

**MANDATORY AFFORDABLE HOUSING ORDINANCE & AFFORDABLE HOUSING PERMANENT FUNDS  
ORDINANCE**

**ADMINISTRATIVE RULES AND REGULATIONS**

*Adopted \_\_\_\_ 2022*

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Adopted pursuant to Article V & Article X, Chapter 27 (Housing) of the Denver Revised Municipal Code (DRMC)

Signature page to be signed by the adopting authority and city attorney. Section 2-96(1) states that “[f]inal adoption of rules shall be effected by the dating and signing of the rules by the adopting authority and approval for legality by the city attorney.” The rule making authority for CPD has a similar provision in Section 12-18(e).

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## SECTION 1: PURPOSE, DEFINITIONS AND APPLICABILITY

### I. PURPOSE

These rules and regulations set forth the procedures for implementation of the Mandatory Affordable Housing Ordinance (“Mandatory Housing Ordinance”) codified at Article X, Chapter 27 (Housing) of the Denver Revised Municipal Code (“DRMC”). These rules also set forth the procedures for implementation of the Affordable Housing Permanent Funds Ordinance (“Linkage Fee Ordinance”) codified at Article V, Chapter 27 of the DRMC.

The rules establish the responsibility for administration of the Mandatory Housing Ordinance and the Linkage Fee Ordinance (collectively, the “Ordinances”) between the Owner of a project subject to the requirements of either ordinance (“Owner”) and the City and County of Denver (the “City”). These rules shall be the source for detailed guidance related to the administration of the Ordinances, including compliance options, submittal and compliance procedures, build requirements, incentives, exceptions and waivers, appeals procedures, and other details relevant to administration of the Ordinances.

Finally, these rules shall be used by HOST as guiding principles for investments into housing development, preservation, and/or programs under the Linkage Fee Ordinance.

Recognizing that no set of regulations can anticipate every conceivable situation to which an ordinance may apply, it is anticipated that these rules may be amended or supplemented as needed. Further, these regulations are not intended to limit the administrative discretion of those persons implementing the Ordinances on subjects not covered herein. In some instances, these rules and regulations attempt to summarize portions of the Ordinances. In the event of a disagreement between these rules and regulations and the Ordinances, the Ordinances control.

Forms or applications as required by these rules and regulations may be updated from time to time as needed by the Executive Director of the Department of Housing Stability (“HOST”) and the Executive Director of the Department of Community Planning and Development (“CPD”), or any successor offices or departments. The most current version of each form or application shall be available on HOST and CPD’s websites as applicable.

### II. DEFINITIONS

For the purposes of these rules, the following relevant terms are defined in DRMC Sec. 27-152 and/or DRMC Sec. 27-219 and carry the same meaning:

- (a) *AMI or Adjusted Median Income or Median Income or Area Median Income*
- (b) *AHP or Affordable Housing Plan*
- (c) *Affordable Housing Project*
- (d) *At One Location*
- (e) *Building Permit*
- (f) *Comprehensive Plan*
- (g) *CPI-U or Consumer Price Index*
- (h) *Director*

- (i) *Dwelling Unit*
- (j) *Eligible Household*
- (k) *Gross Floor Area or GFA*
- (l) *High Market Area*
- (m) *High Impact Development*
- (n) *HOST*
- (o) *HOST Strategic Plan*
- (p) *Household*
- (q) *IRU or Income-Restricted Unit*
- (r) *On-Site*
- (s) *Ownership Development*
- (t) *Rental Development*
- (u) *Residential Development*
- (v) *Structure*
- (w) *Townhouse*
- (x) *Typical Market Area*

Additionally, for the purposes of these rules:

*Affordable Housing Programs* means programs designed to preserve and increase the supply of affordable housing available to Low- and Moderate-Income Households.

*Concept Plan or Concept Site Development Plan or Concept SDP* means that an Owner has initiated the Site Development Plan process with a Concept Plan submittal.

*Formal Site Development Plan or Formal SDP* means that an Owner has initiated the Site Development Plan process following the release of a Concept Plan submittal.

*Income-Restricted Ownership Unit or IROU* means an affordably priced unit constructed under the terms of the Linkage Fee Ordinance (DRMC Article V, Chapter 27), a voluntary affordable housing agreement, or an Affordable Housing Plan and these rules and regulations that include the following:

- (a) Price limitations on sales such that the units are affordable to those earning no more than a specified percent of Denver's Area Median Income (AMI);
- (b) A covenant period for a defined term; and
- (c) An enforcement mechanism to ensure long term affordability to Eligible Households.

*Income-Restricted Rental Unit or IRRU* means an affordably priced unit constructed under the terms of the Linkage Fee Ordinance (DRMC Article V, Chapter 27), a voluntary affordable housing agreement, or an Affordable Housing Plan and these rules and regulations that include the following:

- (a) Rent limitations such that the units are affordable to those earning no more than a specified percent of Denver's Area Median Income (AMI);
- (b) A covenant period for a defined term; and
- (c) An enforcement mechanism to ensure long term affordability to Eligible Households.

*Income-Verified or Income Verification* means that a Household has been determined to be eligible to occupy or purchase an IRU by HOST, or its designee, under this article and further defined in Section 5.1 of these rules and regulations.

*Initial Sale* means the first sale of an IROU to an Eligible Household.

*Initial Sale Price* means the sale price of an IROU at its first compliant sale to an Eligible Household.

*Low- and Moderate-Income* means the level of income as defined by the AMI, as adjusted for Household size, within the income range for Low- and Moderate-Income established from time to time by HUD for the Denver metropolitan area, under federal law.

*Maximum Allowable Sale Price* means the maximum amount for which an IROU may be transferred, calculated in accordance with the covenants recorded against the property.

*Memorandum of Acceptance* means a document signed by each income-eligible buyer of an IROU, stating the buyer is aware of and will be bound by the IROU restrictions and providing an address for notices to the buyer.

*Owner* means any entity or combination of entities and any transferee of real property that is subject to the requirements of these rules and regulations.

Any terms or phrases stated but not defined herein are implied from or deferred to the Ordinances.

### **III. APPLICABILITY**

These rules shall apply to all projects, Structures, or developments that are subject to Article V, Chapter 27 or Article X, Chapter 27 of the DRMC.

## **SECTION 2: DETERMINATION OF APPLICABILITY FOR MANDATORY AFFORDABLE HOUSING (MAH)**

Following Owner submittal of a Concept Site Development Plan (“SDP”), zone lot amendment application, large development review application, preliminary plat application, or Building Permit, CPD staff shall inform the Owner on whether the Mandatory Affordable Housing (“MAH”) requirement will apply, per DRMC Sec. 27-221.

The Director of CPD shall have the sole discretion to determine whether a project consists of ten (10) or more Dwelling Units, considering factors such as timing, phasing, and ownership of the project.

### **I. HIGH-COST AND TYPICAL-COST MARKETS**

CPD shall maintain a publicly accessible map identifying the census tracts that are identified as High Market Areas and Typical Market Areas, as well as corresponding data that informs market area determinations.

The market designation will be determined by CPD at time of Formal SDP submittal and will apply through the issuance of Building Permit unless the SDP expires. The market area of the development will determine the Owner's obligation under the MAH requirement.

**A. METHODOLOGY AND DETERMINATION OF MARKET AREA**

In recognition of market differences in the City and County of Denver, the MAH and linkage fee requirements create two distinct areas, classified as High Market Areas and Typical Market Areas, to determine the required build On-Site requirement in DRMC Section.27-224; Fee In-Lieu in DRMC Section 27-225; and Linkage Fee in DRMC Section 27-153.

**i. UPDATES**

Every three years, CPD shall update the market areas. Therefore, the first map update shall occur in 2025. CPD shall update the map and publish the new map prior to it taking effect on July 1 of the update year.

**ii. METHODOLOGY**

To determine market areas, CPD will use the following sources to establish the median land value per square foot per census tract: City and County of Denver Assessor's Office for land value; and US Census Data for Census Tract boundaries.

To determine the land value per square foot, the appraised land value is divided by the lot size. For stacked parcels (e.g., condos), the parcels are dissolved and the appraised land value of each unit or Structure is summed, resulting in an appraised land value for the entire parcel.

To determine the median census tract land value per square foot, each parcel is joined to the census tract geometry to create a median census tract land value per square foot.

To determine the citywide median land value, each parcel is joined to the citywide geometry to create a citywide median land value per square foot.

High Market Areas include census tracts with a median land value per square foot that is equal to or five (5) times greater than the citywide median land value. For example, if the citywide median land value is \$25 per square foot, High Market Areas would include all census tracts with a median land of \$125 per square foot or greater.



Typical Market Areas include all census tracts that do not qualify as High Market Areas.

**iii. TIMING**

Determination of the applicable market area for the Structure will be set at the time of the Formal SDP submittal. For example, if a project submits Formal SDP in January of the update year, and the market area changes in July of that year, the applicable market area will remain the same as determined in January. If a project submits for Formal SDP after July 1 of the update year, the project will be subject to the new market area.

## **SECTION 3: COMPLIANCE OPTIONS AND SUBMITTAL REQUIREMENTS FOR MANDATORY AFFORDABLE HOUSING (MAH)**

Alongside submittal of a Formal SDP, or at the time of Concept SDP in the case of zone lot amendment applications, the Owner shall submit information sufficient to determine MAH applicability, to calculate MAH compliance requirements, and to indicate a plan for MAH compliance. The Owner shall, at a minimum, provide the following information through CPD's online submittal platform:

- (a) Site location;
- (b) Proposed uses;
- (c) Number of units;
- (d) Planned compliance option:
  - i. On-Site construction of Income-Restricted Units ("IRUs") (including planned build On-Site option, per DRMC Sec. 27-224);
  - ii. Payment of Fee-in-Lieu;
  - iii. Linkage fee (if relevant);
  - iv. High Impact Development; or
  - v. Negotiated Alternative;
- (e) Whether the project is requesting an exception from the MAH requirement; and
- (f) Whether the project is seeking use of zoning incentives.

CPD staff shall review and verify the required documentation provided by the Owner in coordination with HOST or other agencies as appropriate.

Should CPD determine that the linkage fee requirement applies to some or all of the project, Owner will be required to comply with the linkage fee requirement and Sections 6, 7, and 8 of these rules and regulations prior to the issuance of a Building Permit, excluding a permit for excavation/shoring.

An Owner subject to the MAH requirement shall demonstrate steps toward compliance throughout the SDP review and Building Permit approval processes. Those steps vary based on the compliance option selected by the Owner, and details about submittal requirements for each compliance option are included below.

If a project is determined by CPD in consultation with other agencies as appropriate to be a High Impact Development, the Owner will follow the compliance steps outlined in Section 3.IV of these rules and regulations.

If a project involves phased construction resulting in multiple Building Permit applications, the Owner will follow the compliance guidelines described in Section 13 of these rules and regulation.

**I. ON-SITE COMPLIANCE**

If an Owner elects to build affordable units On-Site to fulfill the MAH requirement, CPD will refer the Owner to HOST for preparation of an Affordable Housing Plan (“AHP”), to be submitted during the Formal Site Development Plan process. Details about AHPs can be found in Section A below. In general, AHPs represent a commitment by the Owner to dedicate a portion of units in the development as IRUs. A template AHP will be available on CPD’s website. The Owner will fill in the appropriate information and sign the template AHP in alignment with the selected On-Site compliance options provided in DRMC Sec. 27-224. HOST will review the AHP for compliance with the Mandatory Housing Ordinance and these rules and regulations. If the AHP satisfies the MAH requirement, HOST will approve the AHP. For purposes of this compliance pathway, an AHP is considered “approved” once the Owner and the HOST Executive Director or their designee have signed the document. If the AHP does not satisfy the MAH requirement, HOST will work with the Owner to resolve any issues to ensure compliance with the Mandatory Housing Ordinance and these rules and regulations. Following AHP approval, HOST will submit the approved AHP to CPD and approve the SDP for final approval. Following AHP approval, HOST will record the AHP against the property and provide CPD with a copy of the recorded AHP.

**A. AFFORDABLE HOUSING PLAN ELEMENTS**

An approved AHP shall contain the following elements:

- (a) Contact information for Owner
- (b) Project information:
  - i. Project name/address
  - ii. Relevant record numbers
  - iii. Market area determination (High Market Area/Typical Market Area)
  - iv. Type of development (Multi-Unit, Townhome, Single or Two-Unit, etc.)
  - v. Total number of Dwelling Units anticipated
- (c) Compliance Option election (On-Site, Fee-In-Lieu, etc.)
- (d) A percentage of Income-Restricted Ownership Units (“IROUs”) and/or Income-Restricted Rental Units (“IRRU”) to be constructed;
  - i. Percentages shall align with one of the On-Site compliance options provided in DRMC Sec. 27-224. The available options vary based on the tenure of units, the market area of the development (which will be determined by CPD upon Formal SDP submittal), and whether the Owner plans to leverage enhanced incentives.
- (e) The specific incentives requested by the Owner as set forth in DRMC Sec. 27-224;

- (f) Acknowledgment that the Owner will use a fair and equitable system to select Eligible Households to occupy or own the IRUs;
- (g) A legal description of the development;
- (h) A copy of the city's form(s) of covenant to encumber the IRUs; and
- (i) Such other information as HOST requires to determine the Owner's compliance with the Mandatory Housing Ordinance and these rules and regulations.

**B. REQUIREMENTS OF INCOME-RESTRICTED UNITS (IRUs)**

HOST staff shall review the Owner's AHP for compliance with the applicable provisions of the Mandatory Housing Ordinance and these rules and regulations. Such review shall include, but not be limited to, verification of the following elements:

**i. NUMBER OF IRUs REQUIRED**

Owners must commit a specified portion of the units in a development to be designated as IRUs under DRMC Sec. 27-224. The required percentage of IRUs will vary depending on the tenure of the residential units in the development, as well as whether the development lies in a Typical or High Market Area. Market area designation will be determined by CPD at time of the Formal SDP submittal.

**ii. AMI LEVEL SERVED**

**1. RENTAL DEVELOPMENTS**

Owners shall set rental rates for IRRUs according to the AMI levels designated in DRMC Sec. 27-224. Details about the determination of rental rates at a given AMI level can be found in Section 3.I.C.i below.

**2. OWNERSHIP DEVELOPMENTS**

Owners shall set Initial Sale Prices for IROUs according to the AMI levels designated in DRMC Sec. 27-224. Details about the calculation of Initial Sale Prices at given AMI levels can be found in Section 3.I.C.ii below.

**iii. UNIT MIX**

The IRUs in a development shall contain a mix of bedroom counts (e.g. studio units, one-bedroom units, two-bedroom units, etc.) in a ratio mirroring that of the market-rate units as closely as possible, beginning with the most prevalent unit type and progressing toward the least prevalent.

For example, if a development is required to provide 7 IRUs, and the overall unit mix includes 30% 1-Bedroom units, 50% 2-Bedroom units, and 20% 3-Bedroom units, the appropriate distribution of IRUs would be:

- (2) 1-Bedrooms
- (4) 2-Bedrooms

- (1) 3-Bedrooms

If the development includes one or more unique unit types (a penthouse, for example) that would be unreasonable to incorporate as IRUs, the most comparable typical unit may be utilized.

If only one IRU is required, then the IRU shall have the same bedroom count, or more, as the most prevalent market-rate unit type.

**iv. DISTRIBUTION**

IRUs shall be reasonably distributed among the market-rate units and shall not be concentrated to a specific area (for example, a designated “affordable wing” or “affordable floor”) within the project.

In developments containing IRRUs, the Income-Restricted designation shall “float” among all units of a similar type in the project. Under the “floating” system, if a tenant loses their eligibility to rent an IRRU due to an increase in income or some other reason, then the Owner or designee can transfer the Income-Restricted status of the unit to the next available unit with a similar bedroom count. See Section 5.1.A of these rules and regulations for further detail on the transfer of Income-Restricted status among rental units.

**v. DESIGN / QUALITY / ACCESS**

The IRUs in a development shall be of comparable size, quality, and design to market-rate units.

They shall also be functionally equivalent to market-rate units. For example, if the market-rate units in a development include certain appliances (refrigerator, countertops, washer and dryer, closets, light fixtures, etc.), then the IRUs shall also include those appliances, though the brand of appliance need not be the same across all units. Similarly, residents of IRUs shall have full access to all amenities and services available to residents of market-rate unit (e.g. gyms, pools, parks, storage units, points of entry, parking, etc.).

**vi. ACCESSIBILITY REQUIREMENTS**

The Owner shall provide IRUs that are also considered accessible Dwelling Units under Appendix R of the Denver Building and Fire Code, as may be amended from time to time, in a ratio equal to or greater than that of market-rate accessible Dwelling Units in the project.

**C. AFFORDABLE RENTAL AND SALES PRICE METHODOLOGIES**

**i. MAXIMUM RENTAL CALCULATION AND METHODOLOGY**

HOST will post a table of maximum allowable rents for IRRUs on its website. The maximum allowable rents are calculated annually using the Maximum Allowable LIHTC Rents published and updated annually on the Colorado Housing and Finance Authority (CHFA) website.

In order to set the rental rates for their IRRUs, Owners or their designees must start with these maximum allowable rents posted on HOST's website, then subtract the applicable Utility Allowance published annually by the Colorado Department of Local Affairs (DOLA), as well as any other "non-optional" fees charged to residents.

DOLA's Utility Allowance is used to account for any utilities a resident is required to pay other than telephone, cable, or internet. If an Owner or designee wishes to substitute DOLA's Utility Allowance for another means of calculating utility costs (for example, an actual usage estimate, a public housing authority schedule, or the HUD utility schedule), such a substitution may be allowed on a case-by-case basis. The Owner or designee must get approval for the substitution from HOST staff prior to implementation.

If an Owner elects to satisfy the MAH requirement by providing IRRUs at a specified AMI level through income averaging, the Owner may use the online calculator provided on CPD's website to determine an allowable AMI mix for the proposed IRRUs. The designated AMI level for each IRRU shall persist throughout the covenant period.

Per the MAH requirement, prior to receiving a Temporary Certificate of Occupancy (if requested) or Certificate of Occupancy, the Owner must record a covenant, running with the land, which states that the Dwelling Unit will not be rented for an amount that exceeds the rent limits determined by HOST throughout the covenant period.

**ii. MAXIMUM INITIAL SALE PRICE CALCULATION AND METHODOLOGY**

HOST will post a table of maximum Initial Sale Prices for IROUs on its website. The maximum sales price formula takes into consideration the target AMI, the market, and additional fees as outlined below. Transfer fees shall never be charged for transfer of an IROU and shall not be permitted to be included in any IROU pricing calculation.

The following assumptions regarding number of bedrooms, Household size, and AMI shall be used to calculate sales prices on an annual basis:

- (a) A maximum down payment of 5.0%
- (b) Current Year AMI thresholds adjusted for Household size and income as published by HUD to accommodate a price point aligned to the prospective pool of qualified buyers:

- i. Household size is assumed to be the number of bedrooms + 1 person. For example, for a one-bedroom IROU, a calculation of the sales price will use income of a two (2) person Household.
  - ii. AMI threshold used will be the maximum AMI of the unit with a fifteen (15) percentage point reduction. For example, for an IROU restricted at 80% AMI, a calculation for the sales price will use income of a 65% AMI Household.
- (c) Average of the prior year's 30-year fixed rate mortgage interest rate based on Freddie Mac Primary Mortgage Market Survey
  - (d) 30-year mortgage term
  - (e) Maximum sales price shall include any homeowner fees as calculated by HOST
  - (f) The current sales prices are available from HOST and published online

**D. REQUIREMENTS FOR APPROVAL OF SITE DEVELOPMENT PLAN AND BUILDING PERMIT**

An AHP must be approved by HOST prior to Formal SDP approval. HOST shall provide the approved AHP to CPD as evidence of Owner's compliance with MAH requirements.

**i. DETERMINATION AND APPLICATION OF INCENTIVES**

Owner must request the use of specific zoning incentives during Formal SDP submission to CPD.

Every project that complies with the MAH requirement by providing the minimum required On-Site units shall be eligible for the base incentives listed in DRMC Sec. 27-224(b), including Building Permit fee reductions, reduced minimum vehicle parking requirements (further described in DZC 10.4.5.2), and exemptions to the linkage fee for ground floor commercial, sales, service, and repair uses. Additionally, as specified in DRMC Sec. 27-224(b)(2), a residential project that is approved for exception (c) or (d) through the process described in Section 4 of these rules and regulations may receive the base incentives. For example, a project committing fifty (50) percent of its units to be IRUs for persons earning at or below sixty (60) percent AMI may also use all base incentives.

Every project that complies with the MAH requirement by providing the minimum required On-Site affordability requirements for enhanced incentives On-Site compliance as described in DRMC Sec. 27-224(c) shall be eligible for the base incentives and enhanced incentives.

Eligibility for enhanced incentives, and specifically height incentives for residential projects, shall comply with the minimum enhanced On-Site compliance requirements as described in DRMC Sec. 27-224 (c)(1)(b) and must be located within an applicable zone district and using an applicable building form as further described in DZC 10.12.1.1. Note that additional standards, such as protected district standards or historic districts, may further limit the height incentive applicability. Eligibility for a vehicle parking exemption requires

residential projects to comply with the minimum enhanced On-Site compliance requirements as described in DRMC Sec. 27-224 (c)(1)(b) and to be located within an applicable zone district and within proximity to transit as further described in DZC 10.4.5.1.E.

An SDP shall not be approved by CPD until the AHP has been approved by HOST. All incentives, including zoning incentives, shall be noted on the AHP. All zoning incentives utilized shall be noted on the SDP cover sheet in general notes.

Owner may apply for a Building Permit, including relevant incentives, prior to SDP approval, but Building Permit will not be approved until CPD verifies Building Permit request matches SDP approval.

**E. REQUIREMENTS FOR APPROVAL OF CERTIFICATE OF OCCUPANCY**

Prior to receiving a Temporary Certificate of Occupancy (if requested) or Certificate of Occupancy, the Owner must sign a covenant that confirms the Owner's commitment to designate a percentage of residential units as IRRUs, or to restrict specific units as IROUs as outlined in the approved AHP. The covenant(s) shall confirm or update the terms that were outlined in the approved AHP during the SDP review process, as well as provide that penalties will apply for any violation of the covenant, the Ordinances, or these rules and regulations.

No Temporary Certificate of Occupancy (if requested) or Certificate of Occupancy for residential Dwelling Units subject to an AHP shall be issued until MAH compliance has been verified by HOST through a compliance inspection conducted by HOST or a HOST partner, and the Owner has completed compliance training as outlined in this section, and then only after all other requirements necessary for the issuance of the certificate are satisfied. Any Temporary Certificate of Occupancy or Certificate of Occupancy issued in error for a project that fails to follow applicable provisions or the Mandatory Housing Ordinance or these rules and regulations may be suspended or revoked upon request to CPD by HOST.

**i. COMPLIANCE TRAINING AND INSPECTIONS**

Prior to preleasing or sale of the property, the Owner must request training(s) for the site team in preparation for the Income Verification process and, if applicable, for the reporting of tenant qualifications for IRRU(s). After an AHP has been approved and prior to construction completion, Owner must also contact HOST inspection staff to schedule a Housing Quality Standard (HQS) inspection for the property and all IRUs.

Provision of a Temporary Certificate of Occupancy, if requested, or Certificate of Occupancy is contingent on the Owner's successful completion of the compliance training and passage of the compliance inspection.

**II. FEE-IN-LIEU**

As an alternative means to satisfy the MAH requirement, an Owner may provide a fee-in-lieu for each IRU that would be required by option T-1B of the build-On-Site requirement, as described in DRMC Sec. 27-224. Fees will be due at the time of Building Permit issuance, except for a permit for excavation/shoring.

No incentives are allowed if the Owner opts to pay a fee-in-lieu, rather than build affordable units On-Site.

**A. FEE-IN-LIEU CALCULATION**

The amount of fee-in-lieu is determined based on the number of IRUs that would be required by the build On-Site compliance option T-1B for the MAH requirement, as well as the market area of the development and tenure of IRUs that would be required. A table detailing the fee schedule and fee calculation details can be found in DRMC Sec. 27-225.

For the purposes of determining the number of stories for the fee-in-lieu calculation, refer to the International Building Code or any Denver specific amendments to definitions for 'story above grade plane' and 'story'. Only those stories above grade plane shall count when determining the applicable number of stories for certain project types when determining the appropriate fee-in-lieu amount to assess. Mechanical and elevator penthouses, as well as mezzanines, are not considered a story for the purpose of determining the number of stories above grade plane.

**B. METHODOLOGY FOR CPI-U INCREASE OR DECREASE**

In recognition of evolving development costs, fees-in-lieu under the MAH requirement are updated annually to account for changes in inflation.

**i. UPDATES**

Per DRMC Section 27-225 (d) and DRCM Section 27-153, CPD shall maintain a publicly accessible current list of the fee-in-lieu amounts to be updated annually in accordance with the DRMC to reflect any percentage change from the previous calendar year according to the Consumer Price Index for all Urban Consumers (CPI-U), all items, for the Denver-Aurora-Lakewood, Colorado metropolitan area (1982-84=100).

**ii. METHODOLOGY**

CPD shall consult the U.S. Bureau of Labor Statics for the Consumer Price Index for all Urban Consumers (CPI-U), all items, for the Denver-Aurora-Lakewood, Colorado metropolitan area (1982-84=100).

CPD shall pull from the U.S. Bureau of Labor Statics the percent increase or decrease over the past twelve months from January of the prior year to January of the update year. The published percent change shall be multiplied by the existing fee.



For example, if the existing fee is \$250,000 per IRU required and the percent increase was 5%, the fee would be calculated by multiplying \$250,000 by 1.05 to result in a new fee of \$262,500.

**iii. TIMING AND POSTING**

CPD shall publicly post the updated fee schedule no later than 30 days prior to the new fees going into effect on July 1 of that year.

**C. REQUIREMENTS FOR APPROVAL OF SITE DEVELOPMENT PLAN**

If an Owner elects to fulfill the MAH requirement by paying a fee-in-lieu, the Owner must indicate their intent to pay a fee-in-lieu at time of Formal SDP submittal.

**D. REQUIREMENTS FOR APPROVAL OF BUILDING PERMIT**

When an Owner applies for a Building Permit, excluding a permit for excavation/shoring, CPD will review the Building Permit application to determine the fee-in-lieu contribution, which will be due to CPD prior to Building Permit approval.

**i. PAYMENT OF FEES**

All fees-in-lieu shall be paid in full prior to the issuance of any Building Permit, excluding a permit for excavation/shoring.

**III. NEGOTIATED ALTERNATIVES**

As an alternative means to satisfy the MAH requirement, an Owner may elect to negotiate an alternative agreement with HOST, which better fulfills the goals of City adopted plans, such as the HOST Five-Year Strategic Plan, HOST Annual Action Plans, Comprehensive Plan goals, and any small area plan applicable to the development site at the time of drafting of the negotiated alternative. See DRMC Sec. 27-226 for further details.

Negotiated alternatives that align with the HOST Strategic Plan and Comprehensive Plan goals may include:

- (a) Dedication of land for the provision of affordable housing. At a minimum, the market value of the land must exceed the total fee-in-lieu that would be required for the Residential Development and must have residential or mixed-use zoning entitlement in place to enable for the provision of affordable housing. HOST will coordinate with relevant City agencies, including the Division of Real Estate within the Department of Finance or its successor, to evaluate land contribution proposals in compliance with Executive Order 100. Documentation required from an Owner for evaluation of a land contribution will at a minimum include an appraisal, Phase I environmental, survey, and title report conducted for the site(s) within the previous six (6) months. Additional and/or updated documentation may be required by the Director of HOST on a case by case basis.

- (b) An AHP that would provide fewer IRUs On-Site but at lower maximum AMI levels. In any such negotiated alternative, at a minimum, the total percentage 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 or less of AMI.
- (c) An AHP that would provide fewer IRUs On-Site, but the IRUs would have a greater number of bedrooms than would otherwise be required. In any such negotiated alternative, at a minimum, the total percentage 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. Any such development must also contain family-friendly services and amenities. Amenities may include, but are not limited to, child-care facilities; a play area; a community garden; and other On-Site amenities to serve families.
- (d) An agreement to provide off-site IRUs concurrently with the construction of the Residential Development within the same statistical neighborhood or within a ¼ mile radius of the site. In any such negotiated alternative, the total percentage of IRUs that must be provided across all parcels shall not be less than the enhanced On-Site compliance requirement, as set forth in DRMC Sec. 27-224, and the Owner will be required to record an AHP against the parcel(s) providing the IRUs.

**A. REQUIREMENTS FOR APPROVAL OF SITE DEVELOPMENT PLAN**

If an Owner elects to fulfill the MAH requirement by negotiating an alternative agreement, the Owner must provide CPD with documentation indicating its intent to pursue a negotiated alternative, as well as a draft of the alternative proposal, at Formal SDP submittal. CPD shall transmit the draft alternative proposal to HOST for review.

HOST and the Owner will negotiate the draft alternative proposal. If an agreement is reached, that alternative proposal must be signed by the Owner and by the Executive Director of HOST prior to Formal SDP approval.

If an agreement is not reached, the Owner must pursue a different MAH compliance option, following the compliance and submittal requirements detailed in Section 3 of these rules and regulations.

**i. AFFORDABLE HOUSING PLAN**

If a negotiated alternative between the Owner and HOST results in a commitment by the Owner to record an Affordable Housing Plan, then the Owner must follow the compliance guidelines detailed in Section 3.I of these rules and regulations.

**ii. DETERMINATION AND APPLICATION OF INCENTIVES**

Owner must request the use of specific zoning incentives during Formal SDP submission to CPD.

If a negotiated alternative results in the construction of IRUs On-Site, per an approved AHP, Owner shall be eligible for base incentives for On-Site compliance set forth in DRMC Sec. 27-224(b), including Building Permit fee reductions, reduced minimum vehicle parking requirements (further described in DZC 10.4.5.2), and exemptions to the linkage fee for ground floor commercial, sales, service, and repair uses. Additionally, as specified in DRMC Sec. 27-224(b)(2), a residential project that is approved for exception (c) or (d) through the process described in Section 4 of these rules and regulations may receive the base incentives. For example, a project committing fifty (50) percent of its units to be IRUs for persons earning at or below sixty (60) percent AMI may also use all base incentives.

Negotiated alternatives shall not be eligible for enhanced incentives.

An SDP shall not be approved by CPD until the AHP has been approved by HOST. The Owner may proceed with an application for Building Permit, assuming enhanced incentives, provided HOST has received a draft AHP committing to enhanced affordability levels and CPD has determined zoning eligibility.

All zoning incentives used shall be noted on the SDP cover sheet in general notes. All incentives including zoning incentives shall be noted on the approved AHP.

**B. REQUIREMENTS FOR APPROVAL OF BUILDING PERMIT**

For negotiated alternatives involving dedication of land and/or off-site satisfaction of affordable housing requirements, and at the sole discretion of the Executive Director of HOST, the Owner may be required to encumber parcel(s) designated to provide IRUs in order to demonstrate compliance with the MAH requirement prior to Building Permit issuance on the project requesting the negotiated alternative. This requirement shall be documented in the negotiated alternative.

**C. REQUIREMENTS FOR APPROVAL OF CERTIFICATE OF OCCUPANCY**

If a negotiated alternative results in a commitment to build IRUs, either On-Site or off-site, the Owner must sign covenant(s), as well as verify passage of compliance inspection(s), prior to issuance of a Temporary Certificate of Occupancy, if requested, or Certificate of Occupancy. The Owner must follow the compliance guidelines detailed in Section 3.I.E of these rules and regulations.

**IV. HIGH IMPACT DEVELOPMENTS**

Owners who submit site development plans for High Impact Developments, as defined in DRMC Sec. 27-219, will be required to prepare a High Impact Development Compliance Plan that demonstrates the project's compliance with the Mandatory Housing Ordinance or Linkage Fee Ordinance, per DRMC Sec. 27-229, as well as these rules and regulations. This High Impact Development Compliance Plan may be included as part of any Development Agreement for the

High Impact Development. The approved High Impact Development Compliance Plan shall be signed by the Owner(s) of the entire subject property, or the Owner(s) authorized agent(s), and shall be recorded with the Office of the Clerk and Recorder of the City and County of Denver by HOST staff.

**A. APPLICABILITY**

Per DRMC Sec. 27-219, a High Impact Development is a development that includes 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:

- (a) Ten (10) or more acres; OR
- (b) Is leveraging a city approved financing tool such as tax increment financing or a metropolitan district.

CPD staff, in consultation with other agencies and the Denver Urban Renewal Authority as appropriate, will determine whether to designate a development as a High Impact Development upon Owner's submission of a Concept SDP, large development review application, preliminary plat application or similar. If an Owner applies for new Metropolitan District and/or Tax Increment Financing support on or after July 1, 2022, the request for those tools will be considered a qualification for the High Impact Development designation. The Owner is required to notify CPD of any such application to ensure compliance with DRMC and these Rules & Regulations.

**B. WAIVERS OF HIGH IMPACT DESIGNATION**

The Executive Director of HOST may waive the High Impact Development requirement if the Owner demonstrates that circumstances unique to the proposed development limit or eliminate the practical application of DRMC Sec. 27, Article X, Division 3. Examples of reasons why the High Impact Development designation may be waived may include, but not be limited to the following:

- (a) The scale of the development and/or investment of city approved financing does not justify the High Impact process
- (b) The proposed development can sufficiently meet the relevant standards set forth in the Mandatory Housing Ordinance, as well as HOST Strategic Plan and Comprehensive Plan goals, through standard On-Site or alternative mechanisms available within the Ordinances

Owners may apply for a waiver of the High Impact Development requirement by submitting a High Impact Development Waiver Form to CPD upon Formal SDP submittal. Any such application must provide documentation to demonstrate that circumstances unique to the proposed development limit or eliminate the practical application of DRMC Sec. 27, Article X, Division 3. An application for a waiver shall be evaluated by HOST on a case-by-case basis, and HOST shall provide written confirmation to the

Owner and CPD when a waiver of the High Impact Development requirement has been approved or denied.

If a waiver of the High Impact Development requirement is approved, Owner will be subject to standard MAH requirements, as outlined in DRMC Sec. 27, Article X, Division 2, and Section 3 of these rules and regulations, including On-Site construction of IRUs, payment of a fee-in-lieu, negotiation of an alternative agreement, payment of linkage fees, or request for an exception to the MAH and/or linkage fee requirements.

**C. REQUIREMENTS FOR APPROVAL OF SITE DEVELOPMENT PLAN**

Upon Formal SDP submittal, the Owner must provide CPD with a draft High Impact Development Compliance Plan proposal per the requirements of this section. CPD shall provide the draft plan to HOST for review.

HOST and the Owner will negotiate the draft High Impact Development Compliance Plan. Once an agreement is reached, the Compliance Plan must be signed by the Owner and by the Executive Director of HOST. HOST shall provide the approved High Impact Development Compliance Plan to CPD as evidence of Owner's compliance with MAH requirements.

CPD shall not approve a Formal SDP until a High Impact Development Compliance Plan has been approved by the Owner and HOST.

**i. HIGH IMPACT DEVELOPMENT COMPLIANCE PLAN**

The approved High Impact Development Compliance Plan must demonstrate how the proposed development will satisfy or exceed the applicable MAH and/or linkage fee requirement and the goals of City adopted plans to further affordable housing.

High Impact Development Compliance Plans shall include, at a minimum, the following elements:

- (a) Description of how the Owner will satisfy the High Impact Development requirement, per the compliance options set forth in DRMC Sec. 27-229;
- (b) Narrative detailing how the Owner's compliance plan is consistent with criteria set forth in DRMC Sec. 27-229;
- (c) Evidence of public outreach and engagement, as demonstrated by written notice to the following parties:
  - i. Holders and tenants of any real property located within 400 feet of the proposed project;
  - ii. The City Council member in whose district the project is proposed;
  - iii. Any neighborhood organizations registered according to DRMC Sec. 12-94, whose boundaries encompass or are within 400 feet of the proposed project; and

- iv. Other community organizations that are either located within 400 feet of the proposed project or operate within the statistical neighborhood that contains the proposed project site. Owners shall use reasonable efforts to identify such organizations, examples of which may include schools, religious assemblies, and other community-based nonprofit organizations.
- (d) A summary of how the high impact compliance plan is responsive, or is not responsive and why, to the information gathered during the public outreach and engagement process.

The Executive Director of HOST shall review and approve, approve with conditions, or reject the High Impact Development Compliance Plan. The Owner shall continue to submit High Impact Development Compliance Plans until such a Plan is approved. The Director shall collaborate with the Denver Urban Renewal Authority and other agencies as appropriate when reviewing the High Impact Development Compliance Plan.

**ii. DETERMINATION AND APPLICATION OF INCENTIVES**

The Owner must request the use of base and/or enhanced incentives during the creation of the High Impact Development Compliance Plan. The Executive Director of HOST, in consultation with CPD and DURA, if appropriate, may grant access to base incentives per DRMC Sec. 27-229(a)(4) and/or enhanced incentives per DRMC Sec. 27-229(a)(5).

The Director shall make their determination on the applicability of incentives and specify which incentives can be accessed by the project. The approved High Impact Development Compliance Plan and/or Development Agreement shall identify which incentives are available and, if relevant, the areas of the High Impact Development in which the incentives are applicable

All zoning incentives shall be noted on the SDP cover sheet in general notes.

**D. REQUIREMENTS FOR APPROVAL OF BUILDING PERMIT**

For high impact compliance plans involving dedication of land and/or off-site satisfaction of affordable housing requirements, and at the sole discretion of the Executive Director of HOST, the Owner may be required to encumber parcel(s) designated to provide IRUs in order to demonstrate compliance with the MAH requirement prior to Building Permit issuance on the project. This requirement shall be documented in the High Impact Development Compliance Plan.

**E. REQUIREMENTS FOR APPROVAL OF CERTIFICATE OF OCCUPANCY**

If a High Impact Development Compliance Plan results in a commitment to build IRUs, the Owner must sign covenant(s), as well as verify passage of compliance inspection(s), prior to issuance of a Temporary Certificate of Occupancy, if requested, or Certificate of

Occupancy for any buildings containing IRUs. The Owner must follow the compliance guidelines detailed in Section 3.I.E of these rules and regulations.

## SECTION 4: EXCEPTIONS TO MANDATORY AFFORDABLE HOUSING

An Owner applying for an exception to the Mandatory Affordable Housing requirement shall provide documentation necessary to demonstrate that the project complies with one of the allowed exceptions, as outlined in DRMC Sec. 27-222.

### I. SUBMITTAL REQUIREMENTS AT TIME OF SITE DEVELOPMENT PLAN

Each letter below corresponds to an exception listed in DRMC Sec. 27-222. The list below describes the minimum documentation required to request each corresponding exception in DRMC Sec. 27-222, as well as the party responsible for approving the exception. Such documentation shall be submitted to CPD at time of Formal SDP submittal for an initial review, and, if applicable, must be resubmitted with any updates at the time of Building Permit submittal. If a project is not subject to a site development plan, then the exception request and associated documentation shall be submitted with the Building Permit application.

- (a) A copy of the recorded Affordable Housing Plan, contractual commitment, development agreement, or covenant, to be reviewed by HOST staff.
- (b) The zoning ordinance number of the ordinance that contains the applicable zoning obligation, including any waivers and conditions or PUD, to be reviewed by HOST staff.
- (c) Evidence that the proposed development has applied for and/or been awarded federal, state, or local financial resources and/or a summary of the legally enforceable instrument(s) that would serve to ensure long-term affordability of no less than thirty (30) years and the anticipated timing of when it would become enforceable, to be reviewed by HOST staff.
- (d) Evidence of the tax-exempt status of the organization and a summary of the legally enforceable instrument(s) that would serve to ensure long-term affordability of no less than thirty (30) years and the anticipated timing of when it would become enforceable, to be reviewed by HOST staff.
- (e) Evidence of involuntary demolition or destruction such as an insurance report, report from Denver Fire, report from Denver Police, or similar, to be reviewed by CPD staff.
- (f) Documentation as specified by DRMC Sec. 27-229 and Section 3.IV of these Rules & Regulations, to be reviewed by CPD and HOST staff.

### II. DETERMINATION OF INITIAL APPROVAL OF EXCEPTION

Based on documentation submitted by Owner for an exception to the MAH requirement, HOST and CPD shall notify Owner of its initial approval or denial of exception request upon such determination.

If the initial exception request is approved, Owner may proceed with site development plan process, if applicable, and, if necessary, provide additional documentation required at time of Building Permit submittal to receive the requested exception.

If the initial exception request is denied, Owner must either provide additional documentation/evidence as requested to proceed under an exception request or proceed under the requirements of the Mandatory Housing Ordinance and these rules and regulations.

### **III. DETERMINATION OF INCENTIVE APPLICABILITY**

Owners receiving initial approval for Exceptions © or (d) to the MAH requirement are eligible to request use of incentives during the SDP process. Subject to approval of any additional documentation requirements prior to issuance of a Building Permit per paragraph IV of this Section, Owner is eligible to pursue incentives associated with the Mandatory Housing Ordinance. Please refer to DRMC Sec. 27-244 (b) and (c).

### **IV. SUBMITTAL REQUIREMENTS AT TIME OF BUILDING PERMIT**

In addition to documentation for a requested exception to the Mandatory Housing Ordinance, an Owner may be required to provide additional documentation associated with certain requested exceptions prior to issuance of a Building Permit.

Each letter below corresponds to an applicable exception listed in DRMC Sec. 27-222. The list below describes the additional minimum documentation required to request each corresponding exception in DRMC Sec. 27-222, as well as the party responsible for approving the exception. Such documentation shall be submitted to CPD and approved prior to Building Permit issuance.

- (a) Final copy of recorded legally enforceable instrument(s) that would serve to ensure long-term affordability of no less than thirty (30) years and the anticipated timing of when it would become enforceable, to be reviewed by HOST staff.
- (b) Final copy of recorded legally enforceable instrument(s) that would serve to ensure long-term affordability of no less than thirty (30) years, and the anticipated timing of when it would become enforceable, to be reviewed by HOST staff.

Additionally, at the discretion of the Executive Director of HOST or the Executive Director of CPD, an Owner may be required to submit additional documentation prior to Building Permit issuance to verify eligibility for an exception under the Mandatory Housing Ordinance.

### **V. DETERMINATION OF FORMAL APPROVAL OF EXCEPTION**

Based on documentation/evidence submitted by Owner for an exception to the MAH requirement, HOST and/or CPD shall notify Owner of its formal approval or denial of exception following submittal of the exception request information at the time of the Building Permit submittal.

Owner may proceed with Building Permit process prior to approval of exception. Once approved, reviewing staff will confirm to CPD permitting staff that an exception to the



Mandatory Housing Ordinance has been approved and the permitting record will be updated accordingly. Commercial or residential construction permit fee reductions will be applied if applicable.

If denied, Owner must either provide additional documentation/evidence as requested to proceed under an exception request or proceed under the requirements of the Mandatory Housing Ordinance and these rules and regulations.

## SECTION 5: ONGOING COMPLIANCE FOR ON-SITE OPTIONS

The compliance of an Owner, seller, or renter of an IRU will be determined in accordance with its obligations under the terms of the Ordinances, covenants, any deed restrictions, and these rules and regulations. To ensure compliance with the letter and spirit of the MAH requirement, HOST shall:

- (a) Maintain a list of all IRUs constructed, sold, or built under the MAH requirement;
- (b) Periodically confirm occupancy and ownership for IRUs, including through On-Site monitoring;
- (c) Periodically request copies of any documentation relevant to ongoing Household residency for Households owning IRUs; and
- (d) Seek permission to enter an IRU for the purpose of On-Site property inspections.

### I. INCOME AND EDUCATION VERIFICATION OF ELIGIBLE HOUSEHOLDS

#### A. INCOME-RESTRICTED RENTAL PROPERTIES

To be eligible for tenancy in an IRRU, Households entering into a lease contract for the IRRU must earn at or below the specified percentage of AMI included in the covenant, depending on Household size, at the time the lease is signed. A Household renewing a lease contract for an IRRU must earn at or below 140% of current income limit requirement at the time of lease renewal.

To determine the Household's income, the Income Verification process will generally follow the CHFA LIHTC requirements as modified by HOST. Documentation that demonstrates a Household's income must be provided to the Owner or its property management partner for each prospective resident of an IRRU. It is the responsibility of the Owner or its property management partner to assure that a Household or individual is income eligible under the requirements of the Mandatory Housing Ordinance and these rules and regulations before executing a lease contract.

HOST or a partner will treat prospective tenants' financial information as confidential commercial and financial data under the Colorado Open Records Act and shall not release such information except as required by law.

In the event a renter of an IRRU no longer meets the eligibility criteria established by the covenant, as result of increased income or other factors, then at the end of the lease term, the unit will cease to be counted as an IRU, and the tenant will no longer be

eligible for restricted rental rates. In this instance, the rental project would be considered temporarily out-of-compliance until the tenant moves out, the tenant's income decreases below the eligibility threshold established by the covenant, or the property manager transfers the income restriction to a comparable market-rate unit.

**B. INCOME-RESTRICTED OWNERSHIP PROPERTIES**

Households entering into a contract to purchase an IROU must have a current, valid approved Income Verification in effect at the time that a purchase contract is signed. Income eligibility is determined based on the maximum allowable income for an IROU established in the AHP, High Impact Development Plan, or covenant, as well as the prospective IROU purchaser's anticipated income, as determined by the Income Verification process described in Section 5.I.B.i. of these rules and regulations. The Executive Director of HOST has sole discretion to grant an exception to these income limitations.

To be eligible to purchase the unit, the buyer must also provide evidence of course completion from a HOST approved home ownership counseling agency and complete a brief orientation on the MAH requirements conducted by HOST staff. HOST staff may conduct the orientation in person, by phone, or electronically.

Income Eligible Households seeking to purchase an IROU may not own any other residential property and may only purchase an IROU using the following loan products, which must contain fixed terms and fixed interest rates:

- (a) Federal Housing Administration (FHA);
- (b) Conventional; or
- (c) Department of Veterans Affairs (VA).

Upon approval of the Executive Director of HOST, alternative loan products may be considered if they have amortized payments of principal and interest over fixed terms and with fixed interest rates that are comparable to current market rates for the homebuyer's credit profile. All loan products must ensure that mortgages are affordable to the homebuyers and meet standard loan industry standards. No negative amortizing loans are allowed. No cash-funded purchases are allowed.

During the term of the covenant of IROUs, no second mortgage, re-finance mortgage, or equity mortgage greater than the then current restricted maximum resale price shall be legal.

**i. DETERMINATION OF INCOME AND ASSET LIMITATIONS FOR INCOME ELIGIBLE HOUSEHOLDS**

Prospective purchasers of IROUs shall be required to submit to HOST or a partner all documentation necessary to make an income determination and to verify that the prospective purchaser's income qualifies them to purchase a particular IROU, including but not limited to those documents listed on HOST's website or published in HOST's Policies and Procedures for administering the Income Verification process.

HOST and its partners will treat the financial information contained in such application as confidential commercial and financial data under the Colorado Open Records Act and shall not release such information except as required by law. HOST or a partner may place verified Households on a list of eligibility if requested by the Household applying for verification.

HOST or a HOST-approved partner shall provide a written confirmation to the potential buyer evidencing that HOST or a partner has received a fully complete application. HOST or a partner will make its determination after receipt of the fully completed application, which includes evidence of both income and education qualifications. The determination shall be evidenced either by (A) the issuance of a written approval, signed by HOST or a partner, stating that the purchaser is a verified Eligible Household and indicating the amount of the purchase price; or (B) delivering a notice to selling owner and purchaser that an approval cannot be issued and stating the reason(s) therefor.

**ii. REQUIREMENTS FOR INITIAL OFFERING OF INCOME-RESTRICTED OWNERSHIP UNITS**

Prior to the initial offering of an IROU, the Owner shall refer prospective purchasers to HOST or a HOST-approved partner for Income Verification.

**iii. CLOSING REQUIREMENTS**

A Household seeking to purchase an IROU must hold a valid verification of eligibility from HOST or a designated partner under the MAH requirements before closing on the purchase. Applications and requested documentation must be provided to obtain verification. It is the responsibility of the Owner to confirm that a Household or individual is eligible under the requirements of the Ordinances and these rules and regulations prior to scheduling a closing on a purchase.

Prior to closing, the following documentation shall also be provided to HOST:

- (a) A copy of the draft Seller's and Buyer's Settlement Statements;
- (b) A current market rate appraisal (if necessary);
- (c) A covenant signed by the buyer; and
- (d) All other documentation deemed necessary by HOST to confirm that the sale is in compliance with the MAH requirement and these rules and regulations.

**II. OCCUPANCY REQUIREMENT**

Purchasers or renters of IRUs shall occupy the units as their primary place of residence, except in the event the Executive Director of HOST has approved an occupancy exception at the request of the IROU resident. A primary residence shall mean the home or place in which one's habitation is fixed and to which one, whenever he or she is absent, has a present intention of returning. The maximum duration of absence within any one (1) year period is sixty (60) days.

Renters in IRRU apartment buildings are required to occupy the IRRUs as their primary residence and shall not be permitted to sublease the unit, including but not limited to short term rentals as defined by Article III, Chapter 33 of the DRMC.

Purchasers of IROUs are required to occupy the Unit within thirty (30) days of closing, with no rent backs allowed. Purchasers of IROUs are required to occupy those units as their primary residence and are prohibited from obtaining a short-term rental license for the unit as defined by Article III, Chapter 33 of the DRMC.

**A. OCCUPANCY EXCEPTION FOR INCOME-RESTRICTED OWNERSHIP UNITS**

At the sole discretion of the Executive Director of HOST, a temporary occupancy exception for purchasers of IROUs may be allowed. The occupancy exception would allow such purchaser(s) of an IROU to lease the IROU for no more than a total of six months during any two-year period. The exception may be granted upon adequate evidence demonstrating the necessity to allow limited, temporary rental of the IROU including, but not limited to, the following:

- (a) Job or military transfer more than sixty (60) miles from Denver City and County limits;
- (b) Divorce resulting in an inability to pay the mortgage;
- (c) Change in Household size;
- (d) Job loss as a result of firing or layoff;
- (e) Major illness within the Household resulting in financial hardship; and
- (f) Relocation to obtain medical care outside the Denver metropolitan area.

HOST may require a statement of intent to return to residency of the property. Additional information about the occupancy exception can be found on HOST's website.

To obtain an occupancy exception, the purchaser must submit an application for an occupancy exception to HOST. After receiving written approval of the occupancy exception from HOST, the purchaser must sign a Rental Contract and provide a copy of the signed contract to HOST.

The maximum rent that can be charged by the purchaser of the IROU shall correspond to the maximum rent allowed for an IRRU at the AMI limit established in the covenant recorded against the IROU, according to the methodology described in Section 3.I.C.i of these rules and regulations.

Upon request by HOST and as required, the purchaser shall provide income tax returns and bank statements from the time when the unit was rented to demonstrate income earned during any rental period as verification of meeting this obligation.

Under no circumstances shall an IROU be used as a short-term rental as defined by Article III, Chapter 33 of the DRMC.

### **III. NOTICE REQUIREMENTS AND MARKETING OF INCOME-RESTRICTED UNITS**

An Owner of a building containing IRRUs must comply with the tenant and City notice provisions for Local Preservation Projects required in DRMC Sec. 27-49, and any adopted rules and regulations administering or implementing this section.

During initial leasing or continued leasing of IRRUs, and during the initial offering or resale of IROUs, Owners must make a good faith effort to market to Eligible Households. Owners should refer to HOST's Fair Marketing Policies and Procedures, which can be found on the HOST website, for guidance on how to meet this marketing requirement.

### **IV. ANNUAL SUBMITTAL REQUIREMENTS**

Compliance must be demonstrated by the Owner or its property management partner by submitting annual reports to HOST on the IRRUs, tenants and their Income Verifications. HOST will provide the Owner or its property management partner a compliance report template or an online reporting website form that includes, but is not limited to, the following information:

- (a) Specific unit numbers for IRRUs
- (b) Number of bedrooms for each IRRU
- (c) Status of each IRRU – Occupied or Vacant
- (d) Tenant name for each IRRU
- (e) Lease term for each Tenant in an IRRU including start date, end date, and month to month
- (f) Number of occupants within each IRRU
- (g) Total income for each Household living in an IRRU
- (h) Date of income certification for each Household living in an IRRU
- (i) Amount charged in rent for each IRRU
- (j) Amount of utility allowance for each IRRU
- (k) Any additional non-optional fees charged by the Owner or property manager for each Household in a building with IRRUs
- (l) Type of voucher and voucher amount for each Household living in an IRRU
- (m) Tenant demographic information, including the following:
  - i. Race
  - ii. Ethnicity
  - iii. Whether the head of Household is female
  - iv. Whether the tenant has ever been homeless
  - v. Whether any tenants are living with a disability
  - vi. Number of persons in the Household who are 62+ years old

The first compliance report must be submitted at the end of lease-up of the IRRUs and be accompanied by any other documentation as requested by HOST. Thereafter, the compliance report will be requested on September 1 and due by September 30 of each year the covenant is in effect. Additionally, it is the Owner's responsibility to immediately notify HOST in the event a replacement or new property management company is engaged or contracted to oversee the property and/or Income Verification process.

### **V. EDUCATION AND INFORMATION TO SUPPORT ONGOING COMPLIANCE**

To support compliance for projects that include IROUs, HOST staff will meet with the Owner and/or property manager prior to project completion to describe these compliance requirements. HOST may conduct this meeting in person, over the phone, or electronically. HOST may provide the Owner and/or property manager with templates related to project compliance, and templates will also be available on HOST's website.

## **VI. VIOLATIONS AND PENALTIES**

Pursuant to DRMC Sec. 27-230(b) and 1-13E, the city may impose a civil fine for a violation of a person's obligations under the Mandatory Housing Ordinance or these rules and regulations. If a person is found to be in violation, HOST staff will issue a notice to the person demanding corrective action. If, during an HQS inspection, a violation is discovered that indicates a threat to health and safety, then the person in violation will be issued a notice of violation on the day of the inspection, and the person will have twenty-four (24) hours from the date of the inspection to cure the violation. If a violation does not pose a threat to health and safety, then the person in violation will be issued a notice of violation by HOST via mail, and the person in violation will have thirty (30) days from the postmark date to cure the violation. Failure to take corrective action within the allotted timeframe will subject the person in violation to penalties described in these rules and regulations. In the event the City resorts to litigation with respect to any or all provisions of a covenant and the City prevails, the City shall be entitled to recover damages and costs, including reasonable attorneys' fees. Covenant violations shall be enforceable through the district court.

Violations of the MAH Ordinance and these rules and regulations include, but are not limited to, the following:

- (a) An Owner selling an IROU to an individual or Household who has not been Income-Verified by HOST or its designee. Persons in violation of this provision will be assessed a fine in an amount equal to the difference between the final sale price of the unit and the maximum Initial Sale Price as determined by HOST and established in the applicable recorded covenant.
- (b) An Owner selling an IROU at a price that exceeds the Maximum Allowable Sale Price as determined by HOST and established in the applicable recorded covenant. Persons in violation of this provision will be assessed a fine in an amount equal to the difference between the final sale price of the unit and the maximum Initial Sale Price as determined by HOST and established in the applicable recorded covenant.
- (c) An Owner renting an IRRU to an individual or Household who has not been Income-Verified by the Owner or their property management company. Persons in violation of this provision shall be subject to escalating fines, as described in Section 5.VII below.
  - i. In the event an income eligible renter fails to occupy an IRRU for a period of more than sixty (60) days, the unit will cease to be counted as an IRRU, unless HOST determines that a good faith marketing effort is occurring. The Owner shall immediately designate the next available comparable unit as an IRRU to be leased under the terms of the existing covenant.
- (d) The person who purchases an IROU fails to occupy the IROU within thirty (30) days of purchase, or up to sixty (60) days with HOST approval, with no rent backs allowed.

Parties in violation of this provision shall be subject to escalating fines, as described in Section 5.VII below.

- (e) An IRRU fails to be kept up to the quality required by HUD Housing Quality Standards. Parties in violation of this provision shall be subject to escalating fines, as described in Section 5.VII below.
- (f) During the term of the covenant of IROUs, no second mortgage, re-finance mortgage, or equity mortgage greater than the then current restricted maximum resale price shall be legal. Failure to abide by that restriction may subject owner to criminal and civil fraud penalties. The provisions of these rules and regulations hereunder do not in any way limit the types of claims or damages which may be sought against the owner by any injured mortgage, banking, or financial institution. Remedies sought by the City against the owner are not limited by the actions which may be taken by any injured mortgage, banking, or financial institution.
- (g) Owners of IRUs who fail to submit requested documentation, signed affidavits or certifications as required shall be subject to penalties under the covenant or otherwise provided by law.
- (h) Owners and renters of IRUs who sign a required affidavit or certification knowing the statements contained therein to be false shall be subject to penalties under the covenant or otherwise provided by law.
- (i) Renters of IRUs who sign an affidavit or certification knowing the statements contained therein to be false may be subject to lease termination and eviction.
- (j) Households that own individual IROUs who do not occupy their respective unit as their sole and primary domicile without being granted an exception from HOST may be subject to legal action or proceeding under the covenant, including, but not limited to, that HOST may require such owner to forfeit rents received in violation of this provision and to either sell the unit at a restricted price to an Eligible Household or to return to occupy such affordable Dwelling Unit as a domicile.
- (k) Any owner that fails to comply with the notice requirements of Section 5.III may be subject to applicable penalties in the Preservation Ordinance Rules and Regulations.

## **VII. ESCALATING FINE SCHEDULE**

If a person in violation of provision (d), (e) of Section 5.VI of these rules and regulations fails to cure the violation within the allotted time period, fines shall be issued according to the following schedule until the violation is cured:

- (a) Immediately upon failure to cure after allotted timeframe to cure has expired: Five hundred (500) dollars per unit not in compliance
- (b) The first day that is three months after the allotted timeframe to cure has expired: One thousand (1,000) dollars per unit not in compliance
- (c) The first day that is six months after the allotted timeframe to cure has expired: One thousand five hundred (1,500) dollars per unit not in compliance
- (d) For each additional three-month period after the allotted timeframe to cure has expired: One thousand five hundred (1,500) dollars per unit not in compliance

## **VIII. ENFORCEMENT**

HOST shall have all the enforcement authority provided under DRMC to enforce the provisions of the Ordinances and these rules and regulations. Upon complaint, or based upon the results of regular monitoring, HOST may initiate an investigation and physical inspection to verify compliance.

A person aggrieved by HOST staff in the administration or enforcement of the MAH Ordinance or these rules and regulations may appeal such decision to the Executive Director of HOST within thirty (30) days of the postmark date on the mail that included the notice of violation. The full appeals process, including eligible scenarios under which such an appeal is allowed, is described in Section 9 of these rules and regulations.

## SECTION 6: ADMINISTRATION OF THE HOUSING LINKAGE FEE

### I. DETERMINATION OF APPLICABILITY FOR THE HOUSING LINKAGE FEE

When an Owner submits a Formal SDP to CPD, CPD staff shall determine whether the linkage fee requirement shall apply to the project, per DRMC Sec. 27, Article V, Division 2.

### II. CALCULATION OF THE HOUSING LINKAGE FEE

The housing linkage fee will be calculated according the fee schedule published in DRMC Sec. 27-153. Fees are assessed per square footage of Gross Floor Area (“GFA”) per the International Building Code, and rates per square foot differ based on the use of the GFA within a Structure, as well as the amount of GFA for residential units and whether the development is located in a High Market Area or Typical Market Area (as described in Section 2.II of these rules and regulations). The submitted plans for a Building Permit must appropriately document the proposed use as well as the GFA in order to calculate the linkage fee.

### III. CALCULATION OF THE HOUSING LINKAGE FEE FOR CORE AND SHELL BUILDINGS

New core and shell buildings, where either the entire building or a portion of a building is built without an occupant or tenant and is not suitable for occupancy, are required to pay the linkage fee upon issuance of a Building Permit for the core and shell building. The Owner shall make an assumption on the appropriate use category of the space in order to calculate a linkage fee. The use category determination must be consistent with the proposed building code occupancy for which the building is being designed, as well as the project’s Formal SDP submittal.

If, upon first occupancy of the core and shell building, the actual use category of the space is different than the use that was assumed for the calculation of the affordable housing linkage fee, then the Owner shall (a) be allowed to seek a refund of the difference between the fee paid and the fee due based on the now known use category or (b) be assessed additional housing linkage fees based on the difference between the fee paid and the fee due based on the now known use category. This applies to the initial Owner of the space; future Owners that change the use category of the space may not seek a refund of the affordable housing linkage fees paid.

### IV. METHODOLOGY FOR CPI-U INCREASE OR DECREASE



In recognition of evolving development costs, linkage fees are updated annually to account for changes in inflation.

**A. UPDATES**

Per DRMC Section 27-225 (d) and DRCM Section 27-153, CPD shall maintain a publicly accessible current list of the housing linkage fees to be updated annually in accordance with the DRMC to reflect any percentage change from the previous calendar year according to the Consumer Price Index for all Urban Consumers (CPI-U), all items, for the Denver-Aurora-Lakewood, Colorado metropolitan area (1982-84=100).

**B. METHODOLOGY**

CPD shall consult the U.S. Bureau of Labor Statics for the Consumer Price Index for all Urban Consumers (CPI-U), all items, for the Denver-Aurora-Lakewood, Colorado metropolitan area (1982-84=100).

CPD shall pull from the U.S. Bureau of Labor Statics the percent increase or decrease over the past twelve months from January of the prior year to January of the update year. The published percent change shall be multiplied by the existing fee.

For example, if the existing fee is \$6.00 psf and the percent increase was 5%, the fee would be calculated by multiplying \$6.00 by 1.05 to result in a new fee of \$6.30.

**C. TIMING AND POSTING**

CPD shall publicly post the updated fee schedule no later than 30 days prior to the new fees going into effect on July 1 of that year.

**V. SUBMITTAL REQUIREMENTS**

At the time of the Building Permit submittal, Owner shall submit information sufficient to confirm applicability of the affordable housing linkage fee and to calculate the amount of linkage fee due prior to Building Permit issuance. The Owner shall provide the following minimum information:

- (a) Site location;
- (b) Uses of Gross Floor Area, provided in square footage:
  - i. Residential use within Dwelling Units of 1,600 square feet or less of GFA;
  - ii. Residential use within Dwelling Units of more than 1,600 square feet of GFA;
  - iii. Any primary residential use other than Dwelling Units;
  - iv. Commercial sales, services, and repair uses;
  - v. Civic, public, or institutional uses;
  - vi. Industrial, manufacturing and wholesale uses; and
  - vii. Agricultural uses
- (c) Whether the project is requesting an exception from the affordable housing linkage fee; and

- (d) Whether the project has received or will request a waiver or reduction in linkage fees from CPD or HOST.

CPD staff shall review and verify the required documentation provided by the Owner in coordination with HOST or other agencies as appropriate.

Owner must submit payment of the affordable housing linkage fee to CPD prior to receiving a Building Permit for the development, excluding a permit for excavation/shoring.

If a project involves phased construction resulting in multiple Building Permit applications, the Owner will follow the compliance guidelines described in Section 13 of these rules and regulation.

#### **VI. DETERMINATION AND APPLICATION OF INCENTIVES**

The Owner must request the use of specific zoning incentives during Formal SDP submission to CPD. For linkage fee incentives, no HOST review is required.

Specific height incentives for a Structure that is primarily nonresidential may leverage increased height as specified in DZC 10.12.1.2 Enhanced Linkage Fees and DZC 8.8.5.3.

Specific floor area incentives for a Structure that is primarily nonresidential in the Downtown (D-) zoning context may leverage increased height as specified in DZC Article 8 for the following zone districts: D-C, D-TD, D-GT, D-AS, and D-CPV-T, D-CPV-R, and D-CPV-C.

For purposes of linkage fee calculation for enhanced linkage fees, “current applicable rate” as stated in the DZC shall be the applicable linkage fee at time of payment. Payment must be paid by the owner to CPD prior to receiving a Building Permit for the development, excluding the permit for excavation/shoring. All zoning incentives shall be noted on the SDP cover sheet in general notes.

#### **VII. REFUNDS UNDER THE HOUSING LINKAGE FEE**

A refund of the affordable housing linkage fee (in whole or in part) may be requested in the following scenarios:

- (a) Housing linkage fees are not due and owing under the Linkage Fee Ordinance and these rules and regulations;
- (b) The Owner is seeking a reduction in the Gross Floor Area of the permitted project;
- (c) The Owner is seeking a change in the use of the permitted Structure such that the use falls within a different use classification;
- (d) The Owner’s Building Permits for the project are lapsed or are relinquished without the project being built; and
- (e) The Building Permit is canceled by the Owner or CPD due to 60 days of no work performed at the site, 60 days of no inspections called for the site, or a request from the Owner to cancel the permit.

Refund requests for the affordable housing linkage fee must be made in writing to the Executive Director of CPD. The written request for a refund must contain the following information:

- (a) Permit number on which the fee was assessed
- (b) Proof of payment via a receipt, canceled check or a copy of paid document
- (c) Reason for the refund request
- (d) Amount to be refunded

The refund request will be reviewed and, if a refund is found to be due, will be processed according to CPD's Finance/Accounting Policy for refunds, in cooperation with HOST. If a refund is granted, fees will be returned to the contractor or entity that paid for the fees in the manner in which they were paid. The Owner will have to work with the entity that will receive the refund of the affordable housing linkage fee in order to have their funds returned.

#### **VIII. OPTION TO BUILD AFFORDABLE HOUSING RATHER THAN PAY THE HOUSING LINKAGE FEE**

In lieu of paying the affordable housing linkage fee, Owners of projects that include between one (1) and nine (9) new Dwelling Units may elect to commit one (1) Dwelling Unit to be an Income-Restricted Unit at the AMI level specified in Option T-2B of DRMC Sec. 27-224 and are eligible for the base On-Site incentives in DRMC 27-224 (b).

Owners must note this election at the time of Concept SDP submittal, at which point they will be required to draft an Affordable Housing Plan and follow the submittal and compliance requirements outlined in Sections 3, 4, and 5 of these rules and regulations.

## **SECTION 7: EXCEPTIONS TO THE HOUSING LINKAGE FEE**

An Owner applying for an exception to the Linkage Fee requirement shall provide documentation necessary to demonstrate that the project complies with one of the allowed exceptions, as outlined in DRMC Sec. 27-154.

#### **I. SUBMITTAL REQUIREMENTS AT TIME OF BUILDING PERMIT SUBMITTAL**

Each letter below corresponds to an exception listed in DRMC Sec. 27-154. The list below describes the documentation required to request each corresponding exception in DRMC Sec. 27-154, as well as the party responsible for approving the exception. Such documentation shall be submitted to CPD at time of the Building Permit submittal.

- (a) A copy of the recorded Affordable Housing Plan, contractual commitment, development agreement, or covenant, to be reviewed by CPD and HOST staff.
- (b) The zoning ordinance number of the ordinance that contains the applicable zoning obligation, including any waivers and conditions or Planned Unit Development (PUD), to be reviewed by CPD and HOST staff.
- (c) Evidence that the proposed development has applied for and/or been awarded federal, state, or local financial resources and/or a summary of the legally enforceable instrument(s) that would serve to ensure long-term affordability and

- the anticipated timing of when it would become enforceable, to be reviewed by HOST staff.
- (d) Evidence of the tax-exempt status of the organization and a summary of the legally enforceable instrument(s) that would serve to ensure long-term affordability and the anticipated timing of when it would become enforceable, to be reviewed by HOST staff.
  - (e) Evidence of the tax-exempt status of the organization, a copy of the organization's mission statement, and a description of the project, to be reviewed by HOST staff.
  - (f) A description of how the project will be used for a governmental or educational purpose, and proof of property ownership via a deed or lease that documents ownership and/or use, to be reviewed by CPD staff and the City Attorney's Office, if necessary.
  - (g) Evidence of involuntary demolition or destruction such as an insurance report, report from Denver Fire, report from Denver Police, or similar, to be reviewed by CPD staff.
  - (h) Plans for the addition that include square footage information and dimensions, and evidence that the existing Structure is a single- or two-unit dwelling, to be reviewed by CPD staff.
  - (i) Plans demonstrating that the proposed Structure is an Accessory Dwelling Unit (ADU), and evidence that the existing Structure on the lot is a primary Structure, to be reviewed by CPD.
  - (j) Evidence that the Structure is being operated by the governing board of the educational institution, and a description of the program, to be reviewed by CPD.
  - (k) Documentation as specified by DRMC Sec. 27-229 and Section 3.IV of these Rules & Regulations, to be reviewed by CPD and HOST staff.

## **II. DETERMINATION OF APPROVAL OF EXCEPTION**

Based on documentation submitted by Owner for an exception to the housing linkage fee requirement, HOST and CPD shall notify Owner of its initial approval or denial of exception request following submittal of the appropriate documentation with the Building Permit application.

If the exception request is denied, Owner must either provide additional documentation/evidence as requested to proceed under an exception request or proceed under the requirements of the housing linkage fee.

## **SECTION 8: WAIVERS AND REDUCTIONS TO HOUSING LINKAGE FEE**

Owners may apply for a waiver or reduction of the housing linkage fee under specific circumstances outlined in DRMC Sec. 27-157 by submitting to CPD a completed Linkage Fee Reduction or Waiver Form. Any such application must provide documentation that demonstrates that the required fees exceed 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 demonstrating the reduced affordable housing impacts created by the development, based on actual characteristics of the development to be evaluated by HOST on a case-by-case basis. In the event that an Owner's required

documentation does not clearly demonstrate a lower affordable housing impact, the application for a reduction or waiver in the housing linkage fee will be denied, and the Owner will be required to pay the housing linkage fee as outlined by the Linkage Fee Ordinance and these rules and regulations. HOST shall provide written confirmation to the Owner and CPD when a waiver or reduction of the housing linkage fee has been approved or denied.

## SECTION 9: APPEALS PROCESS FOR HOUSING LINKAGE FEE AND MANDATORY AFFORDABLE HOUSING ORDINANCES

Appeals shall be conducted in accordance with DRMC Sec. 56-106 and the Rules and Regulations Governing Hearings Before the Manager of Public Works, with the Director of HOST or the Director of CPD, as applicable, to serve as the designated official in place of the Manager of the Department of Transportation and Infrastructure.

An appeal of the requirements set forth by the Ordinances (in whole or in part) may be requested in the following scenarios:

- (a) Applicability of the linkage fee as outlined in the Linkage Fee Ordinance or these rules and regulations, including but not limited to:
  - i. A request for an exception from the fee is denied by the Executive Director of CPD, the Executive Director of HOST or other City departments or agencies as appropriate; or
- (b) Calculation of the linkage fee by CPD staff, including but not limited to:
  - i. Determination of the use classification; or
  - ii. Determination of the Gross Floor Area for assessing the housing linkage fee; or
- (c) Applicability of Mandatory Affordable Housing as outlined in the Mandatory Housing Ordinance or these rules and regulations, including but not limited to:
  - i. A request for an exception from Mandatory Affordable Housing is denied by the Director of CPD, the Director of HOST or other City departments or agencies as appropriate;
- (d) Calculation of IRUs required as part of Mandatory Affordable Housing or fee in lieu amount by HOST staff; or
- (e) Determination by HOST staff that a party was in violation of its obligations under the Mandatory Housing Ordinance or these rules and regulations.

A party aggrieved by one of the above determinations made by City staff may appeal such determination to the Executive Director of CPD or the Executive Director of HOST, as applicable, within thirty (30) days of receipt of notice. The aggrieved party should contact the department which issued the decision in dispute and file a petition of appeal, which specifies the grounds upon which the aggrieved party is seeking an appeal.

The Executive Director will schedule an appeal hearing at the earliest possible date upon receipt of the request. The Executive Director may preside over the appeal hearing or may select a Hearing Officer to commence the hearing in the Executive Director's stead. The Executive

Director or Hearing Officer shall issue a determination within a reasonable time following the conclusion of the appeal hearing.

This final determination of the Executive Director, based on the record of such hearing, may be reviewed under Rule 106 of the Colorado Rules of Civil Procedure.

## **SECTION 10: AMENDMENTS TO APPROVED SITE DEVELOPMENT PLANS**

Previously approved SDPs or planned building groups that request an amendment per Denver Zoning Code Article 12 or Former Chapter 59 are subject to the MAH or linkage fee requirements for the area being amended. For example:

- (a) If the project in the application for an SDP or planned building group amendment paid the linkage and through the amendment is adding additional square footage, the project must pay additional linkage fees based on the additional square footage only.
- (b) If the amendment adds 10 or more residential units, then those residential units will be subject to the MAH requirement and must follow the rules and regulations above to obtain approval of the SDP or planned building group amendment.
- (c) If the amendment changes the use type to one which is subject to a different amount of linkage fees per square foot, and the project has not yet been occupied but a Building Permit has been issued and linkage fees paid, then CPD shall either assess additional fees if the new use type requires a higher amount of fees per square foot or issue a refund if the amount of linkage fees due would be less than what was previously paid.

If an Owner applies for a new SDP to replace an existing approved SDP for a project, and if the project is subject to the MAH requirement or linkage fee requirement, then the proposal will not be identified as an amendment, and instead the Owner must restart the compliance and submittal processes described in Sections 3 through 8 of these rules and regulations.

## **SECTION 11: APPLICABILITY TO PROJECTS THAT DO NOT RECEIVE APPROVAL PRIOR TO THE GRACE PERIOD**

For projects submitted under the effective date provisions of Section 4 of DRMC Section 27-230 whereby the amendments to Chapter 27 of the DRMC do not apply, but do not receive approval by the appropriate date, the provisions of the amendments to Chapter 27 of the DRMC will apply.

## **SECTION 12: MODIFIED DRAWING SUBMITTALS**

Previously approved and issued Building Permits that require a modification to what was approved prior to issuance of a Certificate of Occupancy or permit finalization (if a Certificate of

Occupancy is not required) shall be submitted to CPD for review as a modified drawing. Should the modification add square footage or increase the number of residential units, the provisions of Article V, Chapter 27 and/or Article X, Chapter 27 of the DRMC shall apply depending upon whether the MAH or linkage fee provision is applicable. Compliance must be addressed prior to issuance of a Building Permit for the modified drawing submittal. Modified drawing submittals that do not increase square footage or add residential units are not subject to the requirements of Article V, Chapter 27 or Article X, Chapter 27 of the DRMC.

## SECTION 13: PHASED CONSTRUCTION

Phased construction means that CPD may issue separate Building Permits for the construction of a portion or phase of a building or Structure prior to the submission of the complete drawings and specifications for the entire project, yet this phased construction may all be shown within one SDP. In these instances, the SDP must document compliance with Article V, Chapter 27 and/or Article X, Chapter 27 of the DRMC for each phase. Prior to Building Permit issuance for each phase, all linkage and/or in-lieu fees applicable for that phase must be paid. Any phase containing 10 or more residential units and electing to build IRUs on site must have a recorded AHP. However, where the applicant chooses to comply by either paying a fee-in-lieu to document compliance with the MAH provision or paying the linkage fee, the respective fees will be assessed and paid on the Building Permit containing the respective uses.

For example, one SDP includes a project with a shared foundation and two building towers (one office and one residential consisting of more than 10 Dwelling Units and they have decided to pay the fees-in-lieu for the residential building). The owner intends to submit for three Building Permit applications for these Structures – a foundation permit (generally for the items below grade), and two separate superstructure permits (for each Structure on top of the foundation that is above grade). In this example, each Building Permit will need to document relevant compliance. If the foundation permit submittal includes only parking and some storage or amenity areas associated with the residential use, there would be no linkage fee or fee-in-lieu requirements associated with that permit. On the permit submittal for the residential superstructure, because it contains more than 10 Dwelling Units and the Owner has chosen to pay the fee-in-lieu, the fees-in-lieu would be assessed and paid prior to the issuance of the superstructure Building Permit for that residential building. On the permit submittal for the office superstructure, linkage fees would be assessed based on the square footage for the Structure and must be paid prior to issuance of the superstructure Building Permit for the office building.

## SECTION 14: HOUSING INVESTMENT GUIDELINES

### I. ELIGIBLE APPLICANTS FOR HOUSING FUNDS

Eligible applicants for housing funds include governmental subdivisions, community development corporations, local housing authorities, non-profit organizations, and for-profit entities.

In order to be considered eligible for financing, applicants for housing funds must be current on all payments to the City and in good standing with HOST on all current or previous housing investments and in good standing with the Colorado Secretary of State. In addition, all applications for HOST funding will require an underwriting and approval process.

## **II. ELIGIBLE PROJECTS AND ACTIVITIES**

Revenue generated by the Ordinances is intended to primarily support the acquisition, production, or preservation of affordable housing units, as well as programs that help residents access or maintain existing affordable housing. The following list of programs and activities is illustrative, but not exhaustive, of possible targets of investment through the Ordinances:

- (a) Acquisition of land for affordable housing construction;
- (b) Acquisition of existing housing or buildings for conversion to affordable housing;
- (c) Rehabilitation and major repairs of existing rental and for-sale Affordable Housing Projects;
- (d) Production of new affordable rental and for-sale housing units;
- (e) Down payment and closing cost assistance for first-time homebuyers;
- (f) Rental assistance for tenants;
- (g) Rental assistance to landlords in exchange for income-restricted rents;
- (h) Supportive services such as case management, when those services are connected with a unit of permanent supportive housing; and
- (i) Administrative expenses associated with the implementation of the Ordinances, up to the extent of any administrative caps established via ordinance.

## **III. FUNDING PROCESS AND REQUIREMENTS**

The Ordinances are essential resources for addressing the need for affordable housing in Denver. In selecting projects and programs for funding, preference will be given to projects and programs that align with adopted priorities for housing investments as outlined in HOST's Five-Year Strategic Plan and Annual Action Plan, or any future replacement Plans.

In addition to the requirements outlined in the Ordinances and these rules and regulations, HOST shall maintain a list of policies and procedures to outline additional requirements for investment of housing funds as appropriate, which may include but are not limited to standard investment terms, application requirements, funding approval processes and contract requirements. A copy of the list of policies and procedures shall be available on HOST's website and may be updated from time to time.

# **SECTION 15: SUMMARY OF RESPONSIBILITIES**

## **I. RESPONSIBILITY OF PROPERTY OWNER**

The Owner of a project or property subject to the Ordinances shall provide current, complete, accurate and valid information regarding the development for which they are submitting for approval of an SDP and/or Building Permit; and shall respond to additional inquiries determined by the City as appropriate to determine compliance and to implement applicable provisions of



either Ordinance or these rules and regulations, including whether the Owner is applying to the City for an exception from the requirements set forth by either Ordinance.

In developments that provide IRRUs, the Owner or designated property management company of shall convey program requirements to prospective tenants, market IRRUs to prospective tenants, and verify the income of prospective tenants, per the compliance requirements outlined in Sections 3 and 5 of these rules and regulations.

In developments that provide IROUs, the Owner or designated real estate brokerage company shall convey program requirements to prospective purchasers, market IROUs to prospective purchasers, and ensure that IROUs are marketed and sold to Eligible Households, per the compliance requirements outlined in Sections 3 and 5 of these rules and regulations.

## **II. RESPONSIBILITY OF COMMUNITY PLANNING AND DEVELOPMENT (CPD)**

CPD is the primary point of contact for any Owner submitting an SDP and/or seeking a Building Permit. CPD staff will determine a project's applicability for the MAH and linkage fee requirements under the Ordinances.

### **A. RESPONSIBILITY UNDER THE MANDATORY HOUSING ORDINANCE**

When a project is determined to be subject to the MAH requirement, CPD shall refer the Owner to HOST for further information and processing, receive approved Affordable Housing Plans, and, in coordination with HOST, provide information about MAH throughout the SDP process. CPD shall not issue a Building Permit, excluding a permit for excavation/shoring, until an Affordable Housing Plan is approved by HOST.

If an Owner seeks an exception to the MAH requirement, CPD and/or HOST shall process and approve the exception. A list of approved exceptions to the MAH requirement can be found in DRMC Sec. 27-221 and Section 4 of these rules and regulations.

CPD shall determine whether projects are eligible for the zoning code incentives established by the Mandatory Housing Ordinance and, if appropriate, shall note which incentives are approved on the SDP.

If an Owner elects to pay a fee-in-lieu to fulfill the MAH requirement for a development, CPD shall impose and collect the fee-in-lieu prior to issuing a Building Permit for the development, excluding a permit for excavation/shoring. CPD shall calculate the total fee-in-lieu payment, oversee the collection of the fee-in-lieu, administer refunds as appropriate, and refer the Owner to HOST for further information.

Instruments for calculation and collection of the MAH fee-in-lieu shall be developed and maintained by CPD. Starting on July 1, 2023, the fee-in-lieu schedule will be adjusted as set forth by DRMC Sec. 27-153.

Similarly, starting on July 1, 2023, CPD will determine and update Typical Market Areas and High Market Areas, as described in Section 2.II of these rules and regulations.

**B. RESPONSIBILITY UNDER THE LINKAGE FEE ORDINANCE**

CPD staff will provide the Owner with information about the housing linkage fee; calculate the total linkage fee payment due at the time of Building Permit issuance; oversee the collection of the housing linkage fee; coordinate with HOST to administer exceptions, waivers, reductions or refunds of the linkage fee payment; and refer the Owner to HOST for further information and processing if the Owner elects to build or cause to be built IRUs.

Instruments for calculation and collection of the housing linkage fee shall be developed and maintained by CPD. CPD shall:

- (a) Update the housing linkage fee schedule annually as set forth by DRMC Sec. 27-153 starting in 2022.
- (b) Maintain definitions of neighborhoods vulnerable to displacement.
- (c) Maintain a process for approving exceptions, reductions, or waivers to the housing linkage fee as outlined in the Linkage Fee Ordinance and these rules and regulations.

Per DRMC Sec. 27-230, HOST and CPD shall provide publicly available online resources to report on MAH outcomes, including, but not limited to, number and types of units created, fee-in-lieu fund revenues, and spending allocations.

**III. RESPONSIBILITY OF HOUSING STABILITY (HOST)**

HOST shall oversee and evaluate the ongoing progress of the Mandatory Housing Ordinance. Procedures and instruments for oversight of the Mandatory Housing Ordinance will be developed and maintained by HOST in collaboration with other agencies.

**A. RESPONSIBILITY UNDER THE MANDATORY HOUSING ORDINANCE**

When a project is subject to the MAH requirement, HOST shall collaborate with the Owner to draft, approve, and record an AHP or High Impact Development Compliance Plan. HOST shall provide the approved AHP or High Impact Development Compliance Plan to CPD prior to approval of a Formal SDP or issuance of a Building Permit, excluding a permit for excavation/shoring. HOST shall also record the AHP or High Impact Development Compliance Plan following approval.

If an Owner elects to fulfill the MAH requirement for a development by entering into a negotiated alternative, HOST shall assist the Owner in drafting and executing an AHP that better supports the affordable housing goals of the City, as set forth in DRMC Sec. 27-226. HOST shall provide the approved AHP and associated form of covenant to CPD prior to issuance of a Building Permit, excluding a permit for excavation/shoring.

If an Owner seeks an exception to the MAH requirement, CPD and/or HOST shall process and approve the exception. A list of exceptions to the MAH requirement can be found in DRMC Sec. 27-221 and Section 4 of these rules and regulations.

When an Owner commits to building IRUs to satisfy the MAH requirement, HOST shall:

- (a) Conduct inspections of developments prior to issuance of a Temporary Certificate of Occupancy or a Certificate of Occupancy to ensure IRUs are provided as indicated in the AHP and that appropriate covenants are recorded against the property.
- (b) If the project contains IRRUs, HOST shall administer oversight processes to ensure that rental property managers or owners comply with the Mandatory Housing Ordinance and these rules and regulations, including but not limited to:
  - i. Overseeing the property manager's or owner's processes related to tenant applications, Income Verifications, and income recertifications for projects that include IRRUs; and
  - ii. Conducting compliance inspections and reviewing property records as a part of the On-Site file review process.
- (c) If the project contains IROUs, HOST shall oversee, directly or through a partner, the application and Income Verification process to identify Eligible Households and individuals to purchase IROUs, including but not limited to:
  - i. Accepting applications from Households and individuals to determine their eligibility for IROUs;
  - ii. Issuing compliance letters or affidavits periodically to Households occupying IROUs to ensure compliance with the Mandatory Housing Ordinance and these rules and regulations;
  - iii. Maintaining a list of all IROUs for compliance monitoring, including the covenant expiry dates;
  - iv. Maintaining a list of recognized home ownership counseling agencies in the Denver Metro area; and
  - v. Designating nonprofit organizations which may purchase and operate IROUs as affordable housing, unless prohibited by specific covenants. As such, these organizations may be designated by the Director as "Eligible Households" for the purpose of purchasing IROUs, and the units purchased will be considered IRUs.

Per DRMC Sec. 27-230, HOST and CPD shall provide publicly available online resources to report on MAH outcomes, including, but not limited to, number and types of units created, fee-in-lieu fund revenues, and spending allocations.

**B. RESPONSIBILITY UNDER THE LINKAGE FEE ORDINANCE**

If an Owner seeks an exception to the linkage fee requirement, HOST shall collaborate with CPD to verify certain exceptions to the linkage fee requirement prior to Building Permit issuance. A list of exceptions to the linkage fee requirement can be found in DRMC Sec. 27-154.

If an Owner seeks a reduction or waiver of the linkage fee requirement, HOST shall collaborate with CPD to verify certain reductions or waivers to the linkage fee

requirement prior to Building Permit issuance, or within the threshold identified in DRMC Sec. 27-157 after Building Permit issuance. A list of approved reasons for reducing or waiving the linkage fee payment can be found in DRMC Sec. 27-157.

If an Owner elects to build or cause to be built IRUs to satisfy the linkage fee requirement under the Linkage Fee Ordinance, HOST shall collaborate with the Owner to draft, approve, and record an Affordable Housing Plan. HOST shall provide the approved AHP to CPD prior to issuance of a Building Permit, excluding a permit for excavation/shoring.

HOST shall implement and oversee investments made under the Linkage Fee Ordinance into housing development, preservation, or programs, per Section 14 of these rules and regulations.