

1 **BY AUTHORITY**

2 ORDINANCE NO. \_\_\_\_\_

COUNCIL BILL NO. CB18-1407

3 SERIES OF 2018

COMMITTEE OF REFERENCE:

4 **AS AMENDED 12-17-18**

Land Use, Transportation & Infrastructure

5 **A BILL**

6 **For an ordinance amending Article VI, Chapter 27, of the Denver Revised Municipal**  
7 **Code, concerning incentives for the increased levels of affordable housing or the**  
8 **payment of increased fees in the Central Platte Valley, and a corresponding**  
9 **amendment to Article V, Chapter 27.**  
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12 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

13 **Section 1.** That section 27-183, D.R.M.C., shall be amended by deleting the language stricken and  
14 adding the language underlined, to read as follows:

15 **“Sec. 27-183. Intent.**

16 (a) The Denver Zoning Code has established certain underlying zone districts and  
17 incentive overlay districts to allow a structure to exceed its base height in exchange for  
18 payment of incentive height fees, construction of additional affordable units, or provision of  
19 other benefits to the city, in excess of standard requirements, in compliance with the affordable  
20 housing requirements set forth below.

21 (b) Structures ~~within incentive overlay districts~~ that do not take advantage of  
22 applicable incentives shall not be subject to the additional requirements of this division 2.”

23 **Section 2.** That section 27-184, D.R.M.C., shall be amended by deleting the language stricken and  
24 adding the language underlined, to read as follows:

25 **“Sec. 27-184. Additional Definitions.**

26 The following additional definitions shall apply to this division 2:

27 (a) *Base height* shall have the same meaning as the term is defined in Article 13  
28 of the Denver Zoning Code.

29 (b) *Community ~~benefits~~ servicing use agreement* means an agreement entered into  
30 between an applicant and the city, and administered by the office of economic development,  
31 that allows an applicant to provide community serving uses for a portion of a proposed  
32 structure in place of payment of any applicable incentive height fees. A community ~~benefits~~  
33 servicing use agreement shall not substitute for payment of the total structure linkage fee.

1 The office of economic development, in consultation with community planning and  
2 development and considering demonstrated community needs and priorities in the  
3 surrounding neighborhood(s), and the value of commensurate incentive height fee savings  
4 and benefits, shall determine applicable community serving uses for each community  
5 ~~benefits~~ serving use agreement. The community ~~benefits~~ serving use agreement shall be  
6 executed by the city and the applicant using the city's standard contract process, and prior  
7 to approval of a site development plan or issuance of building permits. The community  
8 ~~benefits~~ serving use agreement shall include, but is not limited to the following: benefitting  
9 tenant use; rent-reduction rate; time period; collateral; and default remedies such as re-  
10 leasing or recapture of any obtained incentive height fee savings.

11 (c) *Incentive height* shall have the same meaning as the term is defined in Article  
12 13 of the Denver Zoning Code.

13 (d) *Incentive height build alternative unit(s)* means the number of build alternative  
14 units required for the portion of a structure above the base height, which shall equal the  
15 product of the amount of applicable build alternative units using the formulas in Sec. 27-155,  
16 D.R.M.C. for the incentive height area only, and the specific incentive overlay multiplier in  
17 the table below. For example, if the formula in 27-155, D.R.M.C. requires two (2) build  
18 alternative unit based on the gross floor area located above the base height, and the  
19 multiplier is ten (10), then the incentive height build alternative units would equal twenty (20)  
20 units. Unless and until any rules and regulations have been adopted specific to this article  
21 VI, incentive height build alternative units shall be approved in accordance with the office of  
22 economic development's affordable housing permanent funds ordinance administrative  
23 rules and regulations; however, in no event will the approved number of incentive height  
24 build alternative units result in zero (0) units. Incentive height build alternative units are  
25 provided in addition to total structure build alternative units.

26 (e) *Incentive height fee* means the amount of incentive fee required for the portion  
27 of a structure above the base height, which shall equal the product of the amount of  
28 applicable linkage fee using the formulas in Sec. 27-153, D.R.M.C. for the incentive height  
29 area only, and the specific incentive ~~overlay~~ height multiplier in the table below. For  
30 example, if the formula in 27-153, D.R.M.C. requires \$10,000 based on the gross floor area  
31 of the incentive height, and the multiplier for that specific incentive overlay district is ten,  
32 then the Incentive Height Fee for that structure in that specific incentive overlay district  
33 would equal \$100,000. Incentive height fees are provided in addition to the total structure

1 linkage fee.

2 (f) Large ~~+~~ or phased project means any combination of residential, mixed-use  
3 residential, non-residential, and mixed-use non-residential structures that are built as part of  
4 a development with one or more of the following features:

5 (1) The development will be built on five or more acres;

6 (2) The development will include 500 or more residential units;

7 (3) The development will occur in more than one phase; or

8 (4) The development will use one or more City-approved financing tools,  
9 such as tax increment financing or a metropolitan district.

10 (g) Underlying zone district shall have the same meaning as the term is defined in  
11 Article 13 of the Denver Zoning Code.”

12 **Section 3.** That section 27-185, D.R.M.C., shall be amended by adding the language underlined,  
13 to read as follows:

14 **“Sec. 27-185. Specific Incentive Height Fee and Incentive Height Build Alternative**  
15 **Unit Requirements**

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

| <u>Underlying Zone District or</u><br><u>Incentive Overlay District</u> | <u>Incentive Height Fee</u><br><u>Multiplier</u> | <u>Incentive Height Build</u><br><u>Alternative Unit Multiplier</u> |
|---|--|---|
| IO-1  | 4  | 4   |
| <u>D-CPV-T, D-CPV-R, D-</u><br><u>CPV-C</u>                             | <u>6</u>   | <u>6</u>  |

18 ”  
19 **Section 4.** That a Division 2, Article VI, Chapter 27, D.R.M.C. shall be amended by adding a  
20 new section 27-186.5, to read as follows:

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

23 If the city commissions any study pursuant to section 27-153(d)(3) to evaluate a proposed  
24 linkage fee increase, such study shall also include an evaluation of, or a separate evaluation shall

1 be completed, to determine whether the effect of the fee increase in combination with the multipliers  
2 applicable to zone districts in this division will affect the economic feasibility of any type of  
3 development seeking to use this division’s height incentives.”

4 **Section 5.** That section 27-187, D.R.M.C., shall be amended by deleting the language stricken and  
5 adding the language underlined, to read as follows:

6 **“Sec. 27-187. Incentive height requirements for the 38<sup>th</sup> & Blake Station Area Incentive**  
7 **Overlay District (IO-1).**

8 (a) Residential and mixed-use residential structures that exceed the base height  
9 shall comply with the following requirements in order to build within the allowed incentive  
10 height as determined by the Denver Zoning Code:

11 (1) The project must provide the required quantity of total structure build  
12 alternative units and incentive height build alternative units. In calculating the  
13 total number of build alternative units to be created, the fractional amounts of  
14 total structure build alternative units and incentive height build alternative units  
15 shall be added together, and then rounded so that five-tenths (.5) or greater  
16 shall result in requiring that a whole unit shall be produced.

17 (2) Build alternative units may be located on the subject property, or at an  
18 off-site location anywhere with a zone district designation of IO-1, regardless of  
19 whether that location is within a quarter-mile of the subject ~~structure~~ property.

20 (3) Residential and mixed-use residential structures that exceed the base  
21 height must provide build alternative units; payment of total structure linkage fee  
22 and incentive height fee is not allowed.

23 (b) Non-residential and mixed-use non-residential structures that exceed the base  
24 height shall comply with one of the following requirements in order to build within the allowed  
25 incentive height as determined by the Denver Zoning Code:

26 (1) Payment of both the required total structure linkage fee and incentive height fee;

27 (2) Providing the required quantity of total structure build alternative units and  
28 incentive height build alternative units, either at an off-site location with a zone district  
29 designation of IO-1 (regardless of whether that location is within a quarter-mile of the  
30 subject ~~structure~~ property), or, if the structure is a mixed-use non-residential structure,  
31 on the subject property; in calculating the total number of build alternative units to be

1 created, the fractional amounts of total structure build alternative units and incentive  
2 height build alternative units shall be added together, and then rounded so that five-  
3 tenths (.5) or greater shall result in requiring that a whole unit shall be produced; or

4 (3) Payment of the total structure linkage fee and execution of a community ~~benefits~~  
5 servicing use agreement.”

6 **Section 6.** That Division 2, Article VI Chapter 27, shall be amended by adding a new section 27-188,  
7 to read as follows:

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

10 (a) Residential and mixed-use residential structures that exceed the base height  
11 and are not within a large ~~+~~ **or** phased project shall comply with the following requirements  
12 in order to build within the allowed incentive height as determined by the Denver Zoning Code:

13 (1) The project must provide the required quantity of total structure build  
14 alternative units and incentive height build alternative units. In calculating the  
15 total number of build alternative units to be created, the fractional amounts of  
16 total structure build alternative units and incentive height build alternative units  
17 shall be added together, and then rounded so that five-tenths (.5) or greater  
18 shall result in requiring that a whole unit shall be produced.

19 (2) Build alternative units may be located on the subject property, or at an  
20 off-site location anywhere with a zone district designation of D-CPV-T, D-CPV-  
21 R or D-CPV-C, regardless of whether that location is within a quarter-mile of the  
22 subject property.

23 (3) Residential and mixed-use residential structures that exceed the base  
24 height must provide build alternative units; payment of total structure linkage fee  
25 and incentive height fee is not allowed.

26 (b) Non-residential and mixed-use non-residential structures that exceed the base  
27 height and are not within a large ~~+~~ **or** phased project shall comply with one of the following  
28 requirements in order to build within the allowed incentive height as determined by the Denver  
29 Zoning Code:

30 (1) Payment of both the required total structure linkage fee and incentive  
31 height fee;

1 (2) Providing the required quantity of total structure build alternative units  
2 and incentive height build alternative units, either at an off-site location with a  
3 zone district designation of D-CPV-T, D-CPV-R or D-CPV-C (regardless of  
4 whether that location is within a quarter-mile of the subject property), or, if the  
5 structure is a mixed-use non-residential structure, on the subject property; in  
6 calculating the total number of build alternative units to be created, the fractional  
7 amounts of total structure build alternative units and incentive height build  
8 alternative units shall be added together, and then rounded so that five-tenths  
9 (.5) or greater shall result in requiring that a whole unit shall be produced; or

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

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

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

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

31 b. A method of calculating required affordable housing units must be  
32 provided that is reasonably expected to result in a quantity of affordable

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

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

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

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

29 **Section 7.** That Section 27-154, D.R.M.C. concerning exceptions to the linkage fee shall be  
30 amended by deleting the language stricken and adding the language underlined to read as follows:

31 **“Sec. 27-154. Exceptions.**

32 The payment of linkage fees as set forth in section 27-53 shall not be required for the issuance of a

1 building permit under any of the following circumstances:

2 (a) Construction upon any property which is, alone or in combination with other  
3 properties, the subject of a ~~preexisting~~ contractual commitment or covenant that is dated and  
4 properly recorded prior to the imposition of a linkage fee on the first structure on the property  
5 and is enforceable by the city to construct affordable housing, including by way of example  
6 any development or subdivision agreement which includes an affordable housing covenant  
7 and to which the city is a party, ~~or~~ any city-approved plan to build moderately priced  
8 development units (MPDUs) under article IV of this chapter 27, or an affordable housing plan  
9 executed to meet incentive requirements under article VI of this Chapter 27. The exception  
10 provided by this subsection (a) shall apply only for so long ~~the preexisting~~ such contractual  
11 commitment or covenant to construct affordable housing remains in ~~existence~~ effect.  
12 Construction upon property that, alone or in combination with other properties, was originally  
13 developed under such a contractual commitment or covenant and is substantially proposed  
14 for redevelopment shall be subject to payment of linkage fees hereunder unless the  
15 redevelopment is governed by a new contractual commitment or covenant to construct  
16 affordable housing, or otherwise qualifies for an exception under any other provision of this  
17 section.

18 (b) Construction upon any property subject to a ~~preexisting~~ an obligation as a condition  
19 of zoning to provide affordable housing on the property.

20 (c) Affordable housing projects that are constructed with the support of any  
21 combination of federal, state or local financial resources, including private activity bonds, tax  
22 credits, grants, loans, or other subsidies to incentivize the development of affordable housing,  
23 including support from the affordable housing permanent funds created in section 27-150,  
24 and that are restricted by law, contract, deed, covenant, or any other legally enforceable  
25 instrument to provide housing units only to income-qualified households. This exception shall  
26 apply to any housing project financed or constructed by or on behalf of the Denver Housing  
27 Authority.

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

31 (e) Nonresidential projects that are built by any charitable, religious or other nonprofit  
32 entity and that are primarily used to provide, shelter, housing, housing assistance, or related



1 services to low income households or persons experiencing homelessness.

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

5 (g) Any structure that is being reconstructed due to involuntary demolition or  
6 involuntary destruction as defined in article XIII of the Denver Zoning Code, but which also  
7 includes involuntary manmade forces.

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

10 (i) Accessory dwelling units as defined in article XI of the Denver Zoning Code.”

11 COMMITTEE APPROVAL DATE: November 27, 2018

12 MAYOR-COUNCIL DATE: December 4, 2018

13 PASSED BY THE COUNCIL \_\_\_\_\_ December 17, 2018

14 \_\_\_\_\_ - PRESIDENT

15 APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_

16 ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
17 EX-OFFICIO CLERK OF THE  
18 CITY AND COUNTY OF DENVER

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

20 PREPARED BY: Julie Mecklenburg, Assistant City Attorney DATE: December 6, 2018

21 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of  
22 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed  
23 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to  
24 §3.2.6 of the Charter.  
25

26 Kristin M. Bronson, City Attorney

27  
28 BY: Kristin J. Crawford, Assistant City Attorney

Date: Dec. 17, 2018