor area three years after initial Cert. of Occupancy.

Analysis.
Staff recommend approval of all proposed changes. The proposed amendment introduces flexibility for property owners and tenants when conducting certain changes of use or small residential additions.

For change of uses, the proposed amendment reduces the financial impact of businesses locating or relocating in Town and allows businesses to move and relocate more easily within the Town, especially when a move is forced by a lease not being renewed or when rent is increased beyond their ability to pay. Currently, businesses with higher employee-generating uses are responsible for the difference in mitigation rates when locating in a tenant space that previously had a lower employee generating use. An example is a restaurant use assuming a lease at a 15 year old structure that previously housed a retail use. The proposed text amendment would exempt the housing mitigation requirement for that change of use scenario. It is frequently the case that businesses, rather than property owners, pay for the mitigation fee during a change of use and many businesses cannot afford to move, or are reluctant to do so, as a result. Staff recommends eliminating all change of use mitigation requirements except for changes from a residential use to a commercial use (e.g., residential condo to a short-term rental) because of the direct impact on individual businesses, many of which are small.

For small residential additions, the proposed amendment would reduce the mitigation requirement for property owners and tenants when constructing small additions to existing homes. An example of a small addition would be enclosing a porch to create habitable floor area to accommodate a laundry room or bedroom. This proposed amendment would reduce the expense of building small additions, many times allowing residents to remain in the community in existing housing stock as their housing needs evolve. This directly supports Comprehensive Plan policies to preserve and enhance existing stable neighborhoods, promote infill development, provide workforce housing solutions locally, and house at least 65% of workforce locally. Staff recommends the text amendment introducing an exemption for small residential additions in order to lessen some development impact on, and offer housing solutions for, property owners and tenants.

Staff find the proposed amendments meet the findings of approval required by LDR Sec. 8.7.2 as described below.

Public Comment.
No public comment was received by staff at the time of this report.

Staff Findings.
Pursuant to Section 8.7.2 of the Town of Jackson Land Development Regulations, the advisability of amending the text of these LDRs is a matter committed to the legislative discretion of the Town Council and is not controlled by any one factor. In deciding to recommend adopting, modifying, or denying a proposed LDR Text Amendment the Planning Commission shall consider factors including, but not limited to, the extent to which the proposed amendment:

1. ***Is consistent with the purposes and organization of the LDRs;***

   Complies. The purposes of the LDRs per Division 1.3 are generally to implement the Comprehensive Plan and to promote the health, safety, and general welfare of the present and future inhabitants of the community. The proposed amendments directly support Comprehensive Plan Policies 3.3.b (Provide predictability in land use decisions), 4.1.c (Promote compatible infill and redevelopment that fits Jackson's neighborhoods), 4.3.a (Preserve and enhance stable subareas), 5.1.a (House at least 65% of the workforce locally), and 5.2.c (Provide workforce housing solutions locally).

   Staff finds the proposed amendment improves the ability of the LDRs to support the above policies.

2. ***Improves the consistency of the LDRs with other provisions of the LDRs;***

   Complies. There are no inconsistencies of the LDRs regarding housing mitigation requirements that the proposed amendment needs to improve. Rather, the introduction of the two exemptions create consistency with other exemptions to required housing mitigation (ex: day care or early childhood education use) currently available that are intended to support certain desirable uses, businesses, and residents within the Town.

3. ***Provides flexibility for landowners within standards that clearly define desired character;***

   Complies. The proposed amendment increases such flexibility for property owners and tenants by simplifying change of use and small residential addition mitigation requirements and providing predictability in land use decisions in currently defined character zones in the Town of Jackson.

4. ***Is necessary to address changing conditions, public necessity, and/or state or federal legislation;***

   Complies. The amendment responds to increased cost of construction for residential uses property owners and local workforce by creating an exemption for small additions. It also responds to the reality that tenants, rather than property owners, typically bear the cost of commercial changes of use within the Town of Jackson.

5. ***Improves implementation of the Comprehensive Plan; and***

   Not Applicable. Not applicable per Wyoming State statute.

6. ***Is consistent with other adopted Town Ordinances.***

   Complies. The proposed amendment does not conflict with any other Town Ordinances.

Fiscal Impact.
Staff estimates the proposed amendment will have a fiscal impact of approximately $15,000-$200,000 per year. Over the past five years the Town has averaged a total of $513,832 yearly in mitigation fees. During FY2023 the Town received a total of $910,585 in housing mitigation fees (July 1, 2022-June 30, 2023). Of that total, approximately $16,000 resulted from changes of use or small residential additions. There were no significant mitigation fees for commercial change of uses during FY2023.

Should the proposed amendment be approved, staff estimates $15,000-$200,000 per year in mitigation fees will be forfeited by the Town. This amount includes an expected increase in commercial changes of use due to the lessened financial burden on property owners or tenants when moving locations in town or accurately reporting a change of location where previously not reported in order to avoid mitigation fees. This amount will fluctuate as it is dependent on the amount and scope of building permits issued by the Town of Jackson in any given year.

Staff Impact.
The amount of Staff time to review this Text Amendment, including research and report drafting, is approximately 15 hours.

Attachments or Links.
Redline Text Amendment
Blackline Text Amendment
Department Reviews

Suggested Motion.

I move to **recommend approval** to the Town Council of LDR Text Amendment P24-094 based upon the findings presented in the staff report, the departmental reviews, minor changes by staff, and subject to this staff report dated August 7, 2024.