

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2018

COUNCIL BILL NO. CB18-0019
COMMITTEE OF REFERENCE:
Land Use, Transportation & Infrastructure

A BILL

For an ordinance adopting a new Article VI in Chapter 27 of the Denver Revised Municipal Code, concerning incentives for the provision of increased levels of affordable housing or the payment of increased fees.

WHEREAS, the City and County of Denver is committed to the promotion and provision of affordable housing for persons of low and moderate incomes as an important and essential public purpose, and seeks to adopt tools that will incentivize affordable and mixed-income development throughout the city; and

WHEREAS, the city seeks to promote the creation and integration of affordable housing and mixed income development by adopting a new regulatory approach, an incentive overlay zone district in Article 9 of the Denver Zoning Code, which would allow building heights to exceed existing requirements in exchange for community benefits including the provision of affordable units, assessing an incentive fee, or negotiating a community benefit agreement to provide community serving uses; and

WHEREAS, city council adopted the 38th and Blake Station Area Height Amendments on September 19, 2016, which reinforced existing land uses, mobility and development visions within the adopted plans; but also refined and updated the city’s building height vision and defined conditions for increasing building height in the 38th and Blake Station area in exchange for providing community benefits; and

WHEREAS, an Incentive Height Overlay feasibility study was conducted in 2016 based on local market conditions in the 38th and Blake Station area which found that in most tested scenarios, the use of maximum incentive heights as required by this article resulted in higher financial returns than development to the maximum base height without incentives; and

WHEREAS, height incentives would allow the city to support appropriate and desired growth patterns (including building form standards) and mixed income housing opportunities associated with greater density and height and encourage access to high capacity public transit as part of a regional rail and bus transit system, thereby providing Denver citizens the opportunity to live and work near transit while minimizing or mitigating undesirable consequences and externalities.

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

3 **Section 1.** That a new Article VI shall be adopted and added to Chapter 27, D.R.M.C., to read
4 as follows:

5 **Article VI: INCENTIVES FOR AFFORDABLE HOUSING**

6 **Division 1. General**

7 **Sec. 27-180. Incentive Fee Fund**

8 (a) *Dedicated revenues.* The Affordable Housing Incentive Fee Fund is created
9 for the exclusive purpose of receiving and accounting for all revenues derived from the
10 incentive height fees provided in this article VI.

11 (b) *Permitted uses of revenue in the affordable housing incentive fee fund.*
12 Revenue received in the Affordable Housing Incentive Fee Fund shall be used exclusively
13 for the following purposes:

14 (1) For the production or preservation of rental housing, including the funding of
15 rental assistance programs, for qualified households earning eighty (80) percent or
16 less of AMI.

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

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

22 (4) For the development of permanent supportive housing for homeless persons,
23 and for supportive services associated with such housing; provided, however, in no
24 event shall the amount expended from the Affordable Housing Incentive Fee Fund
25 for supportive services under this paragraph (4) exceed ten percent (10%) of the
26 balance in the fund on January 1 of each year.

27 (5) For programs supporting low-income at-risk individuals in danger of losing
28 their existing homes, for mitigation of the effects of gentrification and involuntary
29 displacement of lower income households in those neighborhoods of the city that
30 are most heavily impacted by rapidly escalating housing costs, for homeowner

1 emergency repairs, or for other housing programs.

2 (c) *Cap on administrative costs.* Monies in the Affordable Housing Incentive Fee
3 Fund may be expended to pay the costs incurred by the city associated directly with the
4 administration of this fund; provided, however, in no event shall the amount expended from
5 the Affordable Housing Incentive Fee Fund for such administrative expenses in any year
6 exceed eight percent (8%) of the balance in the fund on January 1 of each year.

7 (d) *Fund earnings.* Any interest on any balance in the Affordable Housing
8 Incentive Fee Fund shall accrue to this fund.

9 (e) *Administration of fund.* The Affordable Housing Incentive Fee Fund shall be
10 administered by the executive director of the office of economic development, or its
11 successor city agency or department.

12 **Sec. 27-181 Regulations**

13 The director may, from time to time, adopt rules and regulations necessary to
14 administer this article, including the procedures and requirements for expenditures from the
15 Affordable Housing Incentive Fee Fund.

16 **Sec. 27-182 General Definitions**

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

19 (a) *AMI* means the area median income, adjusted for household size, for the
20 Denver metropolitan area as determined by the U.S. Department of Housing and Urban
21 Development.

22 (b) *Mixed-use non-residential structure* means a structure containing both
23 residential and non-residential uses, and the gross floor area of all residential uses are less
24 than fifty percent of the total gross floor area of the structure.

25 (c) *Mixed-use residential structure* means a structure containing both residential
26 and non-residential uses, and the gross floor area of all residential uses are greater than or
27 equal to fifty percent of the total gross floor area of the structure.

28 (d) *Non-residential structure* means any structure where none of its gross floor
29 area contains any primary residential uses.

1 (e) *Residential structure* means any structure where all of its gross floor area
2 contains primary residential uses.

3 (f) *Total structure build alternative unit(s)* means the number of build alternative
4 units and associated affordability restrictions required for an entire structure under Sec. 27-
5 155, D.R.M.C. Total structure build alternative units shall be approved in accordance with
6 the office of economic development's affordable housing permanent funds ordinance
7 administrative rules and regulations.

8 (g) *Total structure linkage fee* means the amount of linkage fee required for an
9 entire structure under Sec. 27-153, D.R.M.C.

10 **Division 2. Height Incentives**

11 **Sec. 27-183. Intent.**

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

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

19 **Sec. 27-184. Additional Definitions.**

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

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

23 (b) *Community benefits agreement* means an agreement entered into between an
24 applicant and the city, and administered by the office of economic development, that allows
25 an applicant to provide community serving uses for a portion of a proposed structure in
26 place of payment of any applicable incentive height fees. A community benefits agreement
27 shall not substitute for payment of the total structure linkage fee. The office of economic
28 development, in consultation with community planning and development and considering
29 demonstrated community needs and priorities in the surrounding neighborhood(s), and the

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

8 (c) *Incentive height* shall have the same meaning as the term is defined in Article
9 13 of the Denver Zoning Code.

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

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

1 **Sec. 27-185. Specific Incentive Height Fee and Incentive Height Build Alternative Unit**
2 **Requirements**

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

Incentive Overlay District	Incentive Height Fee Multiplier	Incentive Height Build Alternative Unit Multiplier
IO-1	4	4

5
6 **Sec. 27-186. Effect of repeal of build alternative and linkage fee provisions of Article**
7 **V, Chapter 27, D.R.M.C.**

8 The repeal of Section 27-153 or 27-155, D.R.M.C. shall not affect the availability of the height
9 incentives described in this Division 2. In the event of such repeal, the project may take advantage
10 of incentive heights by providing total structure build alternative units, incentive height build
11 alternative units, total structure linkage fees, incentive height fees, and execution of a community
12 benefits agreement, as applicable, calculated in accordance with the applicable multiplier set forth
13 above and the provisions of Section 27-153 and 27-155, respectively, and adopted rules and
14 regulations as such sections and rules and regulations existed immediately prior to their repeal.

15 **Sec. 27-187. Incentive height requirements for the 38th & Blake Station Area Incentive**
16 **Overlay District.**

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

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

26 (2) Build alternative units may be located on the subject property, or at an off-site

1 location anywhere with a zone district designation of IO-1, regardless of whether that
2 location is within a quarter-mile of the subject structure.

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

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

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

11 (2) Providing the required quantity of total structure build alternative units and
12 incentive height build alternative units, either at an off-site location with a zone district
13 designation of IO-1 (regardless of whether that location is within a quarter-mile of the
14 subject structure), or, if the structure is a mixed-use non-residential structure, on the
15 subject property; in calculating the total number of build alternative units to be
16 created, the fractional amounts of total structure build alternative units and incentive
17 height build alternative units shall be added together, and then rounded so that five-
18 tenths (.5) or greater shall result in requiring that a whole unit shall be produced; or

19 (3) Payment of the total structure linkage fee and execution of a community
20 benefits agreement.

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1 COMMITTEE APPROVAL DATE: January 2, 2018

2 MAYOR-COUNCIL DATE: January 9, 2018

3 PASSED BY THE COUNCIL _____

4 _____ - PRESIDENT

5 APPROVED: _____ - MAYOR _____

6 ATTEST: _____ - CLERK AND RECORDER,
7 EX-OFFICIO CLERK OF THE
8 CITY AND COUNTY OF DENVER

9 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____ ; _____

10 PREPARED BY: Adam C. Hernandez, Assistant City Attorney DATE: February 1, 2018

11 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
12 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
13 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to
14 §3.2.6 of the Charter.
15

16 Kristin M. Bronson, City Attorney

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18 BY: _____, Assistant City Attorney Date: _____