

1 **BY AUTHORITY**

2 ORDINANCE NO.  
3 SERIES OF 2022

COUNCIL BILL NO. CB22-xxxx  
COMMITTEE OF REFERENCE:  
4 [insert]

5 **A BILL**

6 **For an ordinance amending Chapter 27 of the Denver Revised Municipal Code**  
7 **concerning housing, revising provisions related to the linkage fee; repealing**  
8 **incentives for affordable housing; and adopting affordable housing**  
9 **requirements applicable to the creation of new dwelling units.**

10  
11  
12 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

13 **Section 1.** That division 2, article V, chapter 27, D.R.M.C. concerning an affordable  
14 housing linkage fee is amended by deleting the language stricken and adding the language  
15 underlined to read as follows:

16 **Sec. 27-151. Legislative findings and intent.**

17 The city council has determined that Denver is experiencing an unprecedented  
18 escalation in housing costs, and thus a critical lack of housing opportunities for  
19 households with low or moderate incomes. In recent years, Denver has ranked at or  
20 near the top of national reports of U.S. cities in terms of inflation in housing costs. The  
21 declining availability of low and moderately priced housing in Denver forces persons  
22 employed in the city to either spend a disproportionate percentage of their disposable  
23 income on housing, thus sacrificing other necessities of life, or forces them to seek  
24 housing opportunities outside the city. Households living outside of the city spend  
25 additional time and resources commuting, which leads to stress, increased child-care  
26 requirements, and increased air pollution. The extraordinary housing cost increases in  
27 Denver are driven, in part, by the pace of population and job growth in the city, resulting  
28 in a situation where demand for housing has far outpaced supply, especially for  
29 persons who may find jobs in Denver's growing economy but are employed at low or  
30 moderate income levels.

31 The city council has determined that it is in the public interest to address the  
32 severe social and economic impacts to the city and its citizens caused by the  
33 increasing gap between supply and demand for housing for funding programs

1 designed to preserve and increase the supply of affordable housing available to low  
2 and moderate income households. The city council specifically finds that it is  
3 appropriate to fund a portion of the costs of such programs from a linkage fee on new  
4 development for the following reasons:

5 (a) New residential and nonresidential development is demonstrably  
6 associated with the generation of new jobs at various income levels, with the number of  
7 jobs associated with any particular development being correlated with the type and size  
8 of the development.

9 (b) When jobs at a low or moderate income level are generated as a direct  
10 consequence of new nonresidential development, employees receiving such incomes will  
11 experience a lack of housing availability and affordability in Denver under current market  
12 conditions unless efforts are taken by the city to increase housing opportunities to keep  
13 pace with job growth.

14 (c) The city council also specifically finds that job growth associated with new  
15 residential development is directly related to the income and spending capacity of the  
16 household occupying the residence and that the size of the residence, as measured in  
17 gross floor area, correlates with the income and spending capacity of the residents, thus  
18 causing a larger residence to drive more job growth and more concomitant secondary  
19 housing demand than a smaller residence.

20 (d) For the foregoing reasons, the city council has determined there is a direct  
21 nexus between both nonresidential and residential development, job growth, and demand  
22 for new housing that is affordable to households with low or moderate incomes.

23 (e) The city council acknowledges that monetary exactions on new  
24 development cannot exceed an amount that is justified by the impacts caused by the  
25 development. The city council has determined that the fees set forth herein fall far below  
26 the amount of revenue that would actually be necessary to meet the demand for new  
27 affordable housing driven by the job growth that is associated with new development, and  
28 thus these fees do not exceed the applicable standards that define the maximum legally  
29 justifiable fee.

1 (f) The city council further acknowledges that the revenue derived from the  
2 fees provided herein must be used, not to address the existing gap between supply and  
3 demand for affordable housing in the city, but instead to mitigate future increases in the  
4 gap caused by new construction which will lead to new employment opportunities in the  
5 city, and the increased demand for affordable housing associated with such employment.

6 (g) The city council has determined to set the affordable housing linkage fees  
7 set forth herein at a level ~~much~~ lower than those imposed by other cities, in an effort to  
8 ensure that the fees do not impair the feasibility of any development project in the city.

9 (h) The foregoing findings are supported by the "Denver Affordable Housing  
10 Nexus Study" prepared for the City and County of Denver by David Paul Rosen &  
11 Associates and dated September 8, 2016, the contents of which are expressly  
12 incorporated herein as a part of the legislative findings of the city council.

13 (i) The linkage fees set forth in division 2 of this article are supported by the  
14 "Expanding Housing Affordability: Feasibility Analysis" prepared for the City and County  
15 of Denver by Root Policy Research and dated September 28, 2021, the contents of which  
16 are expressly incorporated herein as a part of the legislative findings of the city council.

17 (j) The city council has further determined that, since Denver does not impose  
18 nearly the range or amount of development impact fees as are imposed by virtually every  
19 other municipality throughout the Denver metropolitan area, the fees set forth herein will  
20 not place the city at a competitive disadvantage in relation to neighboring jurisdictions in  
21 terms of accommodating future population growth and economic development.

22 **Sec. 27-152. Definitions.**

23 The following words and phrases, as used in this division 2, have the following  
24 meanings:

25 (a) *Dwelling unit; dwelling, single unit; dwelling, two-unit; and dwelling, multi-*  
26 *unit shall have the same meaning as these terms are used in article ~~XI~~ 11 of the Denver*  
27 *Zoning Code.*

28 (b) *Gross floor area (GFA) shall have the same meaning as the term is defined*

1 in ~~article XIII~~ of the ~~Denver Zoning~~ International Building Code, excluding parking garages  
2 and any other structures or areas used exclusively for the storage or parking of vehicles.

3 (c) *Primary agricultural uses* shall have the same meaning as the term is used  
4 in article ~~XI~~ 11 of the Denver Zoning Code.

5 (d) *Primary civic, public and institutional uses* shall have the same meaning as  
6 the term is used in article ~~XI~~ 11 of the Denver Zoning Code.

7 (e) *Primary commercial sales, services and repair uses* shall have the same  
8 meaning as the term is used in article ~~XI~~ 11 of the Denver Zoning Code.

9 (f) *Primary industrial, manufacturing and wholesale uses* shall have the same  
10 meaning as the term is used in article ~~XI~~ 11 of the Denver Zoning Code.

11 (g) *Primary residential use* shall have the same meaning as the term is defined  
12 in article ~~XI~~ 11 of the Denver Zoning Code, and shall be deemed to include any and all  
13 primary residential uses and all uses accessory to a primary residential use, except  
14 accessory dwelling units, as set forth in article ~~XI~~ 11 of the Denver Zoning Code.

15 (h) *Structure* shall have the same meaning as the term is defined in article ~~XIII~~  
16 13 of the Denver Zoning Code, but shall not include any partially enclosed or open  
17 structures such as porches, balconies, courtyards, and similar structures.

18 **Sec. 27-153. Imposition of linkage fee.**

19 (a) *In general.* Except as provided in section 27-154, an affordable housing  
20 linkage fee shall be imposed prior to the issuance of a building permit for any new  
21 structure or for any addition to an existing structure that increases the gross floor area of  
22 the existing structure, according to the following fee schedule:

| <u>Use Within a Structure</u>   | <u>Fee per square foot of GFA</u>     |                                       |                                       |                                       |
|---|---------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|
|   | <u>Effective<br/>July 1,<br/>2022</u> | <u>Effective<br/>July 1,<br/>2023</u> | <u>Effective<br/>July 1,<br/>2024</u> | <u>Effective<br/>July 1,<br/>2025</u> |
| <u>Dwelling unit(s) of 1,600 square feet or less of GFA within a single-unit dwelling, two-unit dwelling, or multi-unit dwelling or live/work dwelling of 9 dwelling units or</u> | <u>\$1.75</u>                         | <u>\$2.83</u>                         | <u>\$3.92</u>                         | <u>\$5.00</u>                         |

|  |               |               |               |               |
|--|---------------|---------------|---------------|---------------|
| <u>less.</u>   |               |               |               |               |
| <u>Dwelling unit(s) of more than 1,600 square feet of GFA within a single-unit dwelling, two-unit dwelling, or multi-unit dwelling, or live/work dwelling of 9 dwelling units or less.</u>       | <u>\$2.50</u> | <u>\$4.33</u> | <u>\$6.17</u> | <u>\$8.00</u> |
| <u>Any primary residential use other than dwelling units.</u>  | <u>\$2.25</u> | <u>\$3.83</u> | <u>\$5.42</u> | <u>\$7.00</u> |
| <u>Any primary commercial sales, services and repair uses, or any primary civic, public or institutional uses in a typical market area, as typical market area is defined in section 27-219.</u> | <u>\$2.90</u> | <u>\$3.93</u> | <u>\$4.97</u> | <u>\$6.00</u> |
| <u>Any primary commercial sales, services and repair uses, or any primary civic, public or institutional uses in a high market area, as high market area is defined in section 27-219.</u>       | <u>\$3.65</u> | <u>\$5.43</u> | <u>\$7.22</u> | <u>\$9.00</u> |
| <u>Any primary industrial, manufacturing and wholesale uses, or any primary agricultural uses.</u>   | <u>\$0.96</u> | <u>\$1.47</u> | <u>\$1.99</u> | <u>\$2.50</u> |

~~(1) Structures containing any single-unit dwelling, any two-unit dwellings, any multi-unit dwellings designed and regulated under the International Residential Code, or any primary residential use other than the multi-unit dwellings provided in paragraph (2): Sixty cents (\$0.60) per square foot of gross floor area.~~

~~(2) Structures containing multi-unit dwellings designed and regulated under the International Building Code: One dollar fifty cents (\$1.50) per square foot of gross floor area.~~

~~(3) Structures containing any primary industrial, manufacturing and wholesale uses, or any primary agricultural uses: Forty cents (\$0.40) per square foot of gross floor area.~~

~~(4) Structures containing any primary commercial sales, services and repair uses, or any primary civic, public or institutional uses: One dollar seventy cents (\$1.70) per square foot of gross floor area.~~

(b) *Mixed use structures; split properties.* When a structure is proposed to be constructed and used for any combination of the uses set forth in subsection (a) of this

1 section, the required linkage fee shall be determined based upon an apportionment of the  
2 gross floor area in the structure attributable to each of the proposed uses. When a  
3 structure is proposed to be constructed upon any property that is partially subject to either  
4 of the exceptions to applicability of the fee as set forth in subsection 27-154(a), ~~or~~ (b), or  
5 (k), the required linkage fee shall be applied only to the gross floor area of construction  
6 that is physically located outside of the portion of the property to which the exception  
7 applies.

8 (c) Voluntary compliance with Mandatory Affordable Housing, Article X,  
9 Chapter 27. An applicant for a building permit for any structure that contains dwelling  
10 units that would be subject to the payment of the linkage fee may voluntarily comply with  
11 Mandatory Affordable Housing, Article X, Chapter 27 rather than pay the required linkage  
12 fee.

13 (d) Modification of existing structures. The linkage fees imposed by this section  
14 shall not be required for the issuance of building permits associated with any  
15 improvement, repair, remodeling, tenant finish, or any other modifications to an existing  
16 structure unless the modification increases the gross floor area of the structure.

17 (d e) Annual inflation adjustment; future fee increases.

18 (1) On July 1, ~~2026~~ 2018, and on each July 1 thereafter, the fees set forth in  
19 subsection (a) of this section shall be adjusted in an amount equal to the  
20 percentage change from the previous calendar year in the CPI-U. The adjustments  
21 will be reflected in a fee schedule issued by the executive director (manager) of  
22 the department of community planning and development and made publicly  
23 available in advance of the fees becoming effective. The annual inflation  
24 adjustment shall apply to and be collected in conjunction with the issuance of any  
25 building permit on or after July of the year in which the adjustment is made,  
26 regardless of when the application for the building permit was made.

27 (2) As used in subsection (d e), the term "CPI-U" means the United States  
28 Department of Labor Statistics (Bureau of Labor Statistics) Consumer Price Index  
29 for All Urban Consumers, All items, for the Denver-Aurora-Lakewood ~~Boulder-~~  
30 ~~Greely~~, Colorado metropolitan area (1982-84-100). In the event that the CPI-U is

1 substantially changed, renamed, or abandoned by the United States Government,  
2 then in its place shall be substituted the index established by the United States  
3 Government that most closely resembles the CPI-U, as determined by the  
4 executive director of the department of housing stability.

5 (3) Except as provided in paragraph (1) of this section, the fees set forth in this  
6 section shall not be increased prior to January 1, ~~2028~~ 2020. On and after January  
7 1, ~~2028~~ 2020, the fees set forth in this section shall not be increased in excess of  
8 the inflation adjustments set forth in subsection (2) unless and until the city  
9 commissions another study to evaluate whether the fee increase will affect the  
10 economic feasibility or any type of development to which the fee increase is  
11 proposed to be applied.

#### 12 **Sec. 27-154. Exceptions.**

13 The payment of linkage fees as set forth in section 27-153 shall not be required  
14 for the issuance of a building permit under any of the following circumstances:

15 (a) Construction upon any property which is, alone or in combination with other  
16 properties, the subject of a contractual commitment or covenant that is dated and properly  
17 recorded prior to the imposition of a linkage fee on the first structure on the property and  
18 is enforceable by the city to construct affordable housing, including by way of example  
19 any development or subdivision agreement which includes an affordable housing  
20 covenant and to which the city is a party, any city-approved plan to build moderately  
21 priced development units (~~MPDUs~~ MPUDs) under article IV of this chapter 27, any city-  
22 approved plan to build affordable units in place of the linkage fee, or an affordable housing  
23 plan executed to meet incentive requirements under article VI of this Chapter 27. The  
24 exception provided by this subsection (a) shall apply only for so long such contractual  
25 commitment or covenant to construct affordable housing remains in effect. Construction  
26 upon property that, alone or in combination with other properties, was originally developed  
27 under such a contractual commitment or covenant and is substantially proposed for  
28 redevelopment shall be subject to payment of linkage fees hereunder unless the  
29 redevelopment is governed by a new contractual commitment or covenant to construct  
30 affordable housing, or otherwise qualifies for an exception under any other provision of

1 this section.

2 (b) Construction upon any property subject to an obligation as a condition of  
3 zoning to provide affordable housing on the property.

4 (c) ~~Affordable housing projects~~ Structures that are constructed with the support  
5 of any combination of federal, state or local financial resources, including private activity  
6 bonds, tax credits, grants, loans, or other subsidies to incentivize the development of  
7 affordable housing, including support from the affordable housing permanent funds  
8 created in section 27-150, and that are or will be restricted by law, contract, deed,  
9 covenant, or any other legally enforceable instrument to provide housing units ~~only~~ to  
10 income-qualified households. This exception shall apply to any housing project financed  
11 or constructed by or on behalf of the Denver Housing Authority.

12 (d) Residential dwelling units that are built by any charitable, religious, or other  
13 nonprofit entity and deed-restricted to ensure the affordability of the dwelling unit to low  
14 and moderate income households.

15 (e) ~~Nonresidential projects~~ Structures that are built by any charitable, religious  
16 or other nonprofit entity and that are primarily used to provide, shelter, housing, housing  
17 assistance, or related services to low income households or persons experiencing  
18 homelessness.

19 (f) Construction by or on behalf of the federal, state or local governments or  
20 any department or agency thereof, to the extent any or all of the gross floor area in the  
21 structure will be used solely for a governmental or educational purpose.

22 (g) Any structure that is being reconstructed up to the legally established gross  
23 floor area due to involuntary demolition or involuntary destruction as defined in article ~~XIII~~  
24 13 of the Denver Zoning Code, but which also includes involuntary manmade forces.

25 (h) An addition of four hundred (400) square feet of gross floor area or less to  
26 an existing structure containing a single-unit dwelling or a two-unit dwelling.

27 (i) Accessory dwelling units as defined in article ~~XI~~ 11 of the Denver Zoning  
28 Code.

1           (j) Any gross floor area of a structure containing an education use as defined  
2 in article 11 of the Denver Zoning Code, including any student housing operated by an  
3 education use.

4           (k) Any gross floor area of a structure containing residential development, as  
5 defined in section 27-219, that is subject to Mandatory Affordable Housing, article X of  
6 this chapter 27.

7 **Sec. 27-155. ~~Build alternative~~ Reserved.**

8           (a) ~~As an alternative to the linkage fee requirement set forth in section 27-153,~~  
9 ~~an applicant for a building permit for any structure subject to the requirements of this~~  
10 ~~division 2 may elect to build or cause to be built affordable housing units on the subject~~  
11 ~~property or within a one-quarter mile radius of the subject property, with the required~~  
12 ~~number of affordable housing units to be determined by the following formulas:~~

13           (1) ~~Structures containing multi-unit dwellings:~~

14            ~~$(\text{Gross floor area of structure}/1000) \times .0168 = \text{number of units}$~~

15           (2) ~~Structures containing any primary industrial, manufacturing and wholesale~~  
16 ~~uses or primary agricultural uses:~~

17            ~~$(\text{Gross floor area of structure}/1000) \times .0054 = \text{number of units}$~~

18           (3) ~~Structures containing any primary commercial sales, services and repair~~  
19 ~~uses or any primary civic, public and institutional uses:~~

20            ~~$(\text{Gross floor area of structure}/1000) \times .0228 = \text{number of units}$~~

21           (4) ~~Developments consisting of fifty (50) or more single-unit dwellings or two-~~  
22 ~~unit dwellings: Number of affordable housing units shall equal two (2) percent of~~  
23 ~~the total number of housing units in the development.~~

24           ~~In the event the application formulas set forth in this subsection to a particular~~  
25 ~~project creates an obligation to build a fractional housing unit, any fraction of~~  
26 ~~one-half (.5) or greater shall be converted into an additional unit.~~

1           ~~(b) Any housing units to be provided under the build alternative shall be~~  
2 ~~restricted to households earning eighty (80) percent or less of AMI, as defined in section~~  
3 ~~27-150.~~

4           ~~(c) An applicant who chooses to comply with the requirements of this division~~  
5 ~~2 through the construction of affordable housing units shall submit to the executive~~  
6 ~~director of the department of housing stability sufficient information to enable the director~~  
7 ~~to determine that the applicant will construct or cause to be constructed the affordable~~  
8 ~~housing units, and enter into a binding agreement with the city to covenant restrict such~~  
9 ~~units in order to ensure their affordability, to stipulate when affordable housing units will~~  
10 ~~be built, and to include any other terms of conditions as may be imposed by the executive~~  
11 ~~director to enforce the requirements of this section. The executive director may require in~~  
12 ~~any such agreement forms of financial security to ensure that the units are built. If the~~  
13 ~~executive director approves a build alternative under this section and an agreement is~~  
14 ~~executed and recorded, the director shall deliver to the department of community and~~  
15 ~~planning and development written notice of such approval and a copy of the agreement.~~  
16 ~~Only after the agreement is executed and recorded may any building permits be issued~~  
17 ~~for a project for which the applicant has elected to use the build alternative as provided in~~  
18 ~~this section.~~

19           **Sec. 27-156. Collection and remittance of linkage fees; reporting.**

20           (a) The responsibility for the calculation and collection of linkage fees shall  
21 reside with personnel in the department of community planning and development, and  
22 the fees required by this division shall be collected in conjunction with the administration  
23 of the city's system for issuing building permits. Any and all linkage fees applicable to a  
24 construction project shall be paid in full prior to the issuance of any building permit,  
25 excluding the shoring or excavation permit, for that project. For projects such as  
26 townhomes where units receive separate building permits, fees shall be assessed on a  
27 permit-by-permit basis. All fees collected by the department shall be remitted to the  
28 affordable housing linkage fee revenue fund as provided in section 27-150 and used  
29 exclusively for the purposes set forth therein.

30           (b) If, after the issuance of a building permit and collection of the applicable

1 linkage fee but before the issuance of a certificate of occupancy, the amount of gross  
2 floor area of the construction project increases or a decision is made by the applicant to  
3 change the use of the structure to a use category for which a higher linkage fee would be  
4 imposed under section 27-153, then the applicant shall be required to pay additional  
5 linkage fees in compliance with this division.

6 (c) Any dispute over the applicability or calculation of the linkage fees may be  
7 appealed by the applicant for a building permit to the executive director (manager) of the  
8 department of community planning and development, who shall determine such appeals  
9 in consultation with the executive director of the department of housing stability.

10 (d) Linkage fees previously paid by an applicant at building permit issuance  
11 may be refunded from the affordable housing linkage fee revenue fund if it is later  
12 determined on appeal or otherwise by the executive director (manager) of community  
13 planning and development that the fees were not due and owing under this division, if a  
14 decision is made by the applicant after a building permit has been issued to reduce the  
15 gross floor area of the construction project or to change the use of the structure to a use  
16 category for which a lower linkage fee would be imposed under section 27-153, or if the  
17 building permits for the project lapse or are relinquished by the applicant without the  
18 project building built. The executive director (manager) of community planning and  
19 development shall not be obligated to make any refund under this subsection (d) unless  
20 the applicant files a written request for a refund with the executive director within sixty  
21 (60) days from the day any grounds for a refund arise.

22 (e) After a building permit has been issued and the applicable linkage fees have  
23 been paid, no additional fees shall be required under either of the following  
24 circumstances:

- 25 (1) If the original building permit is cancelled in order to issue a replacement  
26 building permit to change the general contractor; or
- 27 (2) If modified drawings for the construction project are submitted and logged  
28 in for review, so long as the modified drawings do not increase the overall gross  
29 floor area of the project.

1           (f) The departments of community planning and development and housing  
2 stability shall provide a publicly available online resources to report on linkage fee funds  
3 collected, how linkage fee funds were spent, and approved reductions and waivers as  
4 enabled in section 27-157.

5           **Sec. 27-157. Reductions and waivers.**

6           (a) The executive director of the department of housing stability may reduce or  
7 waive the amount of linkage fees that would otherwise be imposed upon a specific  
8 development under section 27-153 if the applicant for a reduction or waiver demonstrates  
9 that the required amount of fees exceeds the amount that would be needed to mitigate  
10 the actual demand for affordable housing created by the development. An application for  
11 such a reduction or waiver shall include information showing the reduced affordable  
12 housing impacts created by the development, based upon the actual characteristics of  
13 the development including, for example:

14           (1) The unique characteristics and space utilization of the workforce that will  
15 occupy a nonresidential development and the demand of that particular workforce  
16 for affordable housing;

17           (2) A nonresidential development that will involve a structure built for and  
18 suitable solely for a specific use involving few or no employees; or

19           (3) The unique characteristics of the residents who will occupy a residential  
20 development, and the likelihood those particular residents, due to their disposable  
21 household income or projected spending patterns, will not drive additional  
22 employment requiring additional affordable housing.

23           (b) The executive director shall promptly notify in writing the executive director  
24 (manager) of the department of community planning and development of any reduction  
25 or waiver or linkage fees granted under the authority of this section.

26           (c) If the requested reduction or waiver has not been approved or denied by  
27 the time of building permit issuance, then the applicant for a reduction or waiver request  
28 may pay the linkage fees in accordance with section 27-153. If a reduction or waiver is  
29 approved by the executive director after payment of linkage fees, or later determined on

1 appeal, then the appropriate amount of linkage fees already paid by the applicant will be  
2 refunded.

3 **Sec. 27-157.5. Regulations.**

4 The director of the department of housing stability and the director of the  
5 department of community planning and development may cooperatively adopt rules  
6 and regulations to administer this division.

7 **Section 2.** That Article VI of Chapter 27 of the Denver Revised Municipal Code  
8 entitled Incentives for Affordable Housing and relating to allowed height incentives for  
9 the production of affordable housing or payment of linkage fees above standard  
10 requirements is hereby repealed.

11 **Section 3.** That Chapter 27 of the Denver Revised Municipal Code shall be amended  
12 by the addition of a new Article X, to read as follows:

13 ARTICLE X. MANDATORY AFFORDABLE HOUSING

14 **Division 1. General**

15 **Sec. 27-217. Legislative findings.**

16 The city council hereby finds that a severe housing problem continues to exist  
17 within Denver with respect to the supply of housing relative to the need for affordable  
18 housing. Specifically, the city council finds that:

19 (a) Demographics and analyses of new housing indicate that a large majority  
20 of private development is geared toward high-priced housing development and does not  
21 serve households earning less than one hundred percent (100%) of area median income;

22 (b) Development trends produce high-priced housing which does not serve a  
23 large segment of the population and limits housing available to low- and moderate-income  
24 households, thus failing to implement the housing goals of the HOST Strategic Plan,  
25 Comprehensive Plan 2040, and Blueprint Denver, calling for a city that is equitable,  
26 affordable, and inclusive;

1 (c) Market forces, including continued population growth and unmet demand  
2 for new housing, result in highly priced housing, and a lack of economic incentive for  
3 developers to offer a more diversified price range of housing, and therefore such housing  
4 is not being created at a level that meets current demand;

5 (d) Rapid regional growth and a strong housing demand have combined to  
6 make land and construction costs higher, limiting the areas where affordable housing is  
7 located;

8 (e) Incomes of Denver's growing workforce has not kept pace with this rapid  
9 and significant increase in the cost of housing in Denver;

10 (f) Ensuring a mix of incomes and access to homeownership and rental  
11 housing opportunities for low- and moderate-income households are high priorities for the  
12 city, and therefore the city has a strong interest in ensuring that the city's limited supply  
13 of developable land provides housing opportunities for all incomes of the workforce;

14 (g) Land in Denver is highly limited and without a program requiring affordable  
15 housing to be built, it is unlikely based on current trends, new development will create  
16 affordable housing, leaving Denver residents without sufficient affordable housing;

17 (h) Naturally occurring affordable housing, which is housing that may rent or  
18 sell at an affordable rate without affordability restrictions, has declined significantly in  
19 recent years thereby necessitating a program to assist in the development of affordable  
20 housing;

21 (i) The city has deployed multiple funding strategies and programs which are  
22 successful in creating new affordable housing, but not at a pace sufficient to meet the  
23 growing demand of the workforce; and

24 (j) Providing incentives to new development will improve the economic  
25 feasibility of providing a minimal percentage of affordable housing units as an integral part  
26 of new residential developments.

27 **Sec. 27-218. Declaration of public policy.**

28 The city council hereby declares it to be the public policy of the city to:

1 (a) Exercise the authority granted to the city pursuant to HB 21-1117 to regulate  
2 development in order to promote the construction of new affordable housing units;

3 (b) In compliance with HB 21-1117, the city has demonstrated the following  
4 actions to increase the overall number and density of housing units within the city:

5 (1) Changing its zoning regulations to increase the number of housing units  
6 allowed on a particular site;

7 (2) Promoting mixed-use zoning that permits housing units be incorporated in  
8 a wider range of developments;

9 (3) In certain zones, permitting more than one dwelling unit per lot in traditional  
10 single-family lots;

11 (4) Increasing the permitted household size in single-family homes;

12 (5) Promoting denser housing development near transit stations and places of  
13 employment;

14 (6) Granting reduced parking requirements to residential or mixed-use  
15 developments that include housing near transit stations or affordable housing  
16 development;

17 (7) Granting density bonuses to development projects that incorporate  
18 affordable housing units;

19 (8) Materially reducing or eliminating certain utility charges, regulatory fees, or  
20 taxes imposed by the city applicable to affordable housing units; and

21 (9) Granting affordable housing development material regulatory relief from any  
22 type of zoning or land development regulations that would ordinarily restrict the  
23 density of new development.

24 (c) Encourage the construction of new affordable housing units alongside  
25 market rate housing units within mixed income residential developments by offering  
26 incentives to increase the overall supply and availability of housing;

1 (d) Provide property owners or land developers with alternatives to the  
2 construction of new affordable housing units as required by HB 21-1117;

3 (e) Implement the comprehensive plan goal to create a Denver that's equitable,  
4 affordable, and inclusive;

5 (f) Increase the availability of additional low- and moderate-income housing to  
6 address existing and anticipated future housing needs of the workforce in Denver and the  
7 unmet needs of residents in Denver; and

8 (g) Ensure diverse housing options continue to be available for households  
9 earning at or below the area median income.

10 **Sec. 27-219. Definitions.**

11 The following words and phrases, as used in this article, have the following  
12 meanings:

13 (a) *AMI or area median income* means the median income for the Denver  
14 metropolitan area, adjusted for household size, as calculated by the U.S. Department of  
15 Housing and Urban Development.

16 (b) *Affordable housing plan* means a plan approved by the executive director  
17 of the department of housing stability outlining the number and type of income restricted  
18 units to be provided when an applicant elects to build income restricted units on-site as  
19 required by this article.

20 (c) *Affordable housing project* means a residential rental or ownership  
21 development in which the number of affordable units for that project is at least equal to  
22 the number and affordability level of IRUs otherwise required under sec. 27-224(c).

23 (d) *Applicant* means any person, firm, partnership, association, joint venture,  
24 corporation, or any other entity or combination of entities, or affiliated entities and any  
25 transferee of all or part of the real property at one location that submits an application for  
26 a project that would provide a total of ten (10) or more new dwelling units at one location  
27 in Denver.

1 (e) *At one location* means all real property under common ownership or control  
2 by the applicant if:

3 (1) The properties are contiguous at any point;

4 (2) The properties are separated only by a public or private right-of-way or utility  
5 corridor right-of-way, at any point; or

6 (3) The properties are separated only by other real property owned by the  
7 applicant which is not subject to this article at the time of any building permit(s),  
8 site development plan, subdivision, or other zoning development application by the  
9 applicant.

10 (f) *Building permit* means any residential or commercial construction permit  
11 issued for the construction of any structure, foundation and/or superstructure or any  
12 similar term used to issue permits for such work as the terminology may be modified by  
13 the department of community planning and development. A building permit does not  
14 include permits for shoring or excavation and any associated permits for such work as  
15 electrical, mechanical, plumbing or similar permits.

16 (g) *Comprehensive plan* means the Denver Comprehensive Plan 2040 or its  
17 successor.

18 (h) *CPI-U or Consumer Price Index* means the United States Department of  
19 Labor Statistics (Bureau of Labor Statistics) Consumer Price Index for All Urban  
20 Consumers, All items, for the Denver-Aurora-Lakewood Colorado area (1982-84=100).  
21 In the event that the CPI-U is substantially changed, renamed, or abandoned by the  
22 United States Government, then in its place shall be substituted the index established by  
23 the United States Government that most closely resembles the CPI-U, as determined by  
24 the executive director of the department of housing stability.

25 (i) *Director* means the executive director of HOST or executive director's  
26 designee.

27 (j) *Dwelling unit* shall have the same meaning as defined in article 11 of the  
28 Denver Zoning Code.

1 (k) *Eligible household* means (i) a household whose income qualifies them to  
2 rent or purchase an IRU and who holds a valid verification of eligibility from HOST; and  
3 (ii) nonprofit organizations designated by the director and governmental or quasi-  
4 governmental bodies who rent or purchase an IRU for the purpose of renting or selling an  
5 IRU to a household whose income qualifies them to rent or purchase the IRU.

6 (l) *High market area* means census tracts in the City and County of Denver  
7 with the highest land values compared to the citywide median land value. Classification  
8 of high market areas shall be periodically updated as set forth in the rules and regulations.

9 (m) *High impact development* means any combination of residential, non-  
10 residential, or mixed-use structures that are built as a part of a development where the  
11 development:

12 (1) Will be built on ten (10) or more acres; or

13 (2) Is using a city-approved financing tool, such as tax increment financing or  
14 a metropolitan district.

15 (n) *HOST* means the department of housing stability of the City and County of  
16 Denver or its successor.

17 (o) *HOST strategic plan* means the three- to five-year strategic plan or its  
18 successor as required by section 27-164(a).

19 (p) *IRU or income-restricted unit* means a dwelling unit required by this article  
20 required to be affordable as set forth in this article.

21 (q) *On-site* means at the same location of a residential development.

22 (r) *Ownership development* means a residential development where dwelling  
23 units are offered for sale.

24 (s) *Rental development* means a residential development where dwelling units  
25 are offered for rent.

26 (t) *Residential development* means any project that would create ten (10) or

1 more new dwelling units at one location by (i) the construction or alteration of structures  
2 or (ii) the conversion of a use within an existing structure to a residential use from any  
3 other non-residential use. If a project has both residential and non-residential uses, the  
4 residential portion of a project shall be considered a residential development if it would  
5 create ten (10) or more new dwelling units.

6 (u) *Typical market area* means census tracts in the City and County of Denver  
7 that are not identified as high market areas. Classification of typical market areas shall be  
8 periodically updated as set forth in the rules and regulations.

9 (v) *Townhouse* shall have the same meaning as defined in the International  
10 Residential Code (IRC).

11 **Sec. 27-220. Special revenue fund.**

12 (a) The director shall use the Mandatory Affordable Housing Special Revenue  
13 Fund for the primary purpose of offsetting the costs of the building permit fee reduction  
14 incentive provided in section 27-224. Any amounts in the special revenue fund remaining  
15 after offsetting such costs shall then be used for the following purposes, with prioritization  
16 being given to utilize such funds generated from areas vulnerable to displacement in  
17 areas vulnerable to displacement:

18 (1) For the production or preservation of rental housing, including the funding  
19 of rental assistance programs, for qualified households earning eighty percent  
20 (80%) or less of AMI.

21 (2) For the production or preservation of for-sale housing for qualified  
22 households earning one hundred percent (100%) or less of AMI.

23 (3) For homebuyer assistance programs, including by way of example, down  
24 payment and mortgage assistance programs, for qualified households earning one  
25 hundred twenty percent (120%) or less of AMI.

26 (b) As used in this section, “areas vulnerable to displacement” means  
27 neighborhoods identified as meeting all three (3) indicators as defined in Appendix C- Key  
28 Equity Concepts Methodology of Blueprint Denver, a supplement to the comprehensive

1 plan. In the event that the methodology or data source is substantially changed, renamed,  
2 or abandoned by community planning and development, then in its place shall be  
3 substituted a methodology that most closely resembles the original intent as determined  
4 by the executive director of the department of community planning and development.

5 (c) *Cap on administrative costs.* Monies in the Mandatory Affordable Housing  
6 Special Revenue Fund may be expended to pay the costs incurred by the city associated  
7 directly with the administration of this fund; provided, however, in no event shall the  
8 amount expended from the special revenue fund for such administrative expenses in any  
9 year exceed the greater of eight percent (8%) of the balance in the fund on January 1 of  
10 each year or five hundred thousand dollars (\$500,000.00).

11 (d) *Fund earnings.* Any interest on any balance in the Mandatory Affordable  
12 Housing Special Revenue Fund shall accrue to this fund.

13 (e) *Administration of fund.* The Mandatory Affordable Housing Special  
14 Revenue Fund shall be administered by the director.

15 **Division 2. Mandatory affordable housing for residential developments**

16 **Sec. 27-221. Applicability.**

17 (a) This division is applicable to all residential developments. If a residential  
18 development project provides both residential and non-residential uses, this division shall  
19 be applicable to the residential development portion of the project and the portion of the  
20 project that is not a residential development shall be subject to Chapter 27, Article V,  
21 Division 2.

22 (b) In determining whether a residential development contains the applicable  
23 total number of dwelling units for the purpose of applying this article, all real property at  
24 one location within Denver under common ownership or control of the applicant, including  
25 real property owned or controlled by separate entities in which any person or family of an  
26 applicant owns ten percent (10%) or more of the ownership interest shall be included. An  
27 applicant shall not avoid this article by submitting piecemeal applications or approval  
28 requests for subdivision plats, site development plans, zone lot amendments, or building  
29 permits. Any applicant may submit a development proposal that intends construction of

1 dwelling units, including applications for subdivision plats, site development plans, zone  
2 lot amendments, or building permits, for less than the applicable number of dwelling units  
3 at any time; but the applicant shall agree in writing that upon the next such application or  
4 request the applicant will comply with this article when the total number of dwelling units  
5 at one location has reached the applicable number of dwelling units.

6 **Sec. 27-222. Exceptions.**

7 Compliance with this division shall not be required for a residential development  
8 under any of the following circumstances:

9 (a) Construction upon any property which is, alone or in combination with other  
10 properties, the subject of a contractual commitment or covenant that is properly recorded  
11 and is enforceable by the city to construct affordable housing, including by way of example  
12 any development or subdivision agreement which includes an affordable housing  
13 covenant and to which the city is a party, any city-approved plan to build moderately  
14 priced development units (MPDUs) under article IV of this chapter 27, any city-approved  
15 plan to build affordable units in place of the linkage fee, or an affordable housing plan  
16 executed to meet incentive requirements under former article VI of this chapter 27. The  
17 exception provided by this subsection (a) shall apply only for so long as such contractual  
18 commitment or covenant to construct affordable housing remains in effect. Construction  
19 upon property that, alone or in combination with other properties, was originally developed  
20 under such a contractual commitment or covenant and is substantially proposed for  
21 redevelopment shall be subject to the requirements of this section here under unless the  
22 redevelopment is governed by a new contractual commitment or covenant to construct  
23 affordable housing, or otherwise qualifies for an exception under any other provision of  
24 this section.

25 (b) Construction upon any property subject to an obligation as a condition of  
26 zoning to provide affordable housing on the property.

27 (c) Affordable housing projects that are or will be restricted by law, contract,  
28 deed, covenant, or any other legally enforceable instrument.

29 (d) Residential developments that are built by any charitable, religious, or other

1 nonprofit entity and deed restricted to ensure the affordability of the dwelling units to low-  
2 and moderate-income households.

3 (e) Any structure that contained a residential development that is being  
4 reconstructed up to the legally established gross floor area due to involuntary demolition  
5 or involuntary destruction as defined in article 13 of the Denver Zoning Code, but which  
6 also includes involuntary man-made forces.

7 (f) Projects that are high impact developments, which shall instead be required  
8 to comply with division 3.

9 **Sec. 27-223. Compliance requirements.**

10 An applicant may satisfy its requirement under this division by:

- 11 (a) Providing IRUs on-site of the residential development as set forth in section  
12 27-224; or
- 13 (b) Making a payment of the fee-in-lieu as set forth in section 27-225; or
- 14 (c) Entering into a negotiated alternative as set forth in section 27-226.

15 **Sec. 27-224. On-site compliance requirements.**

16 (a) Base On-Site Compliance. Applicants electing to provide income restricted  
17 units on-site may satisfy its requirements by providing the number of IRUs at the income-  
18 restricted levels in accordance with the options set forth below, as the applicant may  
19 choose, as follows:

| Market Area         | Applicant Compliance Options | Minimum percent of total dwelling units to be IRUs | Maximum AMI for eligible households                     |  |
|---------------------|------------------------------|--|---|--|
| High Market Area    | H-1B                         | 10% of total dwelling units                        | Rental developments: 60% of AMI                         | Ownership developments: 80% of AMI                         |
|                     | H-2B                         | 15% of total dwelling units                        | Rental developments: An effective average of 70% of AMI | Ownership developments: An effective average of 90% of AMI |
| Typical Market Area | T-1B                         | 8% of total dwelling units                         | Rental developments: 60% of AMI                         | Ownership developments: 80% of AMI                         |
|                     | T-2B                         | 12% of total dwelling units                        | Rental developments: An effective average of 70% of AMI | Ownership developments: An effective average of 90% of AMI |

2 (b) Base Incentives for On-Site Compliance.

3 (1) To promote the construction of on-site IRUs, an applicant providing IRUs  
 4 on-site pursuant to the requirements in subsection (a) is eligible for the following  
 5 incentives for the applicable residential development:

6 a. *Permit Fee Reduction.* An applicant will receive a building permit fee  
 7 reduction of six thousand five hundred dollars (\$6,500.00.00) per IRU in a  
 8 typical market area and ten thousand dollars (\$10,000.00) per IRU in a high  
 9 market area. The building permit fee reduction shall not exceed fifty percent  
 10 (50%) of the total building permit fee.

11 b. Reduced minimum vehicle parking required by the Denver Zoning  
 12 Code. An applicant may utilize the alternative minimum vehicle parking  
 13 ratios allowed in article 10 of the Denver Zoning Code.

1 c. Commercial, sales service and repair street level exemption to  
2 linkage fee. An applicant may receive an exemption from the requirement  
3 to pay a linkage fee for the gross floor area of a primary commercial sales,  
4 services, and repair use located on the street level of a structure. As used  
5 in this subsection, the terms “primary commercial sales, services, and repair  
6 use” shall have the same meaning as the term is defined in article 11 of the  
7 Denver Zoning Code and “Street level” shall have the same meaning as the  
8 term is defined in article 13 of the Denver Zoning Code.

9 (2) Notwithstanding the applicability of this division, any residential  
10 development that is exempt pursuant to section 27-222(c) or (d) may receive the  
11 base incentives set forth in this section.

12 (c) Enhanced On-site Compliance; Incentives.

13 (1) Enhanced Incentives. To increase the overall supply of housing and  
14 encourage applicants to provide on-site IRUs in excess of the base requirements  
15 specified in subsection (a), an applicant is eligible for the incentives set forth in a.  
16 through c. of this subsection if the applicant provides IRUs as follows:

| Market Area         | Applicant Compliance Option | Minimum percent of total dwelling units to be IRUs | Maximum AMI for eligible households |                                    |
|---------------------|-----------------------------|--|-------------------------------------|------------------------------------|
|                     |                             |  | Rental developments:                | Ownership developments:            |
| High Market Area    | H-1E                        | 12% of total dwelling units                        | 60% of AMI                          | 80% of AMI                         |
|                     | H-2E                        | 18% of total dwelling units                        | An effective average of 70% of AMI  | An effective average of 90% of AMI |
| Typical Market Area | T-1E                        | 10% of total dwelling units                        | 60% of AMI                          | 80% of AMI                         |
|                     | T-2E                        | 15% of total dwelling units                        | An effective average of 70% of AMI  | An effective average of 90% of AMI |

a. Access to Base Incentives. An applicant is eligible for the base incentives for on-site compliance set forth in section 27-224(b)(1).

b. Height and Floor Area Increase. A residential development shall be entitled to an increase in building height and floor area ratio in accordance with the provisions set forth in article 10 of the Denver Zoning Code.

c. Vehicle Parking Exemption. A residential development shall be entitled to a vehicle parking exemption in accordance with the provisions set forth in article 10 of the Denver Zoning Code.

(2) Notwithstanding the applicability of this division, any residential development that is exempt pursuant to section 27-222(c) or (d) may receive the enhanced incentives set forth in this subsection if the residential development provides the percentage of IRUs specified in subsection (c)(1).

1 (d) Affordable Housing Plan Submission. An applicant who chooses to provide  
2 IRUs on-site pursuant to this section shall submit an affordable housing plan to HOST.  
3 The affordable housing plan must be submitted in conjunction with the formal site  
4 development plan or, if no site development plan is required, at time of the applicable  
5 permit application. The director shall review the proposed affordable housing plan for  
6 consistency with the requirements of this article prior to approval of the site development  
7 plan or applicable permit. The director shall approve, approve with conditions, or reject  
8 the affordable housing plan. A site development plan or applicable permit may not be  
9 approved until an affordable housing plan is approved by the director.

10 (e) Covenant Restriction. Residential developments, specific IRUs, or both,  
11 shall carry deed restrictions, restrictive covenants, or other forms of affordability  
12 restrictions, in the form approved by the director. No temporary or final certificate of  
13 occupancy shall be issued until a deed restriction, restrictive covenant, or other form of  
14 affordability restriction is recorded in the real property records of the Clerk and Recorder  
15 for the City and County of Denver and encumbers the residential development or IRUs,  
16 as applicable.

17 (f) Minimum Standards and Requirements for On-Site IRUs.

18 (1) Length of affordability. IRUs must be maintained as affordable for a  
19 minimum term of ninety-nine (99) years.

20 (2) IRUs must be (i) functionally equivalent in construction and appearance to  
21 other dwelling units at the residential development; (ii) interspersed among other  
22 dwelling units at the residential development; (iii) proportionate to the number of  
23 bedrooms of the other dwelling units at the residential development; and (iv)  
24 compliant with all rules and regulations adopted by the director.

25 (3) IRUs in rental developments must be made affordable to and occupied by  
26 eligible households whose incomes are at or below the applicable AMI limit.

27 (4) IRUs in ownership developments must be made available for purchase at  
28 an affordable price to eligible households whose incomes are at or below the  
29 applicable AMI limit.

1 (5) The City may require an eligible household that purchases an IRU in an  
2 ownership development to record a performance deed of trust or a lien on the IRU.

3 (6) The AMI limit associated with each IRU will be identified as a part of the  
4 affordable housing plan and will remain subject to such limitation for the duration  
5 of the term of affordability.

6 (g) Rounding. In calculating the number of on-site IRUs required pursuant this  
7 section, rounding shall be used such that five-tenths (0.5) or greater shall result in  
8 requiring that a whole unit shall be produced; provided, however, that at least one (1) unit  
9 shall be provided if the calculation results in less than five-tenths (0.5). By way of example,  
10 if a requirement is for 8.3 IRUs, the number of on-site IRUs would be eight (8).  
11 Alternatively, if a requirement is for 8.7 IRUs, the number of on-site IRUs would be nine  
12 (9).

13 (h) Effective Average. For applicants selecting to meet compliance options H-  
14 2B, T-2B, H-2E or T-2E, applicants may elect to serve eligible households earning eighty  
15 percent (80%) or less of AMI for rental developments and one hundred percent (100%)  
16 or less of AMI for ownership developments, so long as the average AMI for all on-site  
17 IRUs remains at seventy percent (70%) of AMI for rental developments and ninety percent  
18 (90%) of AMI for ownership developments.

19 **Sec. 27-225. Alternative compliance –fee-in-lieu.**

20 (a) An applicant may satisfy its requirements under this division by making a  
21 fee-in-lieu payment that will be deposited in the Mandatory Affordable Housing Revenue  
22 Fund.

23 (b) Fee-in-Lieu Calculation

24 (1) *Calculation of Fee-in-Lieu.* The fee-in-lieu shall be calculated pursuant to  
25 the table below by multiplying the number of IRUs that would be required by the  
26 fee per IRU:

| <b>Market Area</b>  | <b>Percent of IRUs to be used for the fee calculation</b> | <b>Development Type</b>                                     | <b>Fee per IRU required</b> |
|---------------------|---|---|-----------------------------|
| High Market Area    | 10% of total dwelling units                               | Rental development  | \$311,000.00                |
|                     |   | Ownership development                                       | \$478,000.00                |
| Typical Market Area | 8% of total dwelling units                                | Townhouses  | \$250,000.00                |
|                     |   | Ownership development, dwelling units other than townhouses | \$408,000.00                |
|                     |   | Rental development of one to seven stories                  | \$250,000.00                |
|                     |   | Rental development of eight or more stories                 | \$295,000.00                |

(2) Rounding. In calculating the fee to be paid pursuant this section, rounding shall be used such that five-tenths (0.5) or greater shall result in requiring that a whole unit shall be produced; provided, however, that a unit of one (1) IRU shall be used if the calculation results in less than five tenths (0.5). By way of example, if a calculation results in 8.3 IRUs, the fee per IRU required would be multiplied by eight (8). Alternatively, if a calculation results in 8.7 IRUs, the fee per IRU required would be multiplied by nine (9).

(c) Remittance and Collection of Payment. The calculation and collection of the fees-in-lieu shall be the responsibility of the department of community planning and development. Fees-in-lieu shall be collected in conjunction with the administration of the city's system for issuing building permits. Any and all fees-in-lieu applicable to a project shall be paid in full prior to the issuance of any building permit, excluding the shoring or excavation permit, for the project.

(d) CPI-U Adjustment. On July 1, 2023, and annually thereafter, the amounts set forth in subsection (b)(1) in the Fee per IRU required column shall be adjusted in an amount equal to the percentage change from the previous calendar year's CPI-U. The adjustments will be reflected in a fee-in-lieu schedule issued by the director of the department of community planning and development and be made publicly available in

1 advance of the fees becoming effective. The annual inflation adjustment shall apply to  
2 and be collected in conjunction with the issuance of any building permit on or after July  
3 1st of the year in which the adjustment is made, regardless of when the application for  
4 the building permit was made.

5 **Sec. 27-226. Alternative compliance – negotiated alternatives.**

6 (a) An applicant may propose an alternative manner to satisfy its requirements  
7 under this division. The proposed negotiated alternative must be submitted in conjunction  
8 with the formal site development plan or, if no site development plan is required, at time  
9 of the applicable permit application. The applicant shall demonstrate how the proposed  
10 negotiated alternative provides outcomes that better support the goals of the HOST  
11 strategic plan, comprehensive plan goals, and any small area plan applicable to the  
12 residential development. The director, in consultation with the director of the department  
13 of community planning and development, shall review the proposed negotiated alternative  
14 and approve, approve with conditions, or reject the negotiated alternative. Each  
15 negotiated alternative shall contain information as set forth below and in any rules and  
16 regulations adopted pursuant to this article, a statement that the terms of the negotiated  
17 alternative will bind the applicant and will run with the land upon approval of the director  
18 and recording with the clerk and recorder of the City and County of Denver.

19 (b) A negotiated alternative may include a combination of one or more of, but  
20 not be limited to, the following:

21 (1) The dedication of land for the provision of affordable housing. At a minimum,  
22 the market value of the land to be dedicated must exceed the total fee-in-lieu  
23 required for the residential development and must have zoning entitlement in place  
24 to enable for the provision of affordable housing.

25 (2) An affordable housing plan to provide fewer IRUs on-site but at a greater  
26 depth of affordability. In any such negotiated alternative, at a minimum, the total  
27 percent of IRUs shall not be less than five percent (5%) of total dwelling units and  
28 the majority of IRUs must serve households earning fifty percent (50%) of area  
29 median income or less.

1 (3) An affordable housing plan that would provide fewer IRUs on-site but the  
2 IRUs would have a greater number of bedrooms than would otherwise be required.  
3 In any such negotiated alternative, at a minimum, the total percent of IRUs shall  
4 not be less than five percent (5%) of total dwelling units and the majority of IRUs  
5 must be two (2), three (3), or four (4) bedroom units. The development must also  
6 contain family-friendly services and amenities. Amenities may include, but are not  
7 limited to, child-care; play area; community garden; and other on-site amenities to  
8 serve families.

9 (4) An agreement to provide off-site IRUs concurrently with the construction of  
10 the residential development within the same statistical neighborhood or a ¼ mile  
11 radius of the site. In any such negotiated alternative, the total percent of IRUs that  
12 must be provided for the residential development accessing this option shall not  
13 be less than the enhanced on-site compliance standards requirements for both  
14 properties set forth in the section 27-224(c).

15 (c) An applicant is eligible for the base incentives for on-site compliance set  
16 forth in section 27-224(b)(1) when the residential development is providing IRUs on-site.

17 (d) The provisions of section 27-224(e) and (f) are applicable to any IRUs that  
18 are provided on-site of the residential development.

### 19 **Division 3. High impact developments**

20 **Sec. 27-228. Applicability.** This division shall apply to all high impact  
21 developments.

#### 22 **Sec 27-229. High impact developments.**

23 (a) Owners or developers of a high impact development must submit to HOST  
24 a high impact development compliance plan that demonstrates how it will satisfy the intent  
25 and purposes of division 2 of this article and Chapter 27, Article V, Division 2.

26 (1) The high impact development compliance plan shall demonstrate how the  
27 proposed development meets or exceeds the relevant standards set forth in this  
28 article; Chapter 27, Article V, Division 2; and the goals of the HOST strategic plan,

1 comprehensive plan goals, and any small area plan applicable to the area of high  
2 impact development.

3 (2) The owner or developer must provide to HOST documentation detailing  
4 outreach to the surrounding community, including but not limited to the  
5 organizations and individuals engaged, and how the proposed high impact  
6 development compliance plan is responsive to the conducted community outreach.

7 (3) The high impact development compliance plan may include a combination  
8 of one or more of, but not be limited to, the following:

9 a. A plan to provide IRUs within the area of high impact development  
10 sufficient to meet or exceed one of the compliance options set forth in  
11 section 27-224(c).

12 b. The dedication of land within the area of the high impact  
13 development for the provision of affordable housing. In any such case, at  
14 a minimum, the land dedicated must be of sufficient size and have zoning  
15 entitlement in place to reasonably produce IRUs sufficient to meet the  
16 compliance requirements set forth in section 27-224(c).

17 c. A plan to provide IRUs within the area of high impact development  
18 at a greater depth of affordability than the compliance requirements set forth  
19 in section 27-224(c). In any such case, at a minimum, the total percent of  
20 IRUs provided in the high impact area shall not be less than eight percent  
21 (8%) of total dwelling units and the majority of IRUs must serve households  
22 earning fifty percent (50%) of area median income or less.

23 d. A plan to provide IRUs within the area of high impact development  
24 specifically designed to meet the needs of families and larger households.  
25 In any such case, at a minimum, the total percent of IRUs provided in the  
26 high impact development area shall not be less than eight percent (8%) of  
27 total dwelling units and the majority of IRUs must include two (2), three (3),  
28 or four (4) bedrooms. The development must also contain family-friendly  
29 services and amenities. Amenities may include, but are not limited to, child-

1 care; play area; community garden; and other on-site amenities to serve  
2 families.

3 (4) The director may grant access to the base incentives for on-site compliance  
4 set forth in section 27-224(b)(1) when the project is providing IRUs within the area  
5 of high impact development.

6 (5) The director may grant access to the enhanced incentives for on-site  
7 compliance set forth in section 27-224(c)(1) if the high impact development  
8 compliance plan proportionally meets or exceeds the on-site IRU requirements set  
9 forth in section 27-224(c).

10 (b) The director may waive the application of this division if the applicant  
11 requests such a waiver and demonstrates that circumstances unique to the proposed  
12 development limit or eliminate the practical application of this division. In such a case,  
13 the high impact development would instead be subject to the requirements of Division 2  
14 of this article and Chapter 27, Article V, Division 2, as applicable.

15 (c) The director shall review the high impact compliance plan and approve,  
16 approve with conditions, or reject the high impact development compliance plan. The  
17 director shall collaborate with the Denver Urban Renewal Authority when reviewing the  
18 compliance plan for a high impact development leveraging tax increment financing. The  
19 approved high impact development compliance plan shall result in an agreement to be  
20 signed by the owner or owners of the entire subject property, or the authorized agent of  
21 the owner or owners in advance of City Council approval of city financing tools, if  
22 applicable, and shall be recorded with the clerk and recorder of the City and County of  
23 Denver.

24 (d) For all high impact development compliance plans required under this  
25 section, no building permits shall be approved or issued for any structure within a high  
26 impact development area until the high impact development compliance plan is approved,  
27 executed, and recorded.

28 **Division 4. Regulations, enforcement, and reporting.**

29 **Sec. 27-230. Regulations, enforcement, and reporting.**

1 (a) The director of the department of housing stability and the director of  
2 community planning and development may cooperatively adopt rules and regulations to  
3 administer this article.

4 (b) Any violation of this article or rules and regulations adopted hereunder is  
5 subject to the penalties described under section § 1-13(e). Pursuant to section 1-13(e),  
6 the city may impose a civil fine on applicants in an amount up to one hundred fifty percent  
7 (150%) of the value of the IRU required but not provided.

8 (c) The director may take legal action to enjoin or void any transfer of an IRU if  
9 any party to the transfer does not comply with all requirements of this article or the rules  
10 and regulations promulgated hereunder. The director may recover any funds improperly  
11 obtained from any sale or rental of an IRU in violation of this article.

12 (d) The department of housing stability shall have the authority to enforce the  
13 affordability requirements imposed on IRUs.

14 (e) The departments of community planning and development and housing  
15 stability shall provide a publicly available online resources to report on the outcomes of  
16 this article, including but not limited to number and types of units created, fee-in-lieu fund  
17 revenues, and spending allocations.

18 Secs. 27-231 through -239. **Reserved.**

19 **Section 4. Effective date.**

20 1. Except as otherwise provided herein, this ordinance shall be effective on  
21 July 1, 2022.

22 2. The amendments to chapter 27, D.R.M.C, enacted in this ordinance shall  
23 not apply to any applicant under the following circumstances:

24 a. An applicant who, prior to close of business on Thursday, June 30, 2022, (i)  
25 has submitted to the Department of Community Planning and Development (“CPD”) a site  
26 development concept plan, (ii) CPD has assigned a concept number for the site  
27 development concept plan, and (iii) obtains site development plan approval by August 30,  
28 2023. If any of the conditions of this subsection are not satisfied, the amendments

1 enacted by this ordinance shall be applicable to an applicant.

2 b. An applicant who, prior to close of business on Thursday, June 30, 2022, (i)  
3 has submitted to CPD an amendment to an approved site development plan, (ii) CPD has  
4 assigned a record number for the site development plan amendment, and (iii) obtains site  
5 development plan amendment approval by August 30, 2023. If any of the conditions of  
6 this subsection are not satisfied, the amendments enacted by this ordinance shall be  
7 applicable to an applicant.

8 c. An applicant for an individual site development plan who, prior to close of  
9 business on Thursday, June 30, 2022, (i) has been notified in writing by the Development  
10 Review Committee that a large development framework is required for its project, (ii) has  
11 submitted to CPD a site development concept plan, (iii) CPD has assigned a concept  
12 number for the site development concept plan and (iv) obtains site development plan  
13 approval by December 31, 2023. If any of the conditions of this subsection are not  
14 satisfied, the amendments enacted by this ordinance shall be applicable to an applicant.

15 d. An applicant for an individual site development plan within the legally  
16 described property of an active subdivision application, who, prior to close of business on  
17 Thursday, June 30, 2022, (i) has submitted to CPD a site development concept plan, (ii)  
18 CPD has assigned a concept number for the site development concept plan; and (iii)  
19 obtains a site development plan approval by December 31, 2023. If any of the conditions  
20 of this subsection are not satisfied, the amendments enacted by this ordinance shall be  
21 applicable to an applicant.

22 e. An applicant who, prior to close of business on Thursday, June 30, 2022, (i)  
23 has submitted to CPD a building permit application with associated permit drawings, (ii)  
24 paid all applicable plan review fees, (iii) CPD has logged-in such submission for review  
25 by CPD, and (iv) obtains the building permit approval by December 31, 2022. If any of  
26 the conditions of this subsection are not satisfied, the amendments enacted by this  
27 ordinance shall be applicable to an applicant.

28 3. An applicant allowed to comply with the previous provisions of chapter  
29 27, D.R.M.C. due to subsection 2 of section 4, may instead choose to comply with the  
30 amendment to chapter 27, D.R.M.C. enacted by this ordinance.

1                   4.     An applicant allowed to comply with the previous provisions of chapter  
2 27, D.R.M.C. due to subsection 2 of section 4, will pay linkage fees based on the amount of  
3 the fee as of July 1, 2021, and will not be subject to any further annual inflation adjustments  
4 after July 1, 2021.

5                   5.     Upon the enactment of this ordinance, CPD shall report to the city council  
6 at least four (4) times in intervals not longer than six (6) months detailing the (i) number of  
7 concept and formal site development plans that were submitted prior to June 30, 2022, (ii)  
8 typical review times, and (iii) number of resubmittals. The final report shall be made no later  
9 than January 31, 2024.

10                   **REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

DRAFT

1 COMMITTEE APPROVAL DATE: [fill in]  
2 MAYOR-COUNCIL DATE: [fill in]  
3 PASSED BY THE COUNCIL: \_\_\_\_\_,  
4 \_\_\_\_\_ - PRESIDENT

5 APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_,  
6 ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
7 EX-OFFICIO CLERK OF THE  
8 CITY AND COUNTY OF DENVER

9 NOTICE PUBLISHED IN THE DAILY JOURNAL: \_\_\_\_\_ ; \_\_\_\_\_,

10 PREPARED BY: Eliot Schaefer, Assistant City Attorney DATE: [fill in], 2022

11 Pursuant to section 13-9, D.R.M.C., this proposed ordinance has been reviewed by the office of the  
12 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed  
13 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to §  
14 3.2.6 of the Charter.

15  
16 Kristin M. Bronson, Denver City Attorney

17  
18 BY: \_\_\_\_\_, Assistant City Attorney DATE: \_\_\_\_\_,

DRAFT