

DRAFT FOR DISCUSSION ONLY

BY AUTHORITY

ORDINANCE NO. \_\_\_\_\_  
SERIES OF 2014

COUNCIL BILL NO. \_\_\_\_\_  
COMMITTEE OF REFERENCE:  
Business, Workforce & Sustainability

A BILL

**For an ordinance to amend Chapter 27 (Housing) of the Revised Municipal Code Article IV relating to affordable housing.**

**WHEREAS**, Article IV was first adopted in August of 2002 and amended in October of 2006 and June of 2013; and

**WHEREAS**, the City and County of Denver has updated factual predicates and has completed a study and report to review the operations of the affordable housing program; and

**WHEREAS**, the study's analysis of demographic and market trends indicates that a majority of new private development is geared toward high income households and does not serve households earning less than 95% of AMI; and

**WHEREAS**, the study shows incomes have not kept pace with the cost of housing, as incomes have fallen adjusted for inflation; and

**WHEREAS**, the study's analysis of the distribution of households and home sales inventory in the City indicates a shortage of inventory below 95% of AMI; and

**WHEREAS**, the study shows that even with existing regulations and the affordable units generated through those requirements, production of affordable homes has not kept pace with need; and

**WHEREAS**, the study identifies areas of the city where, due to existing home prices, there is a greater need for new affordable housing, and where due to access to transit, the location of such housing is especially desirable for moderate income households, which research has demonstrated benefit from added mobility and reduced transportation costs when located near transit; and

**WHEREAS**, city data indicates that the existing ordinance with one set of incentives and alternatives for all developers across all the neighborhoods of the city has resulted in a trend of developers choosing to request pay contribution alternative payments of building at higher rates in the areas of the city with the greatest need for affordable housing; and,

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1       **WHEREAS**, the study shows providing a balance of incentives and alternatives to  
2 developers, based on level of need for affordable housing in various areas of the city, will assist  
3 developers in providing more affordable housing units as a part of development, particularly in  
4 higher need areas of the city; and

5       **WHEREAS**, the study shows there is a continued need for moderately priced dwelling units  
6 based on a persistent gap between the incomes of Denver residents and the high price of new  
7 housing; and

8       **WHEREAS**, the study recommends tiered incentives and a tiered contribution alternative  
9 payment structure by neighborhood to improve the number of moderately priced dwelling units  
10 actually constructed in higher need areas, and to prioritize scarce city resources with regard to  
11 construction in lower need areas; and

12       **WHEREAS**, in order to increase the number of moderately priced dwelling units  
13 constructed in areas where they are most needed, and to balance incentives in the remaining  
14 areas, the City has determined that the following revisions are appropriate; and

15       **WHEREAS**, providing increased flexibility and graduated incentives to developers are  
16 anticipated to assist developers in providing the required percentage of affordable housing units as  
17 an integral part of neighborhood development.

18 **NOW THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF**  
19 **DENVER:**

20       **Section 1.** That Chapter 27-101, "Legislative findings", of the Revised Municipal Code is  
21 hereby amended by adding the language underlined and deleting the language stricken as follows:

### 22 **Sec. 27-101. Legislative findings.**

23       The city council hereby finds that a severe housing problem continues to exists within  
24 Denver with respect to the supply of housing relative to the need for moderately priced dwelling  
25 units or MPDUs. Specifically, the city council finds that:

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

29       (b) ~~Developerment trendspractices~~ produce the undesirable and unacceptable effects of  
30 limiting housing available to moderate and low-income households, thus failing to implement the  
31 housing goal of the Denver Comprehensive Plan 2000 and Blueprint Denver of dispersal of a  
32 diverse range of housing throughout the ~~city~~metropolitan area;

33       (c) ~~The continuing high level of~~ Market forces including continued population growth and  
34 unmet demands for new housing, allows for housing result in highly priced housing to be highly  
35 priced, and a lack of economic incentive for developers to offer discourages developers from  
36 offering a more diversified price range of housing, and therefore such housing is not being created.  
37 ~~contributes to the unwillingness of developers to create moderately priced housing;~~

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(d) Rapid regional growth and a strong housing demand have also combined to make land and construction costs higher, ~~causing a rise in the price of housing and causing~~ limiting the areas where affordable housing to be is located in limited areas;

(e) Income has not kept pace with this rapid and significant increase in the cost of housing in Denver;

(f) ~~Housing problems have escalated due to population increase and a limited supply of developable land. The city seeks to assure~~ Ensuring a mix of incomes and access to home-ownership opportunities for moderate income families are high priorities for the city, and therefore the city has a strong interest in ensuring that the city's that the limited supply of developable land provides housing opportunities for all incomes;

(g) ~~Providing incentives to developers will assist developers in providing a minimal percentage of affordable housing units as an integral part of new developments;~~

~~(h)~~ Developers of new housing are not meeting the need for moderately priced, affordable housing. The provision of only higher priced housing contributes to the lack of affordable housing;

~~(i)~~ Developers of new for sale housing are not meeting the need for dispersed, affordable housing. In reviewing public records for 1998—2000 and development trends from 2000-2014, the city council has ~~determined that less than two (2) percent of the new housing is affordable in projects of thirty (30) or more for sale units without any incentives from the city. These units were constructed primarily by one developer and concentrated in the far northeast sector of the city. The provision of only a small number of affordable for sale units in only a single limited area contributes to the city wide lack of dispersal and availability of affordable housing concluded that average housing prices have increased forty eight (48) percent since 2000 for all housing, and sixty nine (69) percent for new housing, and that the affordability gap between median sale price and median income in Denver has widened by \$100,000 since 2000; and~~

~~(j)~~ Without a program requiring moderately priced housing to be built, it is unlikely based on current trends that developers will provide such housing on their own initiative, leaving Denver citizens without sufficient affordable housing- ; and

(i) Providing incentives and increased flexibility to developers will assist developers in providing a minimal percentage of affordable housing units as an integral part of new developments.

**Section 2.** That Chapter 27-102, "Declaration of public policy", of the Revised Municipal Code is hereby amended by adding the language underlined and deleting the language stricken as follows:

### **Sec. 27-102. Declaration of public policy.**

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

(a) Implement the comprehensive plan goal of providing for a full range of housing choices, conveniently located in a suitable living environment, for all incomes, ages and family sizes;

(b) Increase the availability of additional low and moderate income housing to address existing and anticipated future housing needs in Denver;

(c) Assure that moderately priced housing is dispersed throughout Denver consistent with the Comprehensive Plan;

(d) Encourage the construction of moderately priced housing by offering incentives;

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(e) Require that all development of thirty (30) or more detached for sale single-family dwelling units and all for sale attached or multifamily projects of thirty (30) or more units include a minimum number of moderately priced units;

(f) Allow developers of residential units in qualified projects flexibility to meet the broad objectives of the policies set forth herein by allowing a developer, under specified circumstances, to comply with this article by, where approved by the city, voluntarily agreeing to build alternative moderately priced units or contributing to a special revenue fund;

(g) Assure that provision of moderately priced housing does not diminish existing resources which have previously been devoted to development of low and very low income housing ~~in neighborhoods designated by the city as "focus neighborhoods"; and~~

(h) Administer the special revenue fund for the purpose of providing future incentive payments to developers who build moderately priced units, and utilize ~~Direct~~ any amounts in the special revenue fund in excess of all obligations remaining for the next fiscal year, next to provide for the creation or preservation of affordable housing in accordance with applicable city plans, with consideration being given to create housing from funds that were generated from areas identified within this article as high need zones, in areas proximate to those same high need areas when practicable.

**Section 3.** That Chapter 27-103, "Definitions", of the Revised Municipal Code is hereby amended by adding the language underlined and deleting the language stricken as follows:

### **Section 27-103. Definitions.**

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

(a) *AMI or adjusted median income or median income or area median income* means the median income for the Denver metropolitan area, adjusted for household size as calculated by HUD.

(b) *Applicant* means any person, firm, partnership, association, joint venture, corporation, or any other entity or combination of entities, or affiliated entities and any transferee of all or part of the real property at one location, which after this article takes effect develops a total of thirty (30) or more new for sale dwelling units at one location in Denver.

(c) *At one location* means all real property of the applicant if:

(1) The properties are contiguous at any point;

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

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

(d) *Available for development* means all real property:

(1) Owned by, or under contract to, the applicant;

(2) Zoned for residential development; and

(3) Which will use public water and sewerage.

(e) *Comprehensive plan* means the Denver Comprehensive Plan 2000.

(f) *Consumer Price Index* means the latest published version of the Consumer Price Index for All Urban Consumers (CPI-U) of the U.S. Department of Labor for the Denver metropolitan area, or any similar index selected by the director.

(g) *Control period* means the time an MPDU is subject to restrictions to insure the long-term affordability of the MPDU. The control period is no less than fifteen (15) years and begins on the date of initial sale as defined herein.

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(h) *Date of initial sale* means the date of closing for initial purchase of a MPDU.

(i) ~~*Density bonus* means an increase in density above what is allowed; however, no density bonus is available in the R-0, R-1, R-2 and R-2A zone districts or in planned unit developments (PUDs), or in districts where there is no maximum floor area ratio, or in districts where no residential use is permitted.~~

(j) *Director* means the director of OED or director's designee.

(k) *Dwelling unit* means one or more habitable rooms constituting a unit for permanent occupancy, having but one kitchen together with facilities for sleeping and bathing, and which unit occupies a structure or portion of a structure, but does not include hotels or other lodging accommodation, hospitals, tents, or similar structures providing transient or temporary accommodation.

(l) *Eligible household* means a household whose income qualifies the household to participate in the MPDU program, and who holds a valid verification of eligibility from OED which entitles the household to buy an MPDU. To be qualified to participate in the for sale MPDU program as an eligible household at initial sale, the household must be able to demonstrate that its total household income will allow it to pay the mortgage or rent on the unit and the household must earn no more than eighty (80) percent of AMI or if the MPDU is in a high cost structure which buildings are greater than three (3) stories, elevators are provided, and over sixty (60) percent of the parking is structured, no more than ninety-five (95) percent of AMI. To be qualified to participate in the MPDU program as an eligible household on a resale during the control period, the household must be able to demonstrate that its total household income will allow it to pay the mortgage or rent on the unit and the household must earn no more than the amount set forth in a schedule of eligibility provided by OED, which schedule may not under any circumstances exceed one hundred (100) percent of AMI. To be qualified to participate in the MPDU program as an eligible household for a rental MPDU, the household must be able to demonstrate that as of the date the lease is signed its total household income will allow it to pay the rent under the formula provided by OED for the unit and the household must earn no more than more than sixty-five (65) percent of AMI adjusted for household size or if the MPDU is in a high cost structure , or no more than eighty (80) percent of AMI. Eligibility standards shall be based on the HUD AMI calculation. All nonprofit organizations designated by the director, governmental or quasi-governmental bodies who purchase MPDUs for the purpose of sale or rental under any city approved program designed to assist the construction or occupancy of housing for families of low or moderate income are deemed "eligible households" for the purposes of this article.

(m) *Final MPDU sale* means the first resale within ten (10) years after the end of the control period.

(n) *For sale dwelling unit* means a dwelling unit which is offered for sale any time up to two (2) years after completion of construction, as evidenced by a certificate of occupancy.

(o) *High cost structure* means a development in which buildings are greater than three stories, elevators are provided, and over 60% of the parking is structured. In the event a project is presented as high cost, the Director shall determine whether a project is qualified as high cost.

(p) *Household* means:

(1) A single person;

(2) Any number of persons bearing to each other the relationship of: husband, wife, mother, father, grandmother, grandfather, son, daughter, brother, sister, stepson, stepdaughter, stepbrother, stepsister, stepmother, stepfather, grandson, granddaughter, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, uncle, aunt, nephew or niece, living together as a single nonprofit

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housekeeping unit; or

(3) Two (2) unrelated adults over the age of eighteen (18) years plus, if applicable, any persons bearing to either of the two (2) unrelated adults the relationship of son, daughter, stepson, stepdaughter, mother, father, grandmother, grandfather, grandson, granddaughter, sister, brother, living together as a single nonprofit housekeeping unit.

(p) HUD means the U.S. Department of Housing and Urban Development.

(q) Initial sale means the sale by an applicant to an eligible household.

(r) 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.

(s) Maximum purchase price means the maximum amount for which an MPDU may be transferred, calculated in accordance with the covenants recorded against the property. Transfer fees shall never be charged for transfer of an MPDU and shall not be permitted to be included in any MPDU pricing calculation.

(t) Memorandum of acceptance means a document signed by each MPDU purchaser stating the purchaser is aware of and will be bound by the MPDU restrictions and providing an address for notices to the purchaser.

(u) MPDU or moderately priced dwelling unit means a dwelling unit which:

(1) Is offered to eligible households under the terms of this article or as an approved alternative under Section 27-106 and is priced at initial sale to be affordable to households earning no more than eighty (80) percent of AMI, adjusted for household size. For high cost structures developments in which buildings are greater than three (3) stories, elevators are provided, and over sixty (60) percent of the parking is structured, the unit shall be priced at initial sale to be affordable to households earning no more than ninety-five (95) percent of AMI, adjusted for household size; or

(2) Was constructed as an MPDU pursuant to a contractual commitment requesting incentives and entered into before December 1, 2014; Will not meet the requirements of this article but which has been determined under section 27-119 to be eligible for the incentives set forth in sections 27-107 and 27-108 and which contain, by virtue of the contractual commitment described in article 27-119 (d), the following characteristics with respect to the affordable dwelling units:

(A) ~~Price limitations on sales such that the units are affordable to those averaging no more than eighty (80) percent of AMI (but in any event, no more than one hundred (100) percent of the AMI), or for high cost structures no more than ninety-five (95) percent of AMI (but in any event, no more than one hundred ten (110) percent of the AMI) for developments in which buildings are greater than three (3) stories, elevators are provided, and over sixty (60) percent of the parking is structured, or rent limitations such that the rent shall not exceed thirty (30) percent of an average of sixty-five (65) percent of AMI, less a utility allowance as calculated by HUD, provided that for high cost structures a development in which the building is more than three stories, elevators are provided, and over sixty (60) percent of the parking is structured, the rent shall not exceed thirty (30) percent of an average of eighty (80) percent of AMI, less a utility allowance as calculated by HUD;~~

(B) ~~Eligibility restrictions to provide that eligible purchasers or renters shall be limited to households earning no more than one hundred (100) percent of AMI, or no more than one hundred ten (110) percent of AMI for developments in which buildings are greater than three (3) stories, elevators are provided, and over sixty (60) percent of the parking is structured;~~

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~~(C) — A control period beyond the initial sale for a defined term of not less than fifteen (15) years; and~~

~~(D) — An enforcement mechanism during the control period to ensure long term affordability to eligible households or~~

(3) Is constructed pursuant to a customized alternative allowed under Section 27-106 as part of a master-planned development project that has either:

(A) a general development plan (GDP) or planned unit development (PUD) where the total mix of for sale dwelling units within the master planned area exceeds 30 units; or

(B) where the total number of for sale dwelling units within the master-planned development project area exceeds 1000 units;

(v) *New development* means all residential development which is being constructed for the first time or existing buildings which are being substantially rehabilitated or remodeled to provide dwelling units.

(w) *OED* means the City and County of Denver's Office of Economic Development or its successor.

(x) *Owner* means any eligible household which purchases an MPDU from the applicant and any subsequent buyer, devisee, transferee, grantee, owner or holder of title of any MPDU.

(y) *Parking is structured* means parking that is not an open lot and that is not a carport or carports.

~~(z) — *Parking reduction* means a reduction of up to twenty (20) percent in the parking spaces required by the applicable zoning.~~

~~(aa) *Pre-verified* means those households which have been verified as eligible households by OED and placed on a list to be kept by OED, for use as described in this article.~~

~~(bb) *Special revenue fund* means a fund established by the director for use for affordable housing purposes. Community Development Block Grant (CDBG) and HOME moneys may never be deposited into this fund. All incentive payments must be paid only from the special revenue fund. The director shall adopt procedures in the rules and regulations to determine whether there is adequate funding of the special revenue fund for the subsequent fiscal year and estimated incentive payments and all other affordable housing obligations for the subsequent fiscal year. Amounts in the special revenue fund exceeding adequate funding for the subsequent fiscal year may be expended to hire administration staff for affordable housing purposes or to purchase or create affordable housing. The director should use the special revenue fund for the primary purpose of providing future incentive payments to applicants who build moderately priced units, and utilize any amounts in the special revenue fund in excess of all obligations remaining through the subsequent fiscal year, next for the creation or preservation of affordable housing in accordance with applicable city plans, with consideration being given to create housing from funds that were generated from areas identified within this article as high need zones, in areas proximate to those same high need areas when practicable. Amounts in the special revenue fund exceeding the adequate funding for these priorities through the subsequent fiscal year may be expended for the administration of this ordinance, up to a maximum of five (5) percent of the total amount of the balance in the fund on January 1 of each year.~~

(aa) *Statistical neighborhood category* means a classification for a neighborhood into either a high need for affordable housing, an average need for affordable housing, or a low need for affordable housing. Classifications shall be assigned and set forth in rules and regulations by OED through periodically updated modeling of for sale housing prices and proximity to transit.

~~(eebb) *Substantially rehabilitated or remodeled* means more than fifty (50) percent of an existing building is being rehabilitated or remodeled.~~

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(~~decc~~) *Supplemental incentives* has the meaning set forth at section 27-108.

(~~eedd~~) *Verified* or *verification* means that a household has been determined to be eligible to occupy an MPDU under this article.

**Section 4.** That Chapter 27-105, "MPDU requirements", of the Revised Municipal Code is hereby amended by adding the language underlined and deleting the language stricken as follows:

### **Sec. 27-105. MPDU requirements.**

(a) For new developments of thirty (30) or more for sale dwelling units, applicants shall create ten (10) percent of all the units as MPDUs which are priced at initial sale to be affordable to households earning no more than eighty (80) percent of AMI, adjusted for household size. For new developments ~~of high cost structures in which buildings are greater than three (3) stories, elevators are provided, and over sixty (60) percent of the parking is structured,~~ applicants shall create ten (10) percent of all the units as MPDUs which are priced at initial sale to be affordable to households earning no more than ninety-five (95) percent of AMI, adjusted for household size. Maximum purchase prices for MPDUs shall be determined by the OED based on normal underwriting standards and a maximum down payment of five (5) percent. OED shall make available tables which show maximum purchase price

(b) The allowable prices for the MPDUs shall be adjusted for the number of bedrooms in the unit. This price adjustment shall be reflected in the tables provided by OED.

(c) Any homeowner association fees shall be included in the determination of affordability.

(d) If parking or additional amenities are being provided to the purchasers of the market rate units, the same parking and additional amenities must be offered to the purchasers of MPDUs and the pricing or fees for parking and additional amenities shall be included in the determination of affordability.

(e) In calculating the number of MPDUs to be created, rounding shall be used such that five-tenths (.5) or greater shall result in requiring that a whole unit shall be produced. For example, ten (10) percent of thirty-three (33) units calculates to three and three-tenths (3.3) units, which would require three (3) whole units to be MPDUs, but ten (10) percent of thirty-five (35) units calculates to three and five-tenths (3.5) units, which would require four (4) whole units to be MPDUs. ~~Cash in lieu~~ Contribution alternative payments for a unit required to be an MPDU solely as a result of rounding up may be offered in the affordable housing plan at the rate of fifty (50) percent of the established amount under 27-106(b)(1)(C) for a ~~cash in lieu~~ contribution alternative payment.

**Section 5.** That Chapter 27-106, "Plan to build MPDUs; alternatives", of the Revised Municipal Code is hereby amended by adding the language underlined and deleting the language stricken as follows:

### **Sec. 27-106. Plan to build MPDUs; alternatives.**

(a) Prior to obtaining a building permit, an applicant shall submit to OED a written MPDU plan. The director shall review the plan and approve, approve with conditions, or reject the MPDU plan. No permits, rezoning, or plans shall be approved or issued until approval of the MPDU plan is obtained. Each plan shall contain information as set forth in rules and regulations adopted by the director and a form of covenants to encumber the MPDUs, a statement that the terms of this plan will bind the applicant and will run with the land upon approval of OED and recording with the clerk



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and recorder of the City and County of Denver, and such other information as OED requires to determine the applicant's compliance with this article.

(b) Alternatives.

(1) In lieu of building the required number of MPDUs, when consistent with the plans, rules, regulations, and policies of the department of community planning and development and OED the director may approve an alternative defined in the MPDU plan to:

(A) Build more total bedrooms or more MPDUs at one (1) or more other sites in the same or adjoining approximate statistical neighborhood as defined in rules and regulations and approved by the director; or

(B) Build more total bedrooms or more MPDUs at one (1) or more other sites within five-tenths (.5) miles of a light rail or commuter rail station as defined in rules and regulations and approved by the director; or

(C) Build fewer MPDUs at affordability levels lower than the AMI required under section 27-105; or

(D) Build fewer MPDUs for populations of special need or high priority of the director; or

(E) Build fewer MPDUs for a longer control period; or

(F) Build more rental MPDUs; or

(G) Contribute to the special revenue fund an amount equal to fifty (50) percent a percentage up to one hundred (100) percent of the price per MPDU not provided but required under section 27-105. The percentage will be based on the statistical neighborhood category of low need, average need, or high need, in which the applicant proposes to construct the development. OED will categorize statistical neighborhoods as low, average or high, and the specific percentages associated with each statistical neighborhood category shall be defined in the rules and regulations. The contribution amount shall be calculated at the prices set forth on the then current table provided by OED under section 27-105 for the maximum sale prices without homeowners' association fees. This percentage and amount may be adjusted by the director on an annual basis using a formula set forth in the rules and regulations promulgated under this article.

(c) The approved MPDU plans shall be signed by the applicant and shall be recorded with the clerk and recorder of the City and County of Denver.

(d) OED shall assist applicants interested in any of the above alternatives explore options prior to submitting an MPDU plan.

(e) Final discretion for granting an alternative is solely with the director and the city is not liable nor shall there be any review for the director's decision to require an applicant to meet the standard obligations of this ordinance instead of granting an alternative.

**Section 6.** That Chapter 27-107, "Incentive for producing MPDUs", of the Revised Municipal Code is hereby amended by adding the language underlined and deleting the language stricken as follows:

### **Section 27-107. Incentive for producing MPDUs.**

(a) Standard incentive. The director is authorized to reimburse the applicant five thousand five hundred dollars (\$5,500.00) a tiered amount based on statistical neighborhood category as further defined in the rules and regulations up to twenty five thousand dollars (\$25,000) per MPDU built, up to fifty (50) percent of the total units in a development. ~~and the~~ The director is further authorized to reimburse the applicant ten an additional five thousand dollars

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(~~\$105,000.00~~) per MPDU built which is affordable to households earning no more than sixty (60) percent of AMI, adjusted for household size, up to fifty (50) percent of the total units in a development, unless the applicant has provided MPDUs at this affordability level as a result of an alternative being granted under 27-106, in which case the average need level incentive will apply. The amount of reimbursement to any one applicant is limited to a maximum of two hundred fifty thousand dollars (\$250,000.00) per development per year; however, if an applicant constructs MPDUs in a high cost structure, then this maximum yearly limit shall not apply. The amount of reimbursement is limited to the amount available in the special revenue fund. ~~This incentive will be provided to the applicant in a manner prescribed by the director.~~ Furthermore, this incentive will only be made available to developments that provide the minimum number of MPDUs required by this article at the tiered level for the statistical neighborhood category where the MPDU is constructed. The director is authorized to establish procedures through rules and regulations for reimbursement from the special revenue fund and for the manner of payment of incentives. The director may seek annual appropriation in order to adequately fund the special revenue fund.

(b) The standard incentive(s) set forth in this section shall be in addition to any supplemental incentives available, whether in this article, in other governmental incentive programs, or elsewhere.

(c) The standard incentive amount requested shall be set forth in the applicant's MPDU plan.

**Section 7.** That Chapter 27-108, "Supplemental incentives", of the Revised Municipal Code is hereby amended by adding the language underlined and deleting the language stricken as follows:

### **Sec. 27-108. Supplemental incentives.**

(a) Applicants will, upon request in the plan as set forth in section 27-106(a), receive a ~~density bonus, a parking reduction, and expedited processing as~~ a supplemental incentives set forth under the terms of this section, pursuant to the procedures set forth in the zoning code and in rules and regulations. The supplemental incentives requested shall be set forth in the applicant's MPDU plan. ~~The MPDU plan under 27-106 shall reflect how the applicant will meet the additional MPDU requirements for any supplemental incentives.~~

(b) ~~Density bonus. Except for R-0, R-1, R-2, R-2A, and R-2-B zone districts, or in planned unit developments (PUDs), or in districts where there is no maximum floor area ratio, or in districts where no residential use is permitted, a density bonus of up to ten (10) percent will be permitted.~~

(c) ~~Parking reduction. Except for existing PUDs, reduced parking requirements of up to twenty (20) percent of the spaces required by the applicable zoning will be granted as reflected at Chapter 59 of the D.R.M.C. or the City zoning code.~~

(d) Expedited processing.

(1) Development Services shall provide a development review check list to applicants, upon request.

(2) Applicants who fully comply with all items on the development review check list in a completed application for site development plan review shall receive review by Development Services within one hundred eighty (180) days of the official acceptance date of the application for site development plan review. The one hundred eighty (180) day time frame shall not be applicable until the rules and regulations set forth in 27-108(a) have been

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fully and finally adopted. The one hundred eighty (180) day time frame excludes time not attributable to Development Services.

(3) To provide notice to Development Services, in addition to a request for expedited processing in the MPDU plan ~~under 27-106~~, applicants shall file a written request for expedited processing with submission of the completed application for site development plan review.

**Section 8.** That Chapter 27-109, "Eligibility standards", of the Revised Municipal Code is hereby amended by adding the language underlined and deleting the language stricken as follows:

### **Sec. 27-109. Eligibility standards.**

(a) The standards of eligibility for households applying to purchase an MPDU shall be based on the AMI calculation adjusted for household size. The income levels required herein shall be reviewed by OED to be verified, ~~or pre-verified. OED may maintain a list of households pre-verified as eligible.~~

(b) All nonprofit organizations designated by the director, governmental or quasi-governmental entities who purchase MPDUs for the purpose of sale or rental under any city approved program designed to assist the construction or occupancy of housing for families of low or moderate income are deemed eligible households for all purposes under this article.

(c) To be eligible to purchase an MPDU at initial sale, households must be earning no more than eighty (80) percent of the AMI, or no more than ninety-five (95) percent of the AMI for high cost structures~~developments in which buildings are greater than three (3) stories, and elevators are provided, and over sixty (60) percent of the parking is structured.~~ To be eligible to purchase an MPDU on a resale, the household must be earning no more than the amount set forth in a schedule of eligibility provided by OED, which schedule may not under any circumstances exceed one hundred (100) percent of AMI.

(d) The director shall adopt regulations for approving eligibility and for approving the sale or rental of MPDUs to eligible households.

**Section 9.** That Chapter 27-110, "Initial offering of MPDUs ", of the Revised Municipal Code is hereby amended by adding the language underlined and deleting the language stricken as follows:

### **Sec. 27-110. Initial offering of MPDUs.**

(a) In view of the critical, long term public need for housing for families of low and moderate income, governmental entities or nonprofit organizations designated by the director are deemed eligible buyers and may buy for sale MPDUs. The MPDUs so purchased may be sold or rented to households of low or moderate income who are eligible for assistance under any federal, state, or local program or to eligible households as defined in this article.

(b) Initial sale to eligible households.

(1) Every MPDU required under this article shall be offered solely to eligible households for sale to be used primarily for the buyer's own primary residence.

(2) During the initial sales period, the MPDUs shall be offered to eligible households by the applicant through a fair and equitable system.

(3) The applicant shall use reasonable, good-faith efforts to enter into contracts with eligible households and in marketing to eligible households.

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(4) An applicant shall not sell any unit without first obtaining a verification of eligibility issued by OED from the buyer.

**Section 10.** That Chapter 27-112, "Final MPDU sale", of the Revised Municipal Code is hereby amended by adding the language underlined and deleting the language stricken as follows:

**Sec. 27-112. Final MPDU sale.**

(a) *Right of OED to purchase.* The first resale within ten (10) years after the end of the control period shall be known as the "final MPDU sale." The covenant shall provide that the owner thirty (30) days before the final MPDU sale notify OED of the proposed offering and the date on which the owner will be ready to offer the property for sale. The property shall be offered as a single property for sale and shall be offered at fair market value with no extraordinary terms of sale. The notice shall set forth the number of bedrooms, and the floor area for the MPDU type, a description of the amenities offered in the MPDU. Within thirty (30) days from receipt of said written notice, OED shall notify the owner by written notice of the city's intent to purchase. Any sale under this subsection shall close within sixty (60) days of the notice of intent to purchase to the owner. If the property does not close within the sixty (60) days, the owner may proceed to sell the MPDU as provided by this subsection. Any property purchased by OED shall be used for affordable housing purposes.

(b) *Final MPDU payment.* In return for the benefits received by the owner in being able to purchase the MPDU, the owner shall upon the final MPDU sale pay to the city's affordable housing special revenue fund an amount equal to the following calculation:

One-half ( 1/2) of the excess of the total resale price over the sum of:

- (i) The prior purchase price (prior maximum purchase price);
  - (ii) A percentage of the MPDU's prior purchase price equal to the increase in the cost of living since the MPDU was last sold, as determined by the Consumer Price Index;
  - (iii) The fair market value of documented capital improvements made to the MPDU between the date of the last sale and the date of resale; and
  - (iv) A reasonable sales commission and all reasonable costs of sale.
- (iv) In the event that the amount remaining after the calculation of items (i)--(iv) above, is less than twenty thousand dollars (\$20,000.00) the amount which shall be due to the special revenue fund shall be adjusted in each case so that the owner/seller will retain ten thousand dollars (\$10,000.00) or the entire amount, of the excess of the final MPDU sales price, which ever is less. This section does not apply to any designated non-profit organization, or any governmental entity, or any quasi-governmental entity which owns an MPDU.

**Section 11.** That Chapter 27-114, "Voluntary opportunities for developers of rental dwelling units", of the Revised Municipal Code is hereby amended by adding the language underlined and deleting the language stricken as follows:

**Section 27-114. Voluntary opportunities for developers of rental dwelling units.**

(a) For new developments of rental dwelling units, a rental applicant may request the incentives described in ~~sections 27-107 and 27-108~~ this chapter by voluntarily making application to the OED and submitting for approval a written MPDU plan which meets the requirements of section 27-106 and which provides that at least ten (10) percent of the units will be made available to households earning no more than sixty-five (65) percent of AMI, adjusted by household size, ~~;~~

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Such entities shall be considered "applicants" for all purposes of this article. ~~with a rent not exceeding thirty (30) percent of sixty five (65) percent of AMI, less a utility allowance as calculated by HUD. A high cost structured development in which the building is more than three stories, elevators are provided, and over sixty (60) percent of the parking is structured, may provide MPDUs for households earning no more than eighty (80) percent of AMI, with a rent not exceeding thirty (30) percent of eighty (80) percent of AMI. Incentives shall not be available for rental units provided in lieu of affordable for sale units provided under section 27-106(b). A rental applicant may request the enhanced standard incentive of ten an additional five thousand dollars (\$105,000.00) per by providing a rental MPDU unit made available to households earning no more than fifty (50) percent of AMI, adjusted by household size, with a rent not exceeding thirty (30) percent of fifty (50) percent of AMI, less a utility allowance as calculated by HUD. The specific incentives requested shall be set forth in the MPDU plan. Rents shall be limited and the formula for determining allowed rent shall be set forth in rules and regulations.~~

(b) Definitions. The following words and phrases shall have the following meanings as used in connection with developers of rental dwelling units under this section.

(1) *Control period* means the time period an MPDU is subject to maximum rental rate requirements set forth in this section. The control period is no less than fifteen (15) years and begins on the date of initial rental as defined herein. If an individual rental MPDU is offered for sale during the control period, the unit shall be treated as a resale MPDU for purposes of pricing and eligibility.

(2) *Date of initial rental* means the date a certificate of occupancy is issued for a rental MPDU.

(3) ~~*Eligible household* means a household whose income qualifies the household to participate in the MPDU rental program, and who holds a valid verification of eligibility from a landlord which entitles the household to rent an MPDU. All nonprofit organizations designated by the director, governmental or quasi-governmental bodies who purchase or lease MPDUs for the purpose of rental under any city approved program designed to assist the construction or occupancy of housing for families of low or moderate income are deemed "eligible households" for the purposes of this article.~~

(4) *Landlord* means the applicant and any subsequent owner or operator of a multi-family rental development which owns or operates a rental development containing MPDUs during the control period.

(5) *MPDU* in this section means a rental dwelling unit offered to eligible households for rent under this section, or rented under any government or city approved program designed to offer or support housing for families of low or moderate income. Units rented under a government program are deemed MPDUs but are not offered the incentives available under this article or subject to the requirements of this article.

~~(6) *Rental applicant* means any person, firm, partnership, association, joint venture, corporation, or any other entity or combination of entities, or affiliated entities and any transferee of all or part of the real property at one location, who after this article takes effect develops new rental dwelling units at one location in Denver and applies for incentives under this article.~~

Other terms shall have the same meaning as assigned to them in section 27-103.

(c) ~~Eligibility standards. To be eligible to rent an MPDU, households must be earning no more than sixty-five (65) percent of AMI adjusted for household size, less a utility allowance as calculated by HUD, or no more than eighty (80) percent of AMI for developments in which buildings are greater than three (3) stories, elevators are provided, and over sixty (60) percent of the parking is structured. Eligibility standards shall be based on the HUD AMI calculation. OED shall provide~~

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~~an eligibility application form and may adopt rules and regulations for verification and leasing consistent with those provided under section 27-109. Eligibility shall be determined as of the date a lease is initially signed by the parties.~~

~~(d)~~ Covenants. A rental applicant requesting incentives under this section, whose MPDU plan is approved by OED, shall enter into covenants as described in section 27-111 in order to receive the incentives requested. At a minimum the covenants will meet the following:

(1) The rental applicant shall execute and record with the clerk and recorder for the City and County of Denver a covenant on the MPDU property, which shall comply with the provisions in this section. Partnerships, associations or corporations shall not evade this section after receiving incentives through voluntary dissolution.

(2) The covenants shall contain at a minimum the information that the property is affordability restricted and shall set forth the control period, the rental pricing calculation, the eligibility and non-sublease requirements, penalties for violation, and any other restriction provided herein or in the rules and regulations hereto.

~~(ed)~~ During the control period, all grantors of real property which contains rental MPDUs shall require the grantee to execute a memorandum of acceptance which states that the conveyed property contains rental MPDUs and is subject to the restrictions contained in the covenants required under this article.

~~(fe)~~ The director shall release the covenants upon a finding that all amounts due the city's special revenue fund have been received and all other provisions of the covenant have been satisfied.

~~(gf)~~ The director may waive the covenant restrictions on rental if the director finds that the restrictions conflict with regulations governing federal or state housing programs and thus prevent eligible households from renting such units under the MPDU program. Any waiver shall be in writing, shall reference the recorded covenant, and shall be recorded with the clerk and recorder for the City and County of Denver.

~~(h)~~ ~~Offering of rental MPDUs.~~

~~(1)~~ ~~In view of the critical, long term public need for housing for families of low and moderate income, governmental entities or nonprofit organizations designated by the director are deemed eligible renters and may lease rental MPDUs. The MPDUs so leased may be rented to persons of low or moderate income who are eligible for assistance under any federal, state, or local program or to eligible households as defined in this article.~~

~~(2)~~ ~~Rental to eligible households.~~

~~(A)~~ ~~Every rental MPDU provided under this section shall be offered solely to eligible households for rental to be used for the renter's own primary residence.~~

~~(B)~~ ~~The rental MPDUs shall be offered to the eligible households by the landlord through a fair and equitable system.~~

~~(C)~~ ~~The landlord shall use reasonable, good faith efforts to enter into leases with eligible households and in marketing to eligible households.~~

~~(D)~~ ~~A landlord shall not lease any unit without first verifying eligibility of the renter.~~

~~(i)~~ ~~A compliance report shall be provided to OED by the landlord on a form of a compliance report under adopted rules and regulations.~~

**Section 12.** That Chapter 27-115, "Foreclosure", of the Revised Municipal Code is hereby amended by adding the space underlined as follows:

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**Sec. 27-115. Foreclosure.**

(a) Foreclosure or other court-ordered sales. In the event of foreclosure or the acceptance of a deed in lieu of foreclosure with respect to such MPDU by a holder of a purchase money first priority deed of trust against the MPDU (the "purchase money\_first lien holder"), OED shall release the covenant of record and waive its ability to enforce the provisions of the covenant with respect to such MPDU. The purchase money\_first lien holder shall be the only party entitled to take the MPDU free of the covenant.

(b) In the event that the Federal National Mortgage Association (FNMA), Federal Home Loan Mortgage Corporation (Freddie Mac), Federal Housing Administration (FHA), or Veteran's Administration (VA) forecloses or accepts a deed in lieu of foreclosure the restrictions imposed by this article shall automatically and permanently terminate.

**Section 13.** That Chapter 27-116, "Regulations; enforcement", of the Revised Municipal Code is hereby amended by adding the language underlined and deleting the language stricken as follows:

**Sec. 27-116. Regulations; enforcement.**

(a) The director may, from time to time, adopt rules and regulations necessary to administer this article.

(b) OED shall maintain a list of all MPDUs constructed, sold or rented under this article. The list shall include the date of the expiration of the control period for each unit.

(c) If an applicant violates the requirements of section 27-101 et seq., the city may withhold any and all later building department permits to that applicant until the MPDUs required hereunder are built and offered for sale to eligible buyers.

(d) This article applies to all agents, successors and assigns of an applicant. A building permit shall not be issued, and a preliminary plan of subdivision, development plan, or site plan shall not be approved unless the applicant meets the requirements of this article. The city may deny, suspend or revoke any building or occupancy permit for a site where a violation is found upon finding a violation of this article. Any prior approval of a preliminary plan of subdivision, development plan or site plan may be suspended or revoked upon the failure to meet any requirement of this article.

(e) Any violation of this article or rules and regulations adopted hereunder is subject to the penalties described under D.R.M.C. section 1-13(c), except covenant violations shall be enforceable through the district court. Pursuant to D.R.M.C. § 1-13(c), the city may impose a civil fine on applicants in an amount up to one hundred fifty (150) percent of the value of the housing required but not provided.

(f) The director may take legal action to enjoin or void any transfer of an MPDU if any party to the transfer does not comply with all requirements of this article. The director may recover any funds improperly obtained from any sale or rental of an MPDU in violation of this article.

(g) In addition to or instead of any other available remedy, the director may take legal action to:

(1) Enjoin an MPDU owner who violates this article, or any covenant signed or order issued under this article, from continuing the violation; or

(2) Require an owner to sell an MPDU owned or occupied in violation of this article to an eligible household.

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**Section 14.** That Chapter 27-119, "Applicability", of the Revised Municipal Code is hereby amended by adding the language underlined and deleting the language stricken as follows:

### **Sec. 27-119. Applicability**

(a) This article applies to all applicants and housing units developed by applicants, where an application for approval of a site plan, development plan, or submission to the development review committee is requested after the effective date of this article April 30, 2002. The amendments to this article apply to all applicants and housing units developed by applicants, where any application for approval of a site plan, development plan, or submission to the development review committee is requested on or after December 1, 2014.

(b) The requirements of this article shall not apply to planned unit developments (PUDs), adopted prior to the effective date of this article April 30, 2002. The amended requirements to this article shall not apply to planned unit developments (PUDs), adopted prior to December 1, 2014.

(c) The requirements of this article shall not apply to any public or private developer who has, prior to the effective date of this article April 30, 2002, made a contractual commitment in a zoning application to the city for the provision of affordable housing. The amended requirements of this article shall not apply to any public or private developer who has, prior to December 1, 2014 made a contractual commitment in a zoning application to the city for the provision of affordable housing.

(d) The requirements of the amendments to this article shall not apply to any public or private developer which prior to December 1, 2014 makes a contractual commitment to the city to construct a minimum of two hundred (200) MPDUs as part of any master planned development project under the terms of this Chapter 27, Article IV, as it existed prior to December 1, 2014, with the specific number of MPDUs in a master planned development project to be determined in the contractual commitment. In consideration for constructing the MPDUs, in the master planned development project, developers with such contractual commitments shall be entitled to receive the standard incentives set forth in section 27-107 up to a maximum of \$250,000.00 per year per master planned development and the supplemental incentives set forth in section 27-108. These incentives will be made available pursuant to rules and regulations adopted by the director.

(e) This article does not apply to:

(1) Applicants whose projects utilize private activity bond allocation and four (4) percent Low Income Housing Tax Credits ("LIHTC") or nine (9) percent LIHTC.

(2) Governmental entities, or quasi governmental bodies which develop or construct dwelling units for the purpose of sale or rental under any government program that provides for equivalent or greater number of required dwelling units meeting the definition of MPDU and occupied as housing for persons of low or moderate income.

**Section 15.** That Chapter 27-120, "Evaluation of article", of the Revised Municipal Code is hereby amended by adding the language underlined and deleting the language stricken as follows:

### **Sec. 27-120. Evaluation of article.**

(a) *General.* To achieve affordable housing within the City and County of Denver, it is contemplated that participation in this endeavor is not only the responsibility of the applicants but shall include the support and involvement of the Denver city government, other governmental entities, and the community as a whole.

(b) *Evaluation.* Every twelve (12) months, OED shall prepare a written report of OED's workforce housing activities and assess its progress toward the goals of this article. activities related to, and an assessment of outcomes and progress toward the goals of, this article. No later



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than August of 2019, OED shall conduct a policy review of the ordinance, hold a public hearing to gather input for the review, and report the findings and any recommendations to the city council.

Every twelve (12) months from the effective date of the ordinance from which this article derives through 2005 and in August of 2008, city council shall hold a public hearing to evaluate the effectiveness of the article. As part of that evaluation, council shall consider the question of whether to retain or repeal the provisions of this article. In conducting the public hearing, council shall consider the following:-

- (1) Testimony from OED, including a written report of OED's affordable housing activities;
- (2) Testimony from the other appropriate city officials on how the city is meeting its responsibilities as to:
  - (A) Ensure compliance with the affordable housing ordinance by applicants and subsequent owners of MPDUs;
  - (B) Monitor availability of affordable housing produced under the terms of this article;
  - (C) Evaluate the continued level of the need for housing in the affordable categories; and
  - (D) Evaluate market factors; and
- (3) Testimony from the community as a whole, including the development community and the housing community.

**Section 16.** That the amendments in this ordinance become effective at 12:00 a.m. on December 1, 2014.

MAYOR-COUNCIL DATE:

PASSED BY THE COUNCIL: \_\_\_\_\_, 2014

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

APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_, 2014

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

NOTICE PUBLISHED IN THE DAILY JOURNAL: \_\_\_\_\_, 2014; \_\_\_\_\_, 2014

PREPARED BY: Adam C. Hernandez, Assistant City Attorney DATE:

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

D. Scott Martinez, City Attorney,

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1 BY: \_\_\_\_\_, Assistant City Attorney

DATE: \_\_\_\_\_, 2014

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