

Denver Revised Municipal Code Amendment

Expanding Housing Affordability

Public Review Draft – 2/2/2022

Denver needs more affordable housing not just for those with the lowest incomes, but also for teachers, firefighters, restaurant workers—people who make our city the great place we all love. This is an issue that affects all of us, and as a city we can do more and do better to address the housing needs of all residents. City staff have been working with the community to ensure that **as new homes are built, more affordable homes are built**. These new requirements are intended to complement existing investments and programs to address Denver’s current and future housing needs. This includes:

- **Requiring affordable housing in all new residential developments** over 10 units and offering means of alternative compliance (fee-in-lieu or negotiated alternatives); financial incentives (permit fee reductions, linkage fee exemptions) and zoning incentives (by-right parking reductions and height increases).
- **Increasing the linkage fee** which funds city investment into future affordable housing across the city. The linkage fee applies to new residential developments of 1 – 9 units and other non-residential uses.

The proposed regulations are planned for consideration by City Council in Spring 2022 and will apply to all new development projects going forward.

This document contains the **Denver Revised Municipal Code (DRMC) Public Review Draft** to implement these proposed regulatory tools detailed in the updated Proposed Policy Approach (dated February 1, 2022). These regulatory changes are paired with the Denver Zoning Code (DZC) text amendment, and the DZC Public Review Draft can be found on the project website: www.denvergov.org/affordabilityincentive

An outline of the DRMC Public Review Draft is as follows:

Article V. Dedicated Funding for Affordable Housing

- Section 27-150: Sources and uses of fund revenue. No changes, included only for context.
- Section 27 – 151. Legislative findings and intent: Minor clean-up.
- Section 27 – 152. Definitions: Minor clean-up.
- Section 27-153. Imposition of linkage fee: Substantial change including the increase to the linkage fees, changes in use categories. Other minor clean-up.
- Section 27 – 154. Exceptions: Addition of exemption (j) educational use and minor clean up.
- Section 27 – 155. Downtown zone district incentive: Removal of build alternative option as residential developments of 10+ units are subject to Mandatory Affordable Housing (MAH) and residential developments of 1 – 9 units can opt into MAH and build affordable units in lieu of the linkage fee.
- Section 27 – 156. Collection and remittance of linkage fees: No changes, included only for context.
- Section 27 – 157. Reductions and waivers: Minor changes providing further clarity on process for reduction or waiver.

Article VI – Incentives for affordable housing: Repealed in its entirety as incentives are now addressed comprehensively in the new MAH Article X and concurrent Denver Zoning Code text amendment.

Article X – Mandatory Affordable Housing – NEW section

Division 1 – General

- Section 27-217. Legislative findings: Legislative findings of the ordinance.
- Section 27-218. Declaration of public policy: Declaration of the policy addressing compliance with State HB21-1117.
- Section 27-219. Definitions: Includes all definitions relevant to the article.
- Section 27-220. Special Revenue Fund: Specifies the funding allowances for funds generated through the fee-in-lieu.

Division 2 – Mandatory Affordable Housing for Residential Developments

- Section 27-221. Applicability: Sets forth the applicability of the division’s requirements.

- Section 27-222. Exceptions: Sets forth the exceptions to applicability.
- Section 27-223. Compliance Requirements: Sets forth the three means of compliance: (1) providing income restricted units on-site, (2) paying the fee-in-lieu, or (3) a negotiated alternative.
- Section 27-224. On-Site Compliance Requirements: Sets the base on-site compliance requirements and associated incentives. Sets the enhanced on-site compliance requirements and associated incentives. Provides minimum standards for the income restricted units.
- Section 27-225. Alternative Compliance – Fee-in-lieu: Sets forth the fee-in-lieu amounts and calculation.
- Section 27-226. Alternative Compliance – Negotiated Alternatives: Sets forth the procedure and standards for a negotiated alternative.
- Section 27-227. Regulations and Enforcement: Sets forth the opportunity to adopted rules a regulations (will be drafted and available for public review prior to a public hearing). Sets forth enforcement of this article.

Division 3 – High Impact Developments

- Section 27-228. Sets forth applicability.
- Section 270229. Sets for the requirements of the compliance plan.

Review Draft Document Conventions

For article V and VI:

- Text in underline is proposed new language.
- Text in ~~strikethrough~~ is proposed deleted language.

For Article X:

- All new text is not underlined to improve legibility.

While efforts are made to ensure document quality, cross-referenced section numbers may appear incorrect since both new and old text appears in a draft. These will be corrected in the final, “clean” version of the amendment that is filed for adoption by City Council.

Comments may be submitted by March 14, 2022 on this version of the public review draft. The city will consider all feedback, with the intent of releasing an updated public review draft by the end of March 2022. In addition to commenting on this version of the proposal, interested individuals and organizations will have the opportunity to comment during public hearings in front of the Denver Planning Board and Denver City Council later this spring.

ARTICLE V. DEDICATED FUNDING FOR AFFORDABLE HOUSING**DIVISION 1. AFFORDABLE HOUSING PERMANENT FUNDS****Sec. 27-150. Sources and uses of fund revenue.**

- (a) *Dedicated revenues.* The affordable housing permanent funds shall consist of the Affordable Housing Linkage Fee Revenue Fund created for the exclusive purpose of receiving and accounting for all revenues derived from the affordable housing linkage fees provided in division 2 of this article V and the Affordable Housing Property Tax and Other Local Revenue Fund created for the purpose of receiving and accounting for revenues derived from the portion of the city's property taxes and retail marijuana sales taxes dedicated for affordable housing programs, as provided in subsections (i) and (j) of this section, as well as donations, cash transfers from other funds, and other local revenue sources.
- (b) *Permitted uses of revenue in the Affordable Housing Linkage Fee Revenue Fund.* Revenue received in the Affordable Housing Linkage Fee Revenue Fund shall be used exclusively for the following purposes:
- (1) To increase the supply of affordable rental housing, including the funding of renter assistance programs, for qualified households earning eighty (80) percent or less of AMI, in response to increased housing demand linked to new construction and new employment.
 - (2) To increase the supply of for-sale housing for qualified households earning eighty (80) percent or less of AMI, in response to increased housing demand linked to new construction and new employment.
 - (3) To support homebuyer assistance programs, including by way of example down payment and mortgage assistance programs, for qualified households earning eighty (80) percent or less of AMI, in response to increased housing demand linked to new construction and new employment.
- (c) *Permitted uses of revenue in the Affordable Housing Property Tax and Other Local Revenue Fund.* Revenue received in the Affordable Housing Property Tax and Other Local Revenue Fund shall be used exclusively for the following purposes:
- (1) For the production or preservation of rental housing, including the funding of rental assistance programs, for qualified households earning eighty (80) percent or less of AMI.
 - (2) For the production or preservation of for-sale housing for qualified households earning one hundred (100) percent or less of AMI.
 - (3) For homebuyer assistance programs, including by way of example down payment and mortgage assistance programs, for qualified households earning one hundred and twenty (120) percent or less of AMI.
 - (4) For the development and preservation of supportive housing for homeless persons, and for supportive services associated with supportive housing; provided, however, in no event shall the amount expended from the Affordable Housing Property Tax and Other Local Revenue Fund for supportive services under this paragraph (4) exceed ten (10) percent of the amount appropriated by the city council to the fund for that year.
 - (5) For programs supporting low-income at-risk individuals in danger of losing their existing homes, for mitigation of the effects of gentrification and involuntary displacement of lower income households in those neighborhoods of the city that are most heavily impacted by rapidly escalating housing costs, for homeowner emergency repairs, or for other housing programs.
- (d) *Cap on administrative costs.* Monies in the affordable housing permanent funds may be expended to pay the costs incurred by the city associated directly with the administration of the funds; provided, however, in no event shall the amount expended from the funds for such administrative expenses in any year exceed eight

- (8) percent of the amount of revenue received in the Affordable Housing Linkage Fee Revenue Fund that year and shall not exceed eight (8) percent of the amount appropriated by the city council to the Affordable Housing Property Tax and Other Local Revenue Fund that year.
- (e) *Fund earnings.* Any interest earning on any balance in either of the affordable housing permanent funds shall accrue to that fund.
 - (f) *Administration of funds.* The affordable housing permanent funds shall be administered by the executive director of the department of housing stability, in coordination with the recommendations and assistance of the housing stability strategic advisors as provided in division 3 of this article V. The executive director may promulgate rules and regulations consistent with this article V governing the procedures and requirements for expenditures from the funds. Expenditures from the funds shall be made in accordance with the adopted three- to five-year strategic plan for the funds as provided in subsection 27-164(a).
 - (g) *Definition of AMI.* As used in this section, the term "AMI" means the area median income, adjusted for household size, for the Denver metropolitan area as determined by the U.S. Department of Housing and Urban Development.
 - (h) *Review of article.* No later than December 31, 2021, the department of housing stability shall conduct a policy review of this article V, hold a public hearing to gather input for the review, and report the findings and any recommendations to the city council.
 - (i) *Dedicated levy for Affordable Housing Property Tax and Other Local Revenue Fund.* For 2016 property taxes to be collected in 2017, the city's certification of property tax mill levies shall include a separate itemized levy at the rate of one-half of one mill (.5 mill) for the purpose of funding affordable housing programs through the Affordable Housing Property Tax and Other Local Revenue Fund. For 2017 property taxes to be collected in 2018, and in each subsequent year, the city shall continue to maintain a separately itemized levy to fund affordable housing programs and, as provided in subsection 20-26(d), shall adjust the levy annually in coordination with the adjustment other city levies to the extent necessary to comply with the city property tax revenue limitation.
 - (j) *Dedicated portion of marijuana sales tax revenues.* All revenue collected by the city pursuant to section 53-92 shall be remitted to the Affordable Housing Property Tax and Other Local Revenue Fund as provided in subsection (a) of this section and used exclusively for the purposes in subsection (c) of this section.

DIVISION 2. LINKAGE FEES

Sec. 27-151. Legislative findings and intent.

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

The city council has determined that it is in the public interest to address the severe social and economic impacts to the city and its citizens caused by the increasing gap between supply and demand for housing for funding programs designed to preserve and increase the supply of affordable housing available to low and

moderate income households. The city council specifically finds that it is appropriate to fund a portion of the costs of such programs from a linkage fee on new development for the following reasons:

- (a) New residential and nonresidential development is demonstrably associated with the generation of new jobs at various income levels, with the number of jobs associated with any particular development being correlated with the type and size of the development.
- (b) When jobs at a low or moderate income level are generated as a direct consequence of new nonresidential development, employees receiving such incomes will experience a lack of housing availability and affordability in Denver under current market conditions unless efforts are taken by the city to increase housing opportunities to keep pace with job growth.
- (c) The city council also specifically finds that job growth associated with new residential development is directly related to the income and spending capacity of the household occupying the residence and that the size of the residence, as measured in gross floor area, correlates with the income and spending capacity of the residents, thus causing a larger residence to drive more job growth and more concomitant secondary housing demand than a smaller residence.
- (d) For the foregoing reasons, the city council has determined there is a direct nexus between both nonresidential and residential development, job growth, and demand for new housing that is affordable to households with low or moderate incomes.
- (e) The city council acknowledges that monetary exactions on new development cannot exceed an amount that is justified by the impacts caused by the development. The city council has determined that the fees set forth herein fall far below the amount of revenue that would actually be necessary to meet the demand for new affordable housing driven by the job growth that is associated with new development, and thus these fees do not exceed the applicable standards that define the maximum legally justifiable fee.
- (f) The city council further acknowledges that the revenue derived from the fees provided herein must be used, not to address the existing gap between supply and demand for affordable housing in the city, but instead to mitigate future increases in the gap caused by new construction which will lead to new employment opportunities in the city, and the increased demand for affordable housing associated with such employment.
- (g) The city council has determined to set the affordable housing linkage fees set forth herein at a level much lower than those imposed by other cities, in an effort to ensure that the fees do not impair the feasibility of any development project in the city.
- (h) The foregoing findings are supported by the "Denver Affordable Housing Nexus Study" prepared for the City and County of Denver by David Paul Rosen & Associates and dated September 8, 2016, the contents of which are expressly incorporated herein as a part of the legislative findings of the city council.
- (i) The linkage fees set forth in division 2 of this article are supported by the "Expanding Housing Affordability: Feasibility Analysis" prepared for the City and County of Denver by Root Policy Research and dated September 28, 2021.
- ~~(i)~~(j) The city council has further determined that, since Denver does not impose nearly the range or amount of development impact fees as are imposed by virtually every other municipality throughout the Denver metropolitan area, the fees set forth herein will not place the city at a competitive disadvantage in relation to neighboring jurisdictions in terms of accommodating future population growth and economic development.

Sec. 27-152. Definitions.

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

- (a) *Dwelling unit; dwelling, single unit; dwelling, two-unit; and dwelling, multi-unit* shall have the same meaning as these terms are used in article ~~XI~~11 of the Denver Zoning Code.
- (b) *Gross floor area (GFA)* shall have the same meaning as the term is defined in ~~article XIII of the International Building Denver Zoning Code~~, excluding parking garages and any other structures or areas used exclusively for the storage or parking of vehicles.
- (c) *Primary agricultural uses* shall have the same meaning as the term is used in article ~~XI~~11 of the Denver Zoning Code.
- (d) *Primary civic, public and institutional uses* shall have the same meaning as the term is used in article ~~XI~~11 of the Denver Zoning Code.
- (e) *Primary commercial sales, services and repair uses* shall have the same meaning as the term is used in article ~~XI~~11 of the Denver Zoning Code.
- (f) *Primary industrial, manufacturing and wholesale uses* shall have the same meaning as the term is used in article ~~XI~~11 of the Denver Zoning Code.
- (g) *Primary residential use* shall have the same meaning as the term is defined in article ~~XI~~11 of the Denver Zoning Code, and shall be deemed to include any and all primary residential uses and all uses accessory to a primary residential use, except accessory dwelling units, as set forth in article ~~XI~~11 of the Denver Zoning Code.
- (h) *Structure* shall have the same meaning as the term is defined in article ~~XIII~~13 of the Denver Zoning Code, but shall not include any partially enclosed or open structures such as porches, balconies, courtyards, and similar structures.

Sec. 27-153. Imposition of linkage fee.

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

Use Within a Structure	Fee per square foot of GFA		
	Effective July 1, 2022	Effective July 1, 2023	Effective July 1, 2024
<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 of 9 dwelling units or less.</u>	<u>\$1.77</u>	<u>\$2.88</u>	<u>\$4.00</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 of 9 dwelling units or less.</u>	<u>\$2.77</u>	<u>\$4.88</u>	<u>\$7.00</u>
<u>Any primary residential use other than dwelling units.</u>	<u>\$2.44</u>	<u>\$4.22</u>	<u>\$6.00</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>\$3.24</u>	<u>\$4.62</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>\$3.90</u>	<u>\$5.95</u>	<u>\$8.00</u>
<u>Any primary industrial, manufacturing and wholesale uses, or any primary agricultural uses.</u>	<u>\$0.96</u>	<u>\$1.48</u>	<u>\$2.00</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 section, the required linkage fee shall be determined based upon an apportionment of the gross floor area in the structure attributable to each of the proposed uses. When a structure is proposed to be constructed upon any property that is partially subject to either of the exceptions to applicability of the fee as set forth in subsection 27-154(a) or (b), the required linkage fee shall be applied only to the gross floor area of construction that is physically located outside of the portion of the property to which the exception applies.
- (c) Voluntary opt-in to article X. An applicant for a building permit for any structure that contains dwelling units that would be subject to the payment of the linkage fee may voluntarily choose to comply with article X, Chapter 27 rather than make the required linkage fee payment.
- ~~(d)~~ Modification of existing structures. The linkage fees imposed by this section shall not be required for the issuance of building permits associated with any improvement, repair, remodeling, tenant finish, or any other modifications to an existing structure unless the modification increases the gross floor area of the structure.
- ~~(d)~~ Annual inflation adjustment; future fee increases.
- (1) On July 1, ~~2025~~ ~~2018~~, and on each July 1 thereafter, the fees set forth in subsection (a) of this section shall be adjusted in an amount equal to the percentage change from the previous year in the CPI-U. The adjustments will be reflected in a fee schedule issued by the executive director (manager) of the department of community planning and development and made publicly available in advance of the fees becoming effective. The annual inflation adjustment shall apply to and be collected in conjunction with the issuance of any building permit on or after July of the year in which the adjustment is made, regardless of when the application for the building permit was made.
- (2) As used in subsection (d), the term "CPI-U" means the United States Department of Labor Statistics (Bureau of Labor Statistics) Consumer Price Index for All Urban Consumers, All items, for the Denver-Aurora-Lakewood Boulder-Grreeley Colorado area (1982-84=100). In the event that the CPI-U is substantially changed, renamed, or abandoned by the United States Government, then in its place shall be substituted the index established by the United States Government that most closely resembles the CPI-U, as determined by the executive director of the department of housing stability.
- (3) Except as provided in paragraph (1) of this section, the fees set forth in this section shall not be increased prior to January 1, ~~2028~~ ~~2020~~. On and after January 1, ~~2028~~ ~~2020~~, the fees set forth in this section shall not be increased in excess of the inflation adjustments set forth in subsection (2) unless and until the city commissions another study to evaluate whether the fee increase will affect the economic feasibility or any type of development to which the fee increase is proposed to be applied.

Sec. 27-154. Exceptions.

The payment of linkage fees as set forth in section 27-53 shall not be required for the issuance of a building permit under any of the following circumstances:

- (a) Construction upon any property which is, alone or in combination with other properties, the subject of a contractual commitment or covenant that is dated and properly recorded prior to the imposition of a linkage fee on the first structure on the property and is enforceable by the city to construct affordable housing, including by way of example any development or subdivision agreement which includes an affordable housing covenant and to which the city is a party, any city-approved plan to build moderately priced development units (MPDUUDs) under article IV of this chapter 27, any city-approved plan to build affordable units in place of the linkage fee, or an affordable housing plan executed to meet incentive requirements under article VI of this Chapter 27. The exception provided by this subsection (a) shall apply only for so long such contractual commitment or covenant to construct affordable housing remains in effect. Construction upon property that, alone or in combination with other properties, was originally developed under such a contractual commitment or covenant and is substantially proposed for redevelopment shall be subject to payment of linkage fees hereunder unless the redevelopment is governed by a new contractual commitment or covenant to construct affordable housing, or otherwise qualifies for an exception under any other provision of this section.
- (b) Construction upon any property subject to an obligation as a condition of zoning to provide affordable housing on the property.
- (c) Affordable housing projects that are constructed with the support of any combination of federal, state or local financial resources, including private activity bonds, tax credits, grants, loans, or other subsidies to incentivize the development of affordable housing, including support from the affordable housing permanent funds created in section 27-150, and that are restricted by law, contract, deed, covenant, or any other legally enforceable instrument to provide housing units ~~only~~ to income-qualified households. This exception shall apply to any housing project financed or constructed by or on behalf of the Denver Housing Authority.
- (d) Residential dwelling units that are built by any charitable, religious, or other nonprofit entity and deed-restricted to ensure the affordability of the dwelling unit to low and moderate income households.
- (e) ~~Nonresidential p~~Projects that are built by any charitable, religious or other nonprofit entity and that are primarily used to provide, shelter, housing, housing assistance, or related services to low income households or persons experiencing homelessness.
- (f) Construction by or on behalf of the federal, state or local governments or any department or agency thereof, to the extent any or all of the gross floor area in the structure will be used solely for a governmental or educational purpose.
- (g) Any structure that is being reconstructed up to the prior gross floor area due to involuntary demolition or involuntary destruction as defined in article ~~XII~~13 of the Denver Zoning Code, but which also includes involuntary manmade forces.
- (h) An addition of four hundred (400) square feet of gross floor area or less to an existing structure containing a single-unit dwelling or a two-unit dwelling.
- (i) Accessory dwelling units as defined in article ~~XI~~13 of the Denver Zoning Code.
- (j) Any gross floor area of a structure containing an education use as defined in article 11 of the Denver Zoning Code. This exception shall also apply to the gross floor area of a structure occupied by housing provided for students or faculty of the education use and operated by the governing board of the education institution, regardless of the zoning use category determined for that student or faculty housing.

- (k) Residential developments, as defined in section 27-[219] that are subject to article X of this Chapter 27.

Sec. 27-155. ~~Build alternative.~~ Downtown zone district incentive.

- (a) In the D-C, D-TD, D-GT, D-AS, D-AS-12+, D-AS-20+, D-CPV-T, D-CPV-R, and D-CPV-C zone districts, an applicant for a building permit for any structure subject to the requirements of this division 2 may pay a linkage fee of two (2) times the rate imposed under section 27-153 to utilize additional height or floor area described in article 8 of the Denver Zoning Code. As an alternative to the linkage fee requirement set forth in section 27-153, an applicant for a building permit for any structure subject to the requirements of this division 2 may elect to build or cause to be built affordable housing units on the subject property or within a one-quarter mile radius of the subject property, with the required number of affordable housing units to be determined by the following formulas:

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

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

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

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

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

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

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

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

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

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

~~(Ord. No. 625-16, § 1, 9-19-16; Ord. No. 47-20, §§ 37, 38, 3-16-20)~~

Sec. 27-156. Collection and remittance of linkage fees.

- (a) The responsibility for the calculation and collection of linkage fees shall reside with personnel in the department of community planning and development, and the fees required by this division shall be collected in conjunction with the administration of the city's system for issuing building permits. Any and all linkage fees applicable to a construction project shall be paid in full prior to the issuance of any building permit, excluding the shoring or excavation permit, for that project. For projects such as townhomes where units receive separate building permits, fees shall be assessed on a permit-by-permit basis. All fees collected by the department shall be remitted to the affordable housing linkage fee revenue fund as provided in section 27-150 and used exclusively for the purposes set forth therein.
- (b) If, after the issuance of a building permit and collection of the applicable linkage fee but before the issuance of a certificate of occupancy, the amount of gross floor area of the construction project increases or a decision is made by the applicant to change the use of the structure to a use category for which a higher linkage fee would be imposed under section 27-153, then the applicant shall be required to pay additional linkage fees in compliance with this division.
- (c) Any dispute over the applicability or calculation of the linkage fees may be appealed by the applicant for a building permit to the executive director (manager) of the department of community planning and development, who shall determine such appeals in consultation with the executive director of the department of housing stability.
- (d) Linkage fees previously paid by an applicant at building permit issuance may be refunded from the affordable housing linkage fee revenue fund if it is later determined on appeal or otherwise by the executive director (manager) of community planning and development that the fees were not due and owing under this division, if a decision is made by the applicant after a building permit has been issued to reduce the gross floor area of the construction project or to change the use of the structure to a use category for which a lower linkage fee would be imposed under section 27-153, or if the building permits for the project lapse or are relinquished by the applicant without the project building built. The executive director (manager) of community planning and development shall not be obligated to make any refund under this subsection (d) unless the applicant files a written request for a refund with the executive director within sixty (60) days from the day any grounds for a refund arise.
- (e) After a building permit has been issued and the applicable linkage fees have been paid, no additional fees shall be required under either of the following circumstances:
 - (1) If the original building permit is cancelled in order to issue a replacement building permit to change the general contractor; or
 - (2) If modified drawings for the construction project are submitted and logged in for review, so long as the modified drawings do not increase the overall gross floor area of the project.

Sec. 27-157. Reductions and waivers.

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

- (1) The unique characteristics and space utilization of the workforce that will occupy a nonresidential development and the demand of that particular workforce for affordable housing;
 - (2) A nonresidential development that will involve a structure built for and suitable solely for a specific use involving few or no employees; or
 - (3) The unique characteristics of the residents who will occupy a residential development, and the likelihood those particular residents, due to their disposable household income or projected spending patterns, will not drive additional employment requiring additional affordable housing.
- (b) The executive director shall promptly notify in writing the executive director (manager) of the department of community planning and development of any reduction or waiver or linkage fees granted under the authority of this section.
- (c) If the requested reduction or waiver has not been approved or denied by the time of building permit issuance, then the applicant for a reduction or waiver request may pay the linkage fees in accordance with Sec. 27-153. If a reduction or waiver is approved by the executive director after payment of linkage fees, or later determined on appeal, then the appropriate amount of linkage fees already paid by the applicant will be refunded.

ARTICLE VI. RESERVED. ~~INCENTIVES FOR AFFORDABLE HOUSING~~***~~DIVISION 1. GENERAL~~*****~~Sec. 27-180. Incentive fee fund.~~**

- ~~(a) *Dedicated revenues.* The affordable housing incentive fee fund is created for the exclusive purpose of receiving and accounting for all revenues derived from the incentive height fees and other incentive fees provided in this article VI.~~
- ~~(b) *Permitted uses of revenue in the affordable housing incentive fee fund.* Revenue received in the affordable housing incentive fee fund shall be used exclusively for the following purposes:~~
- ~~(1) For the production or preservation of rental housing, including the funding of rental assistance programs, for qualified households earning eighty (80) percent or less of AMI.~~
 - ~~(2) For the production or preservation of for-sale housing for qualified households earning one hundred (100) percent or less of AMI.~~
 - ~~(3) For homebuyer assistance programs for qualified households earning one hundred and twenty (120) percent or less of AMI, including by way of example down payment and mortgage assistance programs.~~
 - ~~(4) For the development and preservation of supportive housing for homeless persons, and for supportive services associated with supportive housing; provided, however, in no event shall the amount expended from the affordable housing incentive fee fund for supportive services under this paragraph (4) exceed ten (10) percent of the balance in the fund on January 1 of each year.~~
 - ~~(5) For programs supporting low-income at-risk individuals in danger of losing their existing homes, for mitigation of the effects of gentrification and involuntary displacement of lower income households in those neighborhoods of the city that are most heavily impacted by rapidly escalating housing costs, for homeowner emergency repairs, or for other housing programs.~~
- ~~(c) *Cap on administrative costs.* Monies in the affordable housing incentive fee fund may be expended to pay the costs incurred by the city associated directly with the administration of this fund; provided, however, in no event shall the amount expended from the affordable housing incentive fee fund for such administrative expenses in any year exceed eight (8) percent of the balance in the fund on January 1 of each year.~~
- ~~(d) *Fund earnings.* Any interest on any balance in the affordable housing incentive fee fund shall accrue to this fund.~~
- ~~(e) *Administration of fund.* The affordable housing incentive fee fund shall be administered by the executive director of the department of housing stability, or its successor city agency or department.~~
- ~~(Ord. No. 0019-18, § 1, 2-12-18; Ord. No. 47-20, §§ 51, 52, 3-16-20; Ord. No. 636-21, § 1, 7-19-21)~~

~~Sec. 27-181. Regulations.~~

~~The director may, from time to time, adopt rules and regulations necessary to administer this article, including the procedures and requirements for expenditures from the affordable housing incentive fee fund.~~

~~(Ord. No. 0019-18, § 1, 2-12-18)~~

Sec. 27-182. General definitions.

As used in this article, terms in section 27-152 shall have the meanings given to them in that section, and the following terms as used in this article shall have the following meaning:

- (a) ~~AMI means the area median income, adjusted for household size, for the Denver metropolitan area as determined by the U.S. Department of Housing and Urban Development.~~
- (b) ~~Mixed-use non-residential structure means a structure containing both residential and non-residential uses, and the gross floor area of all residential uses are less than fifty (50) percent of the total gross floor area of the structure.~~
- (c) ~~Mixed-use residential structure means a structure containing both residential and non-residential uses, and the gross floor area of all residential uses are greater than or equal to fifty (50) percent of the total gross floor area of the structure.~~
- (d) ~~Non-residential structure means any structure where none of its gross floor area contains any primary residential uses.~~
- (e) ~~Residential structure means any structure where all of its gross floor area contains primary residential uses.~~
- (f) ~~Total structure build alternative unit(s) means the number of build alternative units and associated affordability restrictions required for an entire structure under section 27-155, D.R.M.C. Total structure build alternative units shall be approved in accordance with the department of housing stability's affordable housing permanent funds ordinance administrative rules and regulations.~~
- (g) ~~Total structure linkage fee means the amount of linkage fee required for an entire structure under section 27-153, D.R.M.C.~~

(Ord. No. 0019-18, § 1, 2-12-18; Ord. No. 47-20, § 53, 3-16-20; Ord. No. 636-21, § 2, 7-19-21)

~~DIVISION 2. HEIGHT AND FLOOR AREA RATIO INCENTIVES~~**Sec. 27-183. Intent.**

- (a) ~~The Denver Zoning Code has established certain underlying zone districts and incentive overlay districts to allow a structure to exceed its base height or base floor area ratio in exchange for payment of increased fees, construction of additional affordable units, or provision of other benefits to the city, in excess of standard requirements, in compliance with the affordable housing requirements set forth below.~~
- (b) ~~Structures that do not take advantage of applicable incentives shall not be subject to the additional requirements of this division 2.~~

(Ord. No. 0019-18, § 1, 2-12-18; Ord. No. 1407-18, § 1, 12-17-18; Ord. No. 636-21, § 4, 7-19-21)

Sec. 27-184. Additional definitions.

The following additional definitions shall apply to this division 2:

- (a) ~~Base floor area ratio (FAR) has the same meaning as the term is defined in Article 13 of the Denver Zoning Code.~~
- (b) ~~Base height shall have the same meaning as the term is defined in Article 13 of the Denver Zoning Code.~~

- (c) ~~Community serving use agreement~~ means an agreement entered into between an applicant and the city, and administered by the Denver economic development & opportunity agency, that allows an applicant to provide community serving uses for a portion of a proposed structure in place of payment of any applicable incentive height fees. A community serving use agreement shall not substitute for payment of the total structure linkage fee. The Denver economic development & opportunity agency, in consultation with community planning and development and considering demonstrated community needs and priorities in the surrounding neighborhood(s), and the value of commensurate incentive height fee savings and benefits, shall determine applicable community serving uses for each community serving use agreement. The community serving use agreement shall be executed by the city and the applicant using the city's standard contract process, and prior to approval of a site development plan or issuance of building permits. The community serving use agreement shall include, but is not limited to the following: benefitting tenant use; rent reduction rate; time period; collateral; and default remedies such as re-leasing or recapture of any obtained incentive height fee savings.
- (d) ~~Incentive floor area ratio (FAR)~~ has the same meaning as the term is defined in Article 13 of the Denver Zoning Code.
- (e) ~~Incentive height~~ shall have the same meaning as the term is defined in article 13 of the Denver Zoning Code.
- (f) ~~Incentive height build alternative unit(s)~~ means the number of build alternative units required for the portion of a structure above the base height, which shall equal the product of the amount of applicable build alternative units using the formulas in section 27-155, D.R.M.C. for the incentive height area only, and the specific incentive overlay multiplier in the table below. For example, if the formula in 27-155, D.R.M.C. requires two (2) build alternative units based on the gross floor area located above the base height, and the multiplier is ten (10), then the incentive height build alternative units would equal twenty (20) units. In no event will the approved number of incentive height build alternative units result in zero (0) units. Incentive height build alternative units are provided in addition to total structure build alternative units.
- (g) ~~Incentive height fee~~ means the amount of incentive fee required for the portion of a structure above the base height, which shall equal the product of the amount of applicable linkage fee using the formulas in section 27-153, D.R.M.C. for the incentive height area only, and the specific incentive height multiplier in the table below. For example, if the formula in 27-153, D.R.M.C. requires ten thousand dollars (\$10,000.00) based on the gross floor area of the incentive height, and the multiplier for that specific incentive overlay district is ten (10), then the incentive height fee for that structure in that specific incentive overlay district would equal one hundred thousand dollars (\$100,000.00). Incentive height fees are provided in addition to the total structure linkage fee.
- (h) ~~Large or phased project~~ means any combination of residential, mixed-use residential, non-residential, and mixed-use non-residential structures that are built as part of a development with one (1) or more of the following features:
- (1) The development will be built on five (5) or more acres;
 - (2) The development will include five hundred (500) or more residential units;
 - (3) The development will occur in more than one (1) phase; or
 - (4) The development will use one (1) or more city-approved financing tools, such as tax increment financing or a metropolitan district.
- (i) ~~Underlying zone district~~ shall have the same meaning as the term is defined in Article 13 of the Denver Zoning Code.
- (j) ~~Zone lot~~ shall have the same meaning as the term is defined in Article 13 of the Denver Zoning Code, and as administered in Division 1.2 of the Denver Zoning Code.

(Ord. No. 0019-18, § 1, 2-12-18; Ord. No. 1407-18, § 2, 12-17-18; Ord. No. 47-20, §§ 54, 55, 3-16-20; Ord. No. 636-21, § 5, 7-19-21)

~~Sec. 27-185. Specific incentive height fee and incentive height build alternative unit requirements.~~

In order to take advantage of incentive heights, projects shall provide the incentive height fee or incentive height build alternative unit amounts, as applicable, based on the table below:

Underlying Zone District or Incentive Overlay District	Incentive Height Fee Multiplier	Incentive Height Build Alternative Unit Multiplier
IO-1	4	4
D-CPV-T, D-CPV-R, D-CPV-C	6	6

(Ord. No. 0019-18, § 1, 2-12-18; Ord. No. 1407-18, § 3, 12-17-18)

~~Sec. 27-186. Effect of repeal of build alternative and linkage fee provisions of article V, chapter 27, D.R.M.C.~~

The repeal of section 27-153 or 27-155, D.R.M.C. shall not affect the availability of the height incentives or incentive FAR described in this division 2. In the event of such repeal, the project may take advantage of incentive heights or incentive FAR by complying with the requirements of this division, the provisions of section 27-153 and 27-155, respectively, and adopted rules and regulations as such sections and rules and regulations existed immediately prior to their repeal.

(Ord. No. 0019-18, § 1, 2-12-18; Ord. No. 636-21, § 6, 7-19-21)

~~Sec. 27-186.5. Effect of increase in build alternative and linkage fee provisions requirements of article V, chapter 27, D.R.M.C.~~

If the city commissions any study pursuant to section 27-153(d)(3) to evaluate a proposed linkage fee increase, such study shall also include an evaluation of, or a separate evaluation shall be completed, to determine whether the effect of the fee increase in combination with the multipliers applicable to zone districts in this division will affect the economic feasibility of any type of development seeking to use this division's height incentives.

(Ord. No. 1407-18, § 4, 12-17-18)

~~Sec. 27-187. Incentive height requirements for the 38th & Blake Station Area Incentive Overlay District (IO-1).~~

- (a) Residential and mixed-use residential structures that exceed the base height shall comply with the following requirements in order to build within the allowed incentive height as determined by the Denver Zoning Code:
 - (1) The project must provide the required quantity of total structure build alternative units and incentive height build alternative units. In calculating the total number of build alternative units to be created, the fractional amounts of total structure build alternative units and incentive height build alternative

- units shall be added together, and then rounded so that five tenths (.5) or greater shall result in requiring that a whole unit shall be produced.
- (2) ~~Build alternative units may be located on the subject property, or at an off-site location anywhere with a zone district designation of IO-1, regardless of whether that location is within a quarter-mile of the subject property.~~
- (3) ~~Residential and mixed-use residential structures that exceed the base height must provide build alternative units; payment of total structure linkage fee and incentive height fee is not allowed.~~
- (b) ~~Non-residential and mixed-use non-residential structures that exceed the base height shall comply with one (1) of the following requirements in order to build within the allowed incentive height as determined by the Denver Zoning Code:~~
- (1) ~~Payment of both the required total structure linkage fee and incentive height fee;~~
- (2) ~~Providing the required quantity of total structure build alternative units and incentive height build alternative units, either at an off-site location with a zone district designation of IO-1 (regardless of whether that location is within a quarter-mile of the subject property), or, if the structure is a mixed-use non-residential structure, on the subject property; in calculating the total number of build alternative units to be created, the fractional amounts of total structure build alternative units and incentive height build alternative units shall be added together, and then rounded so that five tenths (0.5) or greater shall result in requiring that a whole unit shall be produced; or~~
- (3) ~~Payment of the total structure linkage fee and execution of a community-serving use agreement.~~
- (Ord. No. 0019-18, § 1, 2-12-18; Ord. No. 1407-18, § 5, 12-17-18)

~~Sec. 27-188. Incentive height requirements for the Downtown Central Platte Valley Auraria Transition (D-CPV-T), River (D-CPV-R), and Center (D-CPV-C) Districts.~~

- (a) ~~Residential and mixed-use residential structures that exceed the base height and are not within a large or phased project shall comply with the following requirements in order to build within the allowed incentive height as determined by the Denver Zoning Code:~~
- (1) ~~The project must provide the required quantity of total structure build alternative units and incentive height build alternative units. In calculating the total number of build alternative units to be created, the fractional amounts of total structure build alternative units and incentive height build alternative units shall be added together, and then rounded so that five tenths (0.5) or greater shall result in requiring that a whole unit shall be produced.~~
- (2) ~~Build alternative units may be located on the subject property, or at an off-site location anywhere with a zone district designation of D-CPV-T, D-CPV-R or D-CPV-C, regardless of whether that location is within a quarter-mile of the subject property.~~
- (3) ~~Residential and mixed-use residential structures that exceed the base height must provide build alternative units; payment of total structure linkage fee and incentive height fee is not allowed.~~
- (b) ~~Non-residential and mixed-use non-residential structures that exceed the base height and are not within a large or phased project shall comply with one (1) of the following requirements in order to build within the allowed incentive height as determined by the Denver Zoning Code:~~
- (1) ~~Payment of both the required total structure linkage fee and incentive height fee;~~
- (2) ~~Providing the required quantity of total structure build alternative units and incentive height build alternative units, either at an off-site location with a zone district designation of D-CPV-T, D-CPV-R or D-CPV-C (regardless of whether that location is within a quarter-mile of the subject property), or, if the~~

structure is a mixed-use non-residential structure, on the subject property; in calculating the total number of build alternative units to be created, the fractional amounts of total structure build alternative units and incentive height build alternative units shall be added together, and then rounded so that five-tenths (.5) or greater shall result in requiring that a whole unit shall be produced; or

(3) — Payment of the total structure linkage fee and execution of a community serving use agreement.

(c) — Each large or phased project shall prepare an affordable housing plan instead of complying with section 27-188(a) or (b) above when the project contains any structure that exceeds the base height. The executive director of the department of housing stability, or the executive director's designee ("director"), shall review the plan and approve, approve with conditions, or reject the affordable housing plan. For all affordable housing plans prepared under this subsection (c), no building permits shall be approved or issued for any structure within such large or phased project's area until approval of the affordable housing plan is obtained. Each plan shall contain information as set forth below and any rules and regulations adopted by the director, a statement that the terms of the plan will bind the applicant and will run with the land upon approval of the director and recording with the clerk and recorder of the City and County of Denver. The affordable housing plan shall be included as part of any development agreement for the large or phased project. The approved affordable housing plan shall be signed by the applicant and shall be recorded with the clerk and recorder of the City and County of Denver.

(1) — The affordable housing plan for a large or phased project and the affordable housing units provided thereunder shall comply with the following standards:

a. — All affordable housing units must be located within the area covered by the affordable housing plan.

b. — A method of calculating required affordable housing units must be provided that is reasonably expected to result in a quantity of affordable housing units comparable to or exceeding the quantity of affordable housing units that would have resulted from a similar development applying the requirements of section 27-188(a) or (b). In no case shall a calculation method be used that is likely to result in fewer affordable housing units than would have resulted from application of the build alternative formulas provided in section 27-155. The calculation method may include an option for payment of fees or execution of a community serving use agreement for non-residential structures, rather than construction of affordable housing units. The calculation method is not required to differentiate between base height and incentive height. Nothing in this subsection (c)(1) shall prevent an affordable housing plan from incorporating the requirements set forth in 27-188(a) or (b) above with respect to a portion or all of the area covered by the affordable housing plan, to the extent the city agrees that use of such requirements is reasonable.

c. — The affordable housing plan will demonstrate how it promotes the goals of the city's five-year housing plan as such plan exists at the time of execution of the affordable housing plan, including by the provision of units that are income-restricted to households with a variety of income levels (including thirty (30) percent of AMI or less and sixty (60) percent of AMI or less) and units in a range of sizes (two-bedroom and three-bedroom) and tenure types (for sale and rental), to the extent that is reasonably possible within the development.

d. — The duration of affordability for affordable housing units shall not be less than the city policy concerning the duration of affordable housing that exists at the time of execution of the plan.

(2) — The owner(s) of the entire subject property, or the owner(s) authorized agent(s) shall initiate an affordable housing plan.

(Ord. No. 1407-18, § 6, 12-17-18; Ord. No. 47-20, § 56, 3-16-20)

Sec. 27-188.5. Incentive FAR requirements for the Downtown Golden Triangle (D-GT) district.

- (a) ~~Primarily residential zone lot.~~ A zone lot that will contain fifty (50) percent or more of its gross floor area from new construction as primary residential uses must comply with the following requirements in order to build within the allowed incentive FAR:
- (1) An applicant for a building permit on a zone lot must provide the following quantities of affordable housing units:
 - a. Total structure build alternative units for all new structures and additions on the zone lot; and
 - b. Except as specifically allowed in subsection (d) below, an incentive amount of affordable housing units required for gross floor area within the incentive FAR of the zone lot only using the formulas in Sec. 27-155, D.R.M.C., multiplied by four (4).
 - c. In calculating the units above, the fractional amounts of the units will be added together, and then rounded so that five tenths or greater will result in requiring that a whole unit must be produced.
 - (2) The affordable housing units required in this subsection (a) must meet all the requirements for build alternative units set forth in Art. V, Ch. 27, D.R.M.C. and adopted rules implementing Art. V, Ch. 27, D.R.M.C.; provided, however, that affordable housing units required as part of a development providing rental housing must be restricted to households earning sixty (60) percent or less of AMI.
 - (3) The units required in subsection (1) above may be located in a new structure constructed on the zone lot, or in a new structure at an off-site location anywhere with a zone district designation of D-GT, regardless of whether that location is within a quarter mile of the subject property. The executive director of the department of housing stability may reject a proposal for off-site build alternative units for any reason.
 - (4) A zone lot proposing to use incentive FAR under this subsection (a) must provide the units in subsection (1); payment of fees described in subsection (b) below is not allowed.
- (b) ~~Primarily non-residential zone lot.~~ A zone lot that will contain less than fifty (50) percent of its gross floor area from new construction as primary residential uses may comply with either subsection (a) above, or the following requirements in order to build within the allowed incentive FAR:
- (1) An applicant for a building permit on the zone lot must provide the following amount of fees:
 - a. Payment of the required total structure linkage fee for all new structures and additions on the zone lot; and
 - b. Except as specifically allowed in subsection (d) below, an incentive payment based on the linkage fee required for the gross floor area within the incentive FAR only using the formulas in section 27-153, D.R.M.C., multiplied by four (4).
 - (c) ~~Determination of incentive floor area ratio.~~ When development on a zone lot proposes a single structure or single addition to an existing structure, the gross floor area for the incentive FAR will be determined from the uppermost portion of the structure or addition. When development on a zone lot proposes multiple new structures, multiple new additions to existing structures, or a combination of new structures and new additions to existing structures, the gross floor area for the incentive FAR will be determined using a proportion of the gross floor area of the uppermost portion of the structures or additions. This proportion is determined by the amount of overall FAR contributed by each new structure or new addition to the total FAR of new structures or new additions on a zone lot.
 - (d) ~~Alternative requirements.~~ A zone lot may choose to comply with alternative requirements for the portion of a zone lot exceeding 12:1 floor area ratio instead of providing the required number of affordable housing units required in subsection (a)(1)(b) or the incentive payment required in subsection (b)(1)(b) for the portion of the zone lot exceeding 12:1 floor area ratio; however, the zone lot must provide the required number of

~~affordable housing units or amount of incentive payment for the portion of the zone lot that exceeds the base FAR up to and including 12:1 floor area ratio. The alternative requirements are located in article 8 of the Denver Zoning Code for the Downtown Golden Triangle zone district.~~

~~(Ord. No. 636-21, § 7, 7-19-21)~~

Secs. 27-180 – 188.5. – Reserved.

ARTICLE [X] - Mandatory Affordable Housing

DIVISION 1 - GENERAL

Sec. 27-[217]. Legislative findings.

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

- (a) Demographics and analyses of new housing indicate that a large majority of private development is geared toward high-priced housing development and does not serve households earning less than one hundred percent (100%) of area median income;
- (b) Development trends produce high-priced housing which does not serve a large segment of the population and limits housing available to low- and moderate-income households, thus failing to implement the housing goal of the HOST Strategic Plan, Comprehensive Plan 2040, and Blueprint Denver calling for a city that is equitable, affordable, and inclusive;
- (c) Market forces, including continued population growth and unmet demand for new housing, result in highly priced housing, and a lack of economic incentive for developers to offer a more diversified price range of housing, and therefore such housing is not being created at a level that meets current demand;
- (d) Rapid regional growth and a strong housing demand have also combined to make land and construction costs higher, limiting the areas where affordable housing is located;
- (e) Incomes of Denver's growing workforce has not kept pace with this rapid and significant increase in the cost of housing in Denver;
- (f) Ensuring a mix of incomes and access to home-ownership and rental housing opportunities for low- and moderate-income households are high priorities for the city, and therefore the city has a strong interest in ensuring that the city's limited supply of developable land provides housing opportunities for all incomes of the workforce;
- (g) New development is not meeting the need for affordable housing and the provision of primarily higher priced housing contributes to the lack of affordable housing;
- (h) Land in Denver is highly limited and without a program requiring affordable housing to be built, it is unlikely based on current trends new development will create affordable housing, leaving Denver residents without sufficient affordable housing;
- (i) Naturally occurring affordable housing, which is housing that may rent or sell at an affordable rate without affordability restrictions, has declined significantly in recent years thereby necessitating a program to assist in the development of affordable housing;
- (j) The city has deployed multiple funding strategies and programs which are successful in creating new affordable housing, but not at a pace sufficient to meet the growing demand of the workforce;
- (k) Providing incentives to new development will improve the economic feasibility of providing a minimal percentage of affordable housing units as an integral part of new residential developments.

Sec. 27-[218]. Declaration of public policy.

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

- (a) Exercise the authority granted to the city pursuant to HB 21-1117 to regulate development in order to promote the construction of new affordable housing units;
- (b) In compliance with HB 21-1117, the city has demonstrated the following actions to increase the overall number and density of housing units within the city:

- (1) Changing its zoning regulations to increase the number of housing units allowed on a particular site;
 - (2) Promoting mixed-use zoning that permits housing units be incorporated in a wider range of developments;
 - (3) Permitting more than one dwelling unit per lot in traditional single-family lots;
 - (4) Increasing the permitted household size in single-family homes;
 - (5) Promoting denser housing development near transit stations and places of employment;
 - (6) Granting reduced parking requirements to residential or mixed-use developments that include housing near transit stations or affordable housing development;
 - (7) Granting density bonuses to development projects that incorporate affordable housing units;
 - (8) Materially reduce or eliminate utility charges, regulatory fees, or taxes imposed by the local government applicable to affordable housing units; and
 - (9) Grant affordable housing development material regulatory relief from any type of zoning or land development regulations that would ordinarily restrict the density of new development.
- (c) Encourage the construction of new affordable housing units alongside market rate housing units within mixed income residential developments by offering incentives to increase the overall density and availability of housing;
- (d) Provide property owners or land developers with alternatives to the construction of new affordable housing units alongside market rate housing units within mixed income of residential developments as required by HB 21-1117;
- (e) Implement the comprehensive plan goal to create a Denver that's equitable, affordable and inclusive;
- (f) Increase the availability of additional low- and moderate-income housing to address existing and anticipated future housing needs of the workforce in Denver and the unmet needs of residents in Denver; and
- (g) Ensure diverse housing options continue to be available for households earning at or below the area median income.

Sec. 27-[219]. Definitions.

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

- (a) *AMI or adjusted median income or median income or area median income* means the median income for the Denver metropolitan area, adjusted for household size as calculated by the U.S. Department of Housing and Urban Development.
- (b) *Affordable housing plan (AHP)* means a plan approved by the director outlining the number and type of units to be provided when an applicant elects to build affordable housing units on-site as required by this article.
- (c) *Affordable housing project* for purposes of this article, means a residential rental or ownership development in which more than fifty (50%) percent of the housing units are income restricted affordable household earning up to 80% AMI.
- (d) *Applicant* means any person, firm, partnership, association, joint venture, corporation, or any other entity or combination of entities, or affiliated entities and any transferee of all or part of the real property at one location that develops a total of ten (10) or more new dwelling units at one location in Denver.

- (e) *At one location* means all real property under common ownership or control by the applicant if:
- (1) The properties are contiguous at any point;
 - (2) The properties are separated only by a public or private right-of-way or utility corridor right-of-way, at any point; or
 - (3) The properties are separated only by other real property of the applicant which is not subject to this article at the time of any building permit(s), site development plan, subdivision, or other zoning development application by the applicant.
- (f) *Comprehensive plan* means the Denver Comprehensive Plan 2040 or its successor.
- (g) *CPI-U or Consumer Price Index* means the United States Department of Labor Statistics (Bureau of Labor Statistics) Consumer Price Index for All Urban Consumers, All items, for the Denver-Aurora-Lakewood Colorado area (1982-84=100). In the event that the CPI-U is substantially changed, renamed, or abandoned by the United States Government, then in its place shall be substituted the index established by the United States Government that most closely resembles the CPI-U, as determined by the executive director of the department of housing stability.
- (h) *Director* means the executive director of HOST or executive director's designee.
- (i) *Dwelling unit* shall have the same meaning as defined in Article 11 of the Denver Zoning Code.
- (j) *Eligible household* means a household whose income qualifies them to rent or purchase an IRU and who holds a valid verification of eligibility from HOST.
- (k) *High market area* means statistical neighborhoods in the City and County of Denver that are in the top quartile of both (i) the highest rents or sales prices and (ii) land values. Classification of high market areas shall be periodically updated as set forth in the rules and regulations.
- (l) *High impact development means any combination of residential, mixed-use residential, non-residential, and mixed-use non-residential structures that are built as a part of a development where the development will be built on:*
- (1) ten (10) or more acres without the use of city approved financing tools; OR
 - (2) five (5) or more acres and is leveraging a city approved financing tool such as tax increment financing or a metropolitan district.
- (m) *HOST* means the Department of Housing Stability of the City and County of Denver or its successor.
- (n) *HOST Five-Year Strategic Plan* means the Department of Housing Stability Five-Year Strategic Plan or its successor as required by Sec.27-164(a).
- (o) *Household* shall have the same meaning as set forth in Article 11 of the Denver Zoning Code.
- (p) *IRU or income-restricted unit* means a dwelling unit required by this article required to be affordable as set forth in this article.
- (q) *Non-residential structure* means any structure where none of the structure's gross floor area contains any primary residential uses.
- (r) *On-site* means at the same location of a residential development.
- (s) *Ownership development* means a residential development where dwelling units are offered for sale.
- (t) *Rental development* means a residential development where dwelling units are offered for rent.
- (u) *Residential development* means any project that would create ten (10) or more new dwelling units at one location by (i) the construction or alteration of structures or (ii) the conversion of a use to

residential from any other non-residential use. If a project has both residential and non-residential uses, the residential portion of a project shall be considered a residential development if it would create ten (10) or more new dwelling units.

- (v) *Typical market area* means statistical neighborhoods in the City and County of Denver that are not identified as high market areas. Classification of typical market areas shall be periodically updated as set forth in the rules and regulations.
- (w) *Townhouse* shall have the same meaning as defined in the International Residential Code (IRC).

Sec. 27-[220]. Special Revenue Fund.

- (a) The director shall use the Mandatory Affordable Housing Special Revenue Fund for the primary purpose of offsetting the costs of the commercial permit fee reduction incentive provided in section 27-[224]. Any amounts in the special revenue fund remaining after offsetting such costs shall then be used for the following purposes, with prioritization being given to utilize such funds generated from areas vulnerable to displacement in areas vulnerable to displacement:
 - (1) For the production or preservation of rental housing, including the funding of rental assistance programs, for qualified households earning eighty (80) percent or less of AMI.
 - (2) For the production or preservation of for-sale housing for qualified households earning one hundred (100) percent or less of AMI.
 - (3) For homebuyer assistance programs, including by way of example down payment and mortgage assistance programs, for qualified households earning one hundred and twenty (120) percent or less of AMI.
- (b) As used in this section, “areas vulnerable to displacement” means neighborhoods identified as meeting all (3) three indicators as defined in Appendix C- Key Equity Concepts Methodology of Blueprint Denver, a supplement to Comprehensive Plan 2040. In the event that the methodology or data source is substantially changed, renamed, or abandoned by community planning and development, then in its place shall be substituted by a methodology that most closely resembles the original intent as determined by the executive director of the department of community planning and development.
- (c) *Cap on administrative costs.* Monies in the Mandatory Affordable Housing Special Revenue Fund may be expended to pay the costs incurred by the city associated directly with the administration of this fund; provided, however, in no event shall the amount expended from the affordable housing incentive fee fund for such administrative expenses in any year exceed eight (8) percent of the balance in the fund on January 1 of each year.
- (d) *Fund earnings.* Any interest on any balance in the Mandatory Affordable Housing Special Revenue Fund shall accrue to this fund.
- (e) *Administration of fund.* The Mandatory Affordable Housing Special Revenue Fund shall be administered by the executive director of the department of housing stability, or its successor city agency or department.

DIVISION 2 – MANDATORY AFFORDABLE HOUSING FOR RESIDENTIAL DEVELOPMENTS**Sec. 27-[221]. Applicability.**

- (a) This division is applicable to all residential developments. If a project provides both residential and non-residential uses, this division shall be applicable to the residential development portion of the project and the non-residential portion shall be subject to Chapter 27, Article V, Division 2.
- (b) In determining whether a residential development contains the applicable total number of dwelling units for the purpose of applying this article, all real property at one location within Denver, including real property owned or controlled by entities in which any person or family of the person owns ten percent (10%) or more of the ownership interest shall be included. An applicant shall not avoid this article by submitting piecemeal applications or approval requests for subdivision plats, site development plans, zone lot amendments, or building permits. Any applicant may submit a development proposal that intends construction of dwelling units, including applications for subdivision plats, site development plans, zone lot amendments, or building permits, for less than the applicable number of dwelling units at any time; but the applicant shall agree in writing that upon the next such application or request the applicant will comply with this article when the total number of dwelling units at one location has reached the applicable number of dwelling units.

Sec. 27-[222]. Exceptions.

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

- (a) Construction upon any property which is, alone or in combination with other properties, the subject of a contractual commitment or covenant that is properly recorded and is enforceable by the city to construct affordable housing, including by way of example any development or subdivision agreement which includes an affordable housing covenant and to which the city is a party, any city-approved plan to build moderately priced development units (MPDUs) under article IV of this chapter 27, any city-approved plan to build affordable units in place of the linkage fee, or an affordable housing plan executed to meet incentive requirements under article VI of this Chapter 27. The exception provided by this subsection (a) shall apply only for so long such contractual commitment or covenant to construct affordable housing remains in effect. Construction upon property that, alone or in combination with other properties, was originally developed under such a contractual commitment or covenant and is substantially proposed for redevelopment shall be subject to the requirements of this section here under unless the redevelopment is governed by a new contractual commitment or covenant to construct affordable housing, or otherwise qualifies for an exception under any other provision of this section.
- (b) Construction upon any property subject to an obligation as a condition of zoning to provide affordable housing on the property.
- (c) Affordable housing projects that are restricted by law, contract, deed, covenant, or any other legally enforceable instrument.
- (d) Residential developments that are built by any charitable, religious, or other nonprofit entity and deed restricted to ensure the affordability of the dwelling units to low- and moderate-income households.
- (e) Any structure that contains a residential development that is being reconstructed due to involuntary demolition or involuntary destruction as defined in article 13 of the Denver Zoning Code, but which also includes involuntary man-made forces.
- (f) Projects that are high impact developments, which shall instead be required to comply with division 3 unless the director determines otherwise.

Sec. 27-[223]. Compliance Requirements.

An applicant may satisfy its requirement under this division by:

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

Sec. 27-[224]. On-Site Compliance Requirements.

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

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

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

- (1) To promote the construction of on-site IRUs, an applicant complying with the on-site requirements in this section is eligible for the following incentives for the applicable residential development:
 - (A) *Permit Fee Reduction.* An applicant will receive a commercial construction permit fee reduction of six thousand five hundred dollars (\$6,500.00) per IRU in a typical market area and ten thousand dollars (\$10,000.00) per IRU in a high market area. The commercial construction permit fee reduction shall not exceed fifty percent (50%) of the commercial construction permit fee.
 - (B) *Reduced minimum vehicle parking required by the Denver Zoning Code.* An applicant may utilize the alternative minimum vehicle parking ratios allowed in accordance with Article 10 of the Denver Zoning Code.
 - (C) *Commercial, sales service and repair street level exemption to linkage fee.* An applicant may receive an exemption from the requirement to pay a linkage fee for the gross floor area of primary commercial sales, services, and repair use located on the street level of a structure. As used in this subsection, the term “street level” shall have the same meaning as the term is defined in article 13 of the Denver Zoning Code.

- (2) Notwithstanding the applicability of this division, any residential development that is exempt pursuant to section 27-221(c) or (d) may receive the base incentives set forth in this section.

- (c) **Enhanced On-site Compliance, Incentives.**

- (1) **Enhanced Incentives.** To increase the overall supply of housing and encourage the construction of additional on-site IRUs, an applicant is eligible for the incentives set forth in (A) and (B) of this subsection if the residential development 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) 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 [cite DZC].
- (B) Vehicle Parking Exemption. A residential development shall be entitled to a vehicle parking exemption in accordance with the provisions set forth in [cite DZC].
- (2) Notwithstanding the applicability of this division, any residential development that is exempt pursuant to section 27-221(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).
- (d) **Affordable Housing Plan Submission.** An applicant who chooses to provide IRUs on-site shall submit an affordable housing plan to HOST. The affordable housing plan must be submitted in conjunction with the site development plan or if no site development plan is required, at time of the applicable permit application. The director shall review the proposed affordable housing plan for consistency with the requirements of this article prior to approval of the site development plan or applicable permit.
- (e) Minimum Standards and Requirements for On-Site IRUs.
 - (1) Affordability requirements. IRUs must be maintained as affordable for a minimum term of ninety-nine (99) years. IRUs shall carry deed restrictions, covenants, or both, in the form set by the director. No temporary or final certificate of occupancy shall be issued until a restrictive covenant in the form provided by the director is recorded in the records of the Clerk and Recorder for the City and County of Denver.
 - (2) IRUs must be (i) functionally equivalent in construction and appearance to other dwelling units at the new development; (ii) interspersed among other dwelling units at the new development; (iii) proportionate to the number of bedrooms of the other dwelling units at the development; and (iv) compliant with all rules and regulations adopted by the director.
 - (3) IRUs in rental developments must be made affordable to and occupied by eligible households whose incomes are at or below the applicable AMI limit.
 - (4) IRUs in ownership developments must be made available for purchase at an affordable price to eligible households whose incomes are at or below the applicable AMI limit.
 - (5) The City may require an eligible household that purchases an IRU in an ownership development to record a performance deed of trust or a lien on the IRU.
- (f) **Rounding.** In calculating the number of on-site IRUs required 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

- (g) **Effective Average.** For applicants selecting to meet compliance options HC-2B, TC-2B, HC-2E or TC-2E, all IRUs must serve eligible households earning 80% AMI and below for rental and 100% AMI and below for ownership. The AMI limit associated with each IRU will be identified as a part of the affordable housing plan and remain as is for the duration of the agreement.

Sec. 27-[225]. Alternative Compliance – Fee-in-lieu

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

- (b) *Fee-in-Lieu Calculation*

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

Market Area	Percent of IRUs to be used for the fee calculation	Development Type	Fee per IRU required
High Market Area	10% of total dwelling units	Rental development	\$311,000
		Ownership development	\$478,000
Typical Market Area	8% of total dwelling units	Townhouses	\$250,000
		Ownership development, other than townhouses	\$408,000
		Rental development of one to seven stories	\$250,000
		Rental development of eight or more stories	\$295,000

- (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. For example, if a requirement is 8.3 IRUs, the fee per IRU required would be multiplied by 8. Alternatively, if a requirement is for 8.7 IRUs, the fee per IRU required would be multiplied by 9.

- (c) *Remittance of Payment*

- (1) *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*

- (1) *CPI-U adjustment.* On July 1, 2023, and annually thereafter, the amounts set forth in subsection (b)(1) of this section shall be adjusted in an amount equal to the percentage change from the previous year in the 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 advance of the fees becoming effective. The annual inflation adjustment shall apply to an be collected in conjunction with the issuance of any building permit on or after July 1st of the year in which the adjustment is made, regardless of when the application for the building permit was made.

Sec. 27-[226]. Alternative Compliance – Negotiated Alternatives

- (a) An applicant may propose an alternative manner in order to satisfy its obligations under this division. The applicant shall demonstrate how the proposed negotiated alternative provides outcomes that better

support the goals of the city's five-year housing plan, comprehensive plan goals, and any small area plan applicable to the development site at the time of execution of the negotiated alternative. The director shall review the proposed negotiated alternative and approve, approve with conditions, or reject the negotiated alternative. Each negotiated alternative shall contain information as set forth below and in any rules and regulations adopted by the director, a statement that the terms of the negotiated alternative will bind the applicant and will run with the land upon approval of the director and recording with the clerk and recorder of the City and County of Denver.

- (b) A negotiated alternative may include a combination of one or more of, but not be limited to, the following:
- (1) The dedication of land for the provision of affordable housing. At a minimum, the market value of the land to be dedicated must exceed the total fee-in-lieu required for the residential development and must have zoning entitlement in place to enable for the provision of affordable housing.
 - (2) An affordable housing plan to provide fewer IRUs on-site but at a greater depth of affordability. In any such negotiated alternative, at a minimum, the total percent of IRUs shall not be less than five (5) percent of total dwelling units and the majority of IRUs must serve households earning fifty (50) percent of area median income or less.
 - (3) An affordable housing plan that would provide fewer IRUs on-site but the IRUs would have a greater number of bedrooms that would otherwise be required. In any such negotiated alternative, at a minimum, the total percent of IRUs shall not be less than five (5) percent of total dwelling units and the majority of IRUs must be two (2), three (3), or four (4) bedroom units. The development must also contain family-friendly services and amenities. Amenities may include, but are not limited to, child-care; play area; community garden; and other on-site amenities to serve families.
 - (4) An agreement to provide off-site IRUs within the same statistical neighborhood or a ¼ mile radius of the site concurrently with the construction of the residential development. In any such negotiated alternative, the total percent of IRUs that must be provided for the residential development accessing this option shall not be less than the requirements for both properties set forth in the section [27-224(e)].

Sec. 27-[227]. Regulations; enforcement.

- (a) The director may, from time to time, adopt rules and regulations to administer this article.
- (b) Any violation of this article or rules and regulations adopted hereunder is subject to the penalties described under section § 1-13(e). Pursuant to section 1-13(e), the city may impose a civil fine on applicants in an amount up to one hundred fifty percent (150%) of the value of the IRU required but not provided.
- (c) The director may take legal action to enjoin or void any transfer of an IRU if any party to the transfer does not comply with all requirements of this article or the rules and regulations promulgated hereunder. The director may recover any funds improperly obtained from any sale or rental of an IRU in violation of this article.
- (d) HOST shall enforce the affordability requirements imposed on IRUs.

DIVISION 3 – HIGH IMPACT DEVELOPMENTS

Sec. 27-228. This division shall apply to all high impact developments.

Sec. 27-[229] High Impact Developments.

- (a) Owners or developers of a high impact development must submit to HOST a high impact development compliance plan that demonstrates how it will satisfy the intent and purposes of division 2 of this article and Chapter 27, Article V, Division 2.
- (1) The high impact development compliance plan shall demonstrate how the proposed development meets or exceeds the relevant standards set forth in this article and Chapter 27, Article V, Division 2 and the goals of the city's five-year housing plan, comprehensive plan goals, and any small area plan applicable to the area of high impact development at the time of execution of the plan.
 - (2) The owner or developer must provide HOST documentation detailing outreach to the surrounding community, including but not limited to the organizations and/or individuals engaged, and how the proposed high impact development compliance plan is responsive to the conducted community outreach.
 - (3) The high impact development compliance plan may include a combination of one or more of, but not be limited to, the following:
 - (A) A plan to provide IRUs within the area of high impact development sufficient to meet or exceed one of the compliance options set forth in section 27-[224(c)].
 - (B) The dedication of land within the area of the high impact development for the provision of affordable housing. In any such case, at a minimum, the land dedicated must be of sufficient size and have zoning entitlement in place to reasonably produce IRUs sufficient to meet the compliance requirements set forth in section 27-[224(c)].
 - (C) A plan to provide IRUs within the area of high impact development at a greater depth of affordability than the compliance requirements set forth in section 27-[224(c)]. In any such case, at a minimum, the total percent of IRUs provided in the high impact area shall not be less than eight (8) percent of total dwelling units and the majority of IRUs must serve households earning fifty (50) percent of area median income or less.
 - (D) A plan to provide IRUs within the area of high impact development specifically designed to meet the needs of families and larger households. In any such case, at a minimum, the total percent of IRUs provided in the high impact area shall not be less than eight (8) percent of total dwelling units and the majority of IRUs must include two (2), three (3), or four (4) bedrooms. The development must also contain family-friendly services and amenities. Such amenities may include, but are not limited to: child-care; playground/sport court, community garden; and other on-site amenities to serve families.
- (b) The director may waive the application of this division if the owner or developer requests such a waiver and demonstrates that circumstances unique to the proposed development limit or eliminate the practical application of this division. In such a case, the high impact development would instead be subject to the requirements of division 2 of this article and Chapter 27, Article V, Division 2 as applicable.
- (c) The director shall review the plan and approve, approve with conditions, or reject the high impact development compliance plan. The approved high impact development compliance plan shall result in an agreement to be signed by the owner or owners of the entire subject property, or the authorized agent of the owner or owners in advance of City Council approval of city financing tools, if applicable, and shall be recorded with the clerk and recorder of the City and County of Denver. For all high impact development compliance plans required under this section, no building permits shall be approved or issued for any structure within a high impact development area until an agreement is approved and recorded.