

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2016
AS AMENDED 9-12-16

COUNCIL BILL NO. 16-0625
COMMITTEE OF REFERENCE:
Safety, Housing, Education and
Homelessness

A BILL

For an ordinance amending Chapter 27 of the Denver Revised Municipal Code concerning housing, establishing permanent funds to support city affordable housing programs, adopting an affordable housing linkage fee applicable to new construction, and dedicating a portion of the city's existing property tax revenue capacity to the funding of affordable housing programs

WHEREAS, the Colorado Supreme Court has recognized that both the State of Colorado and municipal governments have a significant interest in maintaining the quality and quantity of affordable housing throughout the state; and

WHEREAS, the City and County of Denver has partnered with both the state and the federal government since at least the Great Depression to improve the quality and quantity of affordable housing for persons of low and moderate income, including the provision of transitional housing for persons experiencing homelessness, through a wide range of housing assistance programs and policies; and

WHEREAS, Colorado statutes require all counties and municipalities to include within their comprehensive plans provisions which will promote affordable housing, and Denver has done so by including within its Comprehensive Plan 2000 numerous goals and policies designed to expand housing options for Denver's changing populations; and

WHEREAS, along with the federal and state governments, Denver has long maintained tax and spending policies that help residents at the lowest income levels to afford and retain their homes, including the city's property tax refunds for low-income seniors and disabled persons, originally adopted in 1974; and

WHEREAS, Denver is currently experiencing a virtually unprecedented level of population growth and a market environment in which the supply of housing within the city has not kept pace with demand, particularly for households with low and moderate incomes; and

WHEREAS, Denver is also experiencing redevelopment trends in which formerly affordable housing units and the residents who occupied such units are increasingly being displaced by the construction of more expensive units, both in the for-sale and rental markets; and

1 WHEREAS, as a result of the foregoing trends, housing prices in Denver have been
2 increasing in recent years at twice the national average; and

3 WHEREAS, the federal sources of funds upon which Denver has traditionally relied to
4 support the city’s affordable housing programs have declined by a third in recent years and are
5 expected to decline even further in the future; and

6 WHEREAS, the city estimates that up to 4,500 dwelling units currently located in the city
7 could lose affordability protections in the next 5 years, such as rental units that currently accept
8 federal Section 8 vouchers but will not do so in the future; and

9 WHEREAS, the city estimates that, among households in Denver earning 80% or less of the
10 area median income for the Denver metropolitan area, as many as 87,000 such households are
11 “housing cost burdened” in the sense of being required to pay in excess of 30% of their monthly
12 income for housing and utility costs; and

13 WHEREAS, the general lack of affordable housing for households of low and moderate
14 income, along with the large number of existing households that are “housing cost burdened”
15 cause many adverse social and economic impacts within the city, particularly impacts associated
16 with the fact that persons who are employed in Denver are increasingly unable to afford to live in
17 Denver near their place of employment; and

18 WHEREAS, the City and County of Denver, like cities throughout Colorado and the United
19 States, has long treated the promotion and provision of affordable housing for persons of low and
20 moderate incomes as an important and essential public service, and as a part of the city’s
21 fundamental mission to promote the public health, safety and general welfare; and

22 WHEREAS, particularly in light of the ongoing decline in federal resources to fund
23 affordable housing programs, as well as the recent population and market trends described in
24 these recitals, the City Council deems it essential for the city to now adopt new forms of dedicated
25 revenue to support the city’s affordable housing programs; and

26 WHEREAS, for the reasons set forth in Section 20-151 of this ordinance, the City Council
27 has determined that there is a direct nexus between new construction in the city, generation of new
28 employment, and increased demand for housing affordable to low and moderate income
29 households, justifying a linkage fee on new construction to support the city’s affordable housing
30 programs; and

31 WHEREAS, Colorado state statutes, particularly §29-20-104 (1)(g), enable all municipalities
32 and counties to regulate the use of land on the basis of the impact thereof on the community, and
33 Denver is further empowered under its own plenary home rule authority to assess a linkage fee to
34 mitigate the impacts of new construction on the supply of affordable housing within the city; and

1 ~~WHEREAS, referred measure 2A approved by Denver voters in 2012 granted the city~~
2 ~~the authority to exceed the annual property tax revenue limitations set forth in Article X,~~
3 ~~Section 20 (7)(c) of the Colorado Constitution (“TABOR”), and to determine on a year-to-~~
4 ~~year basis how to allocate the extra revenue for essential city services; and~~

5 WHEREAS, the Mayor and the City Council have determined to allocate, beginning for 2016
6 property taxes to be collected in 2017 and continuing in future years, a portion of the city’s lawful
7 property tax revenue capacity for affordable housing programs in accordance with the provisions of
8 this ordinance; and

9 WHEREAS, the Mayor and the City Council expressly intend that a portion of dedicated tax
10 revenue for affordable housing shall be devoted to developing more permanent assistive housing
11 for residents of the city who are currently homeless and in the most desperate need of support and
12 assistance from the city.

13

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

16

17 **Section 1.** That Chapter 27 of the Denver Revised Municipal Code shall be amended by
18 the addition of a new Article V, to read as follows:

19

20 **ARTICLE V. DEDICATED FUNDING FOR AFFORDABLE HOUSING**

21 **Division 1. Affordable housing permanent funds**

22 **Sec. 27-150. Sources and uses of fund revenue**

23 (a) *Dedicated revenues.* The affordable housing permanent funds shall
24 consist of the Affordable Housing Linkage Fee Revenue Fund created for the
25 exclusive purpose of receiving and accounting for all revenues derived from the
26 affordable housing linkage fees provided in Division 2 of this Article V; and the
27 Affordable Housing Property Tax Revenue Fund created for the purpose of receiving
28 and accounting for revenues derived from the portion of the city’s property taxes
29 dedicated for affordable housing programs, as provided in ~~section 20-26~~
30 **subsection (i) of this section.**

1 (b) *Permitted uses of revenue in the Affordable Housing Linkage Fee Revenue*
2 *Fund.* Revenue received in the Affordable Housing Linkage Fee Revenue Fund shall
3 be used exclusively for the following purposes:

4 (1) To increase the supply of affordable rental housing, including the funding
5 of renter assistance programs, for qualified households earning eighty percent
6 (80%) or less of AMI, in response to increased housing demand linked to new
7 construction and new employment.

8 (2) To increase the supply of for-sale housing for qualified households earning
9 one hundred percent (100%) or less of AMI, in response to increased housing
10 demand linked to new construction and new employment.

11 (3) To support homebuyer assistance programs, including by way of example
12 down payment and mortgage assistance programs, for qualified households
13 earning one-hundred and twenty percent (120%) or less of AMI, in response to
14 increased housing demand linked to new construction and new employment.

15 (c) *Permitted uses of revenue in the Affordable Housing Property Tax*
16 *Revenue Fund.* Revenue received in the Affordable Housing Property Tax Revenue
17 Fund shall be used exclusively for the following purposes:

18 (1) For the production or preservation of rental housing, including
19 the funding of rental assistance programs, for qualified households
20 earning eighty percent (80%) or less of AMI.

21
22 (2) For the production or preservation of for-sale housing for
23 qualified households earning one hundred percent (100%) or less of
24 AMI.

25
26 (3) For homebuyer assistance programs, including by way of
27 example down payment and mortgage assistance programs, for
28 qualified households earning one-hundred and twenty percent (120%)
29 or less of AMI.

30

1 (4) For the development of permanent supportive housing for
2 homeless persons, and for supportive services associated with such
3 housing; provided, however, in no event shall the amount expended
4 from the Affordable Housing Property Tax Revenue Fund for
5 supportive services under this paragraph (4) exceed ten percent (10%)
6 of the amount of revenue received in the fund for that year.
7

8 (5) For programs supporting low-income at-risk individuals in danger
9 of losing their existing homes, for mitigation of the effects of
10 gentrification and involuntary displacement of lower income households
11 in those neighborhoods of the city that are most heavily impacted by
12 rapidly escalating housing costs, for homeowner emergency repairs, or
13 for other housing programs.
14

15 (d) *Cap on administrative costs.* Monies in the affordable housing
16 permanent funds may be expended to pay the costs incurred by the city
17 associated directly with the administration of the funds; provided, however, in
18 no event shall the amount expended from the funds for such administrative
19 expenses in any year exceed eight percent (8%) of the amount of revenue
20 received in both funds in that year.
21

22 (e) *Fund earnings.* Any interest earning on any balance in either of
23 the affordable housing permanent funds shall accrue to that fund.
24

25 (f) *Administration of funds.* The affordable housing permanent funds shall
26 be administered by the executive director of the office of economic development, in
27 coordination with the recommendations and assistance of the affordable housing
28 permanent funds advisory committee as provided in Part C of this Article VII. The
29 executive director may promulgate rules and regulations consistent with this Article V
30 governing the procedures and requirements for expenditures from the funds.
31 Expenditures from the funds shall be made in accordance with the adopted 3-5 year
32 strategic plan for the funds, as provided in Sec. 27-164(a).
33

1 (g) *Definition of AMI.* As used in this section, the term “AMI” means the area
2 median income, adjusted for household size, for the Denver metropolitan area as
3 determined by the U.S. Department of Housing and Urban Development.

4
5 (h) *Review of article.* No later than December 31, 2021, the office of
6 economic development shall conduct a policy review of this Article V, hold a
7 public hearing to gather input for the review, and report the findings and any
8 recommendations to the city council.

9
10 (i) *Dedicated levy for Affordable Housing Property Tax Revenue Fund.* For
11 2016 property taxes to be collected in 2017, the city’s certification of property tax
12 mill levies shall include a separate itemized levy at the rate of one-half of one mill
13 (.5 mill) for the purpose of funding affordable housing programs through the
14 affordable housing property tax revenue fund. For 2017 taxes to be collected in
15 2018, and in each subsequent, the city shall continue to maintain a separately
16 itemized levy to fund affordable housing programs and, as provided in Section
17 20-26 (d), shall adjust the levy annually in coordination with the adjustment other
18 city levies to the extent necessary to comply with the city property tax revenue
19 limitation.

20 21 **Division 2. Linkage fees**

22 **Sec. 27-151. Legislative findings and intent.**

23 The city council has determined that Denver is experiencing an unprecedented
24 escalation in housing costs, and thus a critical lack of housing opportunities for
25 households with low or moderate incomes. In recent years, Denver has ranked at or
26 near the top of national reports of U.S. cities in terms of inflation in housing costs.
27 The declining availability of low and moderately priced housing in Denver forces
28 persons employed in the city to either spend a disproportionate percentage of their
29 disposable income on housing, thus sacrificing other necessities of life, or forces
30 them to seek housing opportunities outside the city. The extraordinary housing cost
31 increases in Denver are driven, in part, by the pace of population and job growth in

1 the city, resulting in a situation where demand for housing has far outpaced supply,
2 especially for persons who may find jobs in Denver's growing economy but are
3 employed at low or moderate income levels.

4 The city council has determined that it is in the public interest to address the
5 severe social and economic impacts to the city and its citizens caused by the
6 increasing gap between supply and demand for housing by funding programs
7 designed to preserve and increase the supply of affordable housing available to low
8 and moderate income households. The city council specifically finds that it is
9 appropriate to fund a portion of the costs of such programs from a linkage fee on new
10 development for the following reasons:

11 (a) New residential and non-residential development is demonstrably associated
12 with the generation of new jobs at various income levels, with the number of jobs
13 associated with any particular development being correlated with the type and size of
14 the development.

15 (b) When jobs at a low or moderate income level are generated as a direct
16 consequence of new non-residential development, employees receiving such
17 incomes will experience a lack of housing availability and affordability in Denver
18 under current market conditions unless efforts are taken by the city to increase
19 housing opportunities to keep pace with job growth.

20 (c) The city council also specifically finds that job growth associated with new
21 residential development is directly related to the income and spending capacity of the
22 household occupying the residence and that the size of the residence, as measured
23 in gross square footage, correlates with the income and spending capacity of the
24 residents, thus causing a larger residence to drive more job growth and more
25 concomitant secondary housing demand than a smaller residence.

26 (d) For the foregoing reasons, the city council has determined there is a direct
27 nexus between both non-residential and residential development, job growth, and
28 demand for new housing that is affordable to households with low or moderate
29 incomes.

30 (e) The city council acknowledges that monetary exactions on new development
31 cannot exceed an amount that is justified by the impacts caused by the development.

1 The city council has determined that the fees set forth herein fall far below the
2 amount of revenue that would actually be necessary to meet the demand for new
3 affordable housing driven by the job growth that is associated with new development,
4 and thus these fees do not exceed the applicable standards that define the maximum
5 legally justifiable fee.

6 (f) The city council further acknowledges that the revenue derived from the fees
7 provided herein must be used, not to address the existing gap between supply and
8 demand for affordable housing in the city, but instead to mitigate future increases in
9 the gap caused by new construction which will lead to new employment opportunities
10 in the city, and the increased demand for affordable housing associated with such
11 employment.

12 (g) The city council has determined to set the affordable housing linkage fees set
13 forth herein at a level much lower than those imposed by other cities, in an effort to
14 ensure that the fees do not impair the feasibility of any development project in the
15 city.

16 (h) The foregoing findings are supported by the “Denver Affordable Housing
17 Nexus Study” prepared for the City and County of Denver by David Paul Rosen &
18 Associates and dated September 8, 2016, the contents of which are expressly
19 incorporated herein as a part of the legislative findings of the city council.

20 (i) The city council has further determined that, since the Denver does not
21 impose nearly the range or amount of development impact fees as are imposed by
22 virtually every other municipality throughout the Denver metropolitan area, the fees
23 set forth herein will not place the city at a competitive disadvantage in relation to
24 neighboring jurisdictions in terms of accommodating future population growth and
25 economic development.

26
27 **Sec. 27-152. Definitions.**

28 The following words and phrases, as used in this Division 2, have the following
29 meanings:

- 1 a. *Dwelling, single unit; dwelling, two-unit; and dwelling, multi-unit* shall have the
2 same meaning as these terms are used in Article XI of the Denver Zoning
3 Code.
- 4 b. *Gross floor area* shall have the same meaning as the term is defined in Article
5 XIII of the Denver Zoning Code, excluding garages and any other structures or
6 areas used for the storage or parking of vehicles.
- 7 c. *Primary agricultural uses* shall have the same meaning as the term is used in
8 Article XI of the Denver Zoning Code.
- 9 d. *Primary civic, public and institutional uses* shall have the same meaning as the
10 term is used in Article XI of the Denver Zoning Code.
- 11 e. *Primary commercial sales, services and repair uses* shall have the same
12 meaning as the term is used in Article XI of the Denver Zoning Code.
- 13 f. *Primary industrial, manufacturing and wholesale uses* shall have the same
14 meaning as the term is used in Article XI of the Denver Zoning Code.
- 15 g. *Primary residential use* shall have the same meaning as the term is defined in
16 Article XI of the Denver Zoning Code, and shall be deemed to include any and
17 all primary residential uses and all uses accessory to a primary residential
18 uses, except accessory dwelling units, as set forth in Article XI of the Denver
19 Zoning Code
- 20 h. *Structure* shall have the same meaning as the term is defined in Article XIII of
21 the Denver Zoning Code, but shall not include any partially enclosed or open
22 structures such as porches, balconies, courtyards, and similar structures.
- 23

24 **Sec. 27-153. Imposition of linkage fee.**

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

1 (1) Structures containing any single-unit dwelling, any two-unit
2 dwellings, any multi-unit dwellings designed and regulated under the
3 International Residential Code, or any primary residential use other
4 than the multi-unit dwellings provided in paragraph (2): \$.60 per
5 square-foot of gross floor area.

6 (2) Structures containing multi-unit dwellings designed and
7 regulated under the International Building Code: \$1.50 per square-foot
8 of gross floor area.

9 (3) Structures containing any primary industrial, manufacturing and
10 wholesale uses, or any primary agricultural uses: \$.40 per square-foot
11 of gross floor area.

12 (4) Structures containing any primary commercial sales, services
13 and repair uses, or any primary civic, public, or institutional uses: \$1.70
14 per square-foot of gross floor area.

15 (b) *Mixed use structures; split properties.* When a structure is
16 proposed to be constructed and used for any combination of the uses set forth
17 in subsection (a) of this section, the required linkage fee shall be determined
18 based upon an apportionment of the gross floor area in the structure
19 attributable to each of the proposed uses. When a structure is proposed to be
20 constructed upon any property that is partially subject to either of the
21 exceptions to applicability of the fee as set forth in section 27-154 (a) or (b), the
22 required linkage fee shall be applied only to the gross floor area of construction
23 that is physically located outside of the portion of the property to which the
24 exception applies.

25 (c) *Modification of existing structures.* The linkage fees imposed by
26 this section shall not be required for the issuance of building permits associated
27 with any improvement, repair, remodeling, tenant finish, or any other
28 modifications to an existing structure unless the modification increases the
29 gross floor area of the structure

30 (d) *Annual Inflation adjustment; future fee increases.*

1 (1) On July 1, 2018 and on each July 1 thereafter, the fees set forth in
2 subsection (a) of this section shall be adjusted in an amount equal
3 to the percentage change from the previous year in the CPI-U. The
4 adjustments will be reflected in a fee schedule issued by the
5 executive director (manager) of the department of community
6 planning and development and made publicly available in advance
7 of the fees becoming effective. The annual inflation adjustment
8 shall apply to and be collected in conjunction with the issuance of
9 any building permit on or after July of the year in which the
10 adjustment is made, regardless of when the application for the
11 building permit was made.

12 (2) As used in this subsection (d), the term "CPI-U" means the United
13 States Department of Labor Statistics (Bureau of Labor Statistics)
14 Consumer Price Index for All Urban Consumers, All items, for the
15 Denver-Boulder-Greeley, Colorado metropolitan area (1982-84-
16 100). In the event that the CPI-U is substantially changed, re-
17 named, or abandoned by the United States Government, then in its
18 place shall be substituted the index established by the United States
19 Government that most closely resembles the CPI-U.

20 (3) Except as provided in paragraph (1) of this section the fees set forth
21 in this section shall not be increased prior to January 1, 2022. On
22 and after January 1, 2022, the fees set forth in this section shall not
23 be increased in excess of the inflation adjustments set forth in
24 paragraph (2) unless and until the city commissions another study to
25 evaluate whether the fee increase will affect the economic feasibility
26 of any type of development to which the fee increase is proposed to
27 be applied.

28
29 **Sec. 27-154. Exceptions.**

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

1 (a) Construction upon any property which is, alone or in combination with other
2 properties, the subject of a preexisting contractual commitment or covenant
3 enforceable by the city to construct affordable housing, including by way of example
4 any development or subdivision agreement which includes an affordable housing
5 covenant and to which the city is a party, or any city-approved plan to build
6 moderately priced development units (MPDU's) under Article IV of this Chapter 27.
7 The exception provided by this subsection (a) shall apply only for so long the
8 preexisting contractual commitment or covenant to construct affordable housing
9 remains in existence. Construction upon property that, alone or in combination with
10 other properties, was originally developed under such a contractual commitment or
11 covenant and is subsequently proposed for redevelopment shall be subject to
12 payment of linkage fees hereunder unless the redevelopment is governed by a new
13 contractual commitment or covenant to construct affordable housing, or otherwise
14 qualifies for an exception under any other provision of this section.

15 (b) Construction upon any property subject to a preexisting obligation as a
16 condition of zoning to provide affordable housing on the property.

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

25 (d) Residential dwelling units that are built by any charitable, religious, or
26 other non-profit entity and deed-restricted to ensure the affordability of the dwelling
27 unit to low and moderate income households.

28 (e) Non-residential projects that are built by any charitable, religious or other
29 non-profit entity and that are primarily used to provide, shelter, housing, housing
30 assistance, or related services to low income households or persons experiencing
31 homelessness.

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

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

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

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

11
12 **Sec. 27-155. Build alternative.**

13 (a) As an alternative to the linkage fee requirement set forth in section 27-
14 153, an applicant for a building permit for any structure subject to the requirements of
15 this Division 2 may elect to build or cause to be built affordable housing units on the
16 subject property or within a one-quarter mile radius of the subject property, with the
17 required number of affordable housing units to be determined by the following
18 formulas:

19 (1) Structures containing multi-unit dwellings:

20 $(\text{Gross square feet of structure} / 1000) \times .0168 = \text{number of units}$

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

23 $(\text{Gross square feet of structure} / 1000) \times .0054 = \text{number of units}$

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

26 $(\text{Gross square feet of structure} / 1000) \times .0228 = \text{number of units}$

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

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

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

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

25
26 **Sec. 27-156. Collection and remittance of linkage fees.**

27 (a) The responsibility for the calculation and collection of linkage fees shall
28 reside with personnel in the department of community planning and development,
29 and the fees required by this division shall be collected in conjunction with the
30 administration of the city's system for issuing building permits. Any and all linkage
31 fees applicable to a construction project shall be paid in full prior to the issuance of

1 any building permit, excluding the shoring or excavation permit, for that project. For
2 projects such as townhomes where units receive separate building permits, fees shall
3 be assessed on a permit-by-permit basis. All fees collected by the department shall
4 be remitted to the Affordable Housing Linkage Fee Revenue Fund as provided in
5 section 27-150 and used exclusively for the purposes set forth therein.

6 (b) If, after the issuance of a building permit and collection of the applicable
7 linkage fees but before the issuance of a certificate of occupancy, the amount of
8 gross square footage of the construction project increases or a decision is made by
9 the applicant to change the use of the structure to a use category for which a higher
10 linkage fee would be imposed under section 27-153, then the applicant shall be
11 required to pay additional linkage fees in compliance with this division.

12 (b) Any dispute over the applicability or calculation of the linkage fees may be
13 appealed by the applicant for a building permit to the executive director (manager) of
14 the department of community planning and development, who shall determine such
15 appeals in consultation with the executive director of the office of economic
16 development.

17 (c) Linkage fees previously paid by an applicant at building permit issuance
18 may be refunded from the Affordable Housing Linkage Fee Revenue Fund if it is later
19 determined on appeal or otherwise by the executive director (manager) of community
20 planning and development that the fees were not due and owing under this division,
21 if a decision is made by the applicant after a building permit has been issued to
22 reduce the gross square feet of the construction project or to change the use of the
23 structure to a use category for which a lower linkage fee would be imposed under
24 section 27-153, or if the building permits for the project lapse or are relinquished by
25 the applicant without the project being built. The executive director (manager) of
26 community planning and development shall not be obligated to make any refund
27 under this subsection (c) unless the applicant files a written request for a refund with
28 the executive director within sixty (60) days from the day any grounds for a refund
29 arise.

30 (d) After a building permit has been issued and the applicable linkage fees
31 have been paid, no additional fees shall be required under either of the following
32 circumstances:

1 (1) If the original building permit is cancelled in order to issue a replacement
2 building permit to change the general contractor; or

3 (2) If modified drawings for the construction project are submitted and logged
4 in for review, so long as the modified drawings do not increase the overall
5 gross square-footage of the project.

6
7 **Sec. 27-157. Reductions and Waivers.**

8 (a) The executive director of the office of economic development may
9 reduce or waive the amount of linkage fees that would otherwise be imposed upon a
10 specific development under Sec. 27-153 if the applicant for a reduction or waiver
11 demonstrates that the required amount of fees exceeds the amount that would be
12 needed to mitigate the actual demand for affordable housing created by the
13 development. An application for such a reduction or waiver shall include information
14 showing the reduced affordable housing impacts created by the development, based
15 upon the actual characteristics of the development including, for example: (A) the
16 unique characteristics and space utilization of the workforce that will occupy a non-
17 residential development and the demand of that particular workforce for affordable
18 housing; (B) a non-residential development that will involve a structure built for and
19 suitable solely for a specific use involving few or no employees; or (C) the unique
20 characteristics of the residents who will occupy a residential development, and the
21 likelihood those particular residents, due to their disposable household income or
22 projected spending patterns, will not drive additional employment requiring additional
23 affordable housing.

24 (b) The executive director shall promptly notify in writing the executive
25 director (manager) of the department of community planning and development of any
26 reduction or waiver or linkage fees granted under the authority of this section.

27
28 **Division 3. Affordable housing permanent funds advisory committee**

29 **Sec. 27-158. Committee created.**

1 There is hereby created an affordable housing permanent funds advisory
2 committee. The committee shall consist of twenty-three (23) members as follows:

3 (a) The following nine (9) *ex officio* members, or the member's designee:

4 (1) Executive director of the mayor's office of housing and opportunities
5 for people everywhere (H&OPE).

6 (2) Executive director of the office of economic development.

7 (3) Executive director (manager) of department of community planning
8 and development.

9 (4) Chief financial officer (manager of finance).

10 (5) City official primarily responsible for services to the homeless.

11 (6) Executive director of Denver Housing Authority.

12 (7) Executive director of Denver Urban Renewal Authority.

13 (8) Executive director of the Colorado Housing and Finance Authority, to
14 the extent the state agency elects to participate in the committee.

15 (9) Executive director of the Colorado Division of Housing, to the extent
16 the state agency elects to participate in the committee.

17
18 (b) The following eleven (11) members appointed by the mayor and confirmed by the
19 city council:

20 (1) Housing finance expert.

21 (2) Representative of a provider of services to the homeless.

22 (3) Representative of a community housing development organization.

23 (4) Representative of a major employer.

24 (5) Resident of an affordable housing project or unit, such as a project or
25 unit that is deed-restricted for affordability.

26 (6) Representative of the private-sector, commercial real estate industry.

27 (7) Representative of the private-sector, market rate single-family
28 residential real estate industry.

1 (8) Representative of the private-sector, market rate multi-family real
2 estate industry.

3 (9) For-profit affordable housing developer.

4 (10) Non-profit affordable housing developer.

5 (11) At-large community member.

6 (c) The following three (3) members appointed by the city council:

7 (1) A member of the city council.

8 (2) Affordable housing advocate.

9 (3) At-large community member.

10
11 **Sec. 27-159. Term of appointed committee members.**

12 (a) The appointed members of the committee shall serve for a period of three
13 (3) years, with terms to be staggered by initially appointing one-third of the appointed
14 members for three-year terms, another third for two years, and the remaining third for
15 one year. Initial terms shall be set by the appointing authority.

16 (b) Committee members may be reappointed for successive terms.

17
18 **Sec. 27-160. Vacancies.**

19 Any vacancy in any appointed position of the committee shall be promptly filled
20 by the appropriate appointing authority to serve the remainder of the unexpired term of
21 the member who vacated the position.

22
23 **Sec. 27-161. Compensation**

24 The members of the committee shall serve without compensation; provided,
25 however, that members may be reimbursed for reasonable expenses incurred in
26 performance of their duties pursuant to the rules and regulations of the city for such
27 reimbursement.

1 **Sec. 27-162. Officers.**

2 The committee shall elect from its membership, a chairperson and such other
3 officers as it may designate who shall serve for two-year terms.

4
5 **Sec. 27-163. Meetings and procedures.**

6 (a) The schedule of regular meetings of the committee shall be established
7 by a majority of the membership, but the schedule must provide for at least one regular
8 meeting per month. Additional meetings shall be called as needed by the chair of the
9 committee.

10 (b) All meetings of the committee shall be subject to city requirements for open
11 meetings, as set forth in Article III of Chapter 2 of the code. Participation and voting in
12 committee business by members of the committee shall be subject to the requirements
13 and limitations of the Code of Ethics, as set forth in Article IV of Chapter 2 of the code.

14
15 (c) The committee may adopt additional bylaws and procedures for the conduct
16 of its meetings and the performance of its duties as set forth in section 27-164.

17
18 **Sec. 27-164. Powers and duties.**

19 The general purpose of the committee is to render advice and recommendations
20 to the executive director of the office of economic development in regard to the
21 planning and implementation of city programs and services to preserve and increase
22 the supply of affordable housing in the city, to the extent such programs and services
23 are supported by expenditures from the affordable housing permanent funds, as
24 provided in section 27-150. The specific powers and duties of the committee shall be:

25
26 (a) To recommend goals, objectives and policies to inform the
27 adoption of 3-5 year strategic plans for the permanent funds, including but not
28 limited to:

1 (1) Goals for a mix of housing affordable to households in various
2 ranges of area median income (AMI), subject to the AMI limitations set
3 forth in section 27-150;

4 (2) Goals for a mix of affordable rental and for-sale housing;

5 (3) Parameters for usage of a portion of the revenue in the permanent
6 fund derived from the dedicated affordable housing property tax levy for
7 supportive services; and

8 (4) Parameters for usage of a portion of the revenue in the permanent
9 funds for land banking and other tools to preserve locations in city for
10 future development of affordable housing.

11
12 (b) To recommend goals, objectives and policies to inform budget priorities for
13 expenditures to be made from the permanent funds, prior to the submission of such
14 priorities by the executive director to the mayor and the city council as part of the city's
15 annual budget process.

16 (c) To review semi-annual and annual performance and outlook reports
17 regarding past and potential future uses of revenue in the permanent funds, as shall
18 be submitted by the executive director to the committee.

19 (d) To recommend to the executive director on an ongoing basis:

20 (1) Concepts for new programs and services to achieve the purposes
21 of the permanent funds;

22 (2) Metrics to be tracked in order to monitor the success of the
23 expenditures from the permanent funds in achieving the purposes of the
24 fund;

25 (3) Community engagement strategies;

26 (4) Housing priorities, including geographic priorities for creating or
27 preserving affordable housing within the city.

28 (5) Methods to leverage and maximize expenditures from the
29 permanent funds.

1 (6) Specific provisions for expenditures designed to mitigate the
2 effects of gentrification and displacement of lower income households
3 in neighborhoods with the most rapidly escalating housing costs.

4
5
6 **Sec. 27-165. Staffing and administrative support.**

7 Staffing and other administrative support for the committee shall be provided by
8 the office of economic development.

9
10
11 **Section 2.** That section 2-32, D.R.M.C. concerning Open Meetings shall be amended by
12 adding a new paragraph (2)(ddd), to read as follows:

13
14 **Sec. 2-32. - Definitions.**

15
16 (2) Public body:

17
18 (ddd) The affordable housing permanent funds advisory committee.

19
20
21 ~~**Section 3.** That paragraph (b)(1) and subsection (e) of section 20-26, D.R.M.C., shall~~
22 ~~**be amended by adding the language underlined, to read as follows:**~~

23 ~~**Sec. 20-26. Constitutional revenue limitations.**~~

24 ~~**(b) Definitions.** As used in this section, the following terms have the~~
25 ~~**meanings herein set forth:**~~

26 ~~**(1) Affected funds** means the general fund, the human service~~
27 ~~**fund, the police pension fund, the fire pension fund, for which a**~~
28 ~~**millage rate has been itemized in the annual certification of city**~~
29 ~~**and county property taxes, offset by temporary property tax**~~
30 ~~**credits or rate reductions between tax years 1996 and 2011 in**~~
31 ~~**order to comply with the constitutional property tax revenue**~~

1 ~~limitation; and the affordable housing property tax revenue fund,~~

2 ~~(e) *Use of restored property tax revenues.* Restored property tax revenues~~
3 ~~shall be expended exclusively for the following purposes, with the allocation of~~
4 ~~revenue between and among these purposes to be determined on a year to year~~
5 ~~basis as a part of the annual budget and appropriation process: public safety,~~
6 ~~services for children, street maintenance, parks and recreation, libraries, and other~~
7 ~~essential city services; payments to low-income elderly and disabled persons as~~
8 ~~provided in section 53-498; and business incentive programs to retain and attract~~
9 ~~businesses to Denver. For 2016 property taxes to be collected in 2017, the city's~~
10 ~~certification of levies in support of the affected funds shall include a separate~~
11 ~~itemized levy at the rate of one-half of one mill (.5 mill) for the purpose of funding~~
12 ~~affordable housing programs through the affordable housing property tax fund. For~~
13 ~~2017 taxes to be collected in 2018, and in each subsequent, the city shall continue~~
14 ~~to maintain a separately itemized levy to fund affordable housing programs and, as~~
15 ~~provided in subsection (d)(2) of this section, shall adjust the levy annually in~~
16 ~~coordination with the adjustment of the levies for the other affected funds to the~~
17 ~~extent necessary to comply with the city property tax revenue limitation, until such~~
18 ~~time as the credited mills are entirely eliminated.~~

19
20 **Section 3.** That section 27-104, D.R.M.C. concerning the applicability of the city ordinance
21 commonly known as the “inclusionary housing ordinance” or “IHO” shall be amended by deleting
22 the language stricken and adding the language underlined in subsection (a), and adding a new
23 subsection (c), to read as follow:

24
25 **Sec. 27-104. - Applicable development.**

26
27 (a) This article is applicable to all applicants who, prior to January 1, 2017:

28
29 (1) Submit for approval or extension of approval a development plan, rezoning, or
30 site review, or seek a building permit which provides or will provide for the
31 construction or development of a total of thirty (30) or more for sale dwelling units at

1 one location in one or more subdivisions, parts of subdivisions, or stages of
2 development; or

3
4 (2) With respect to all real property in zones not subject to subdivision approval or
5 site plan review, apply for a general zoning approval for the construction of a total of
6 thirty (30) or more for sale dwelling units at one location.

7
8 (c) Any application for any approval as set forth in subsection (a) of this section
9 submitted on or after January 1, 2017 shall not be subject to the requirements of this
10 article. However, this article shall continue to govern MPDU plans associated with
11 applications for approvals submitted prior to January 1, 2017.

12
13
14 **Section 4.** That section 27-113, D.R.M.C. concerning certain incentives offered under the
15 city ordinance commonly known as the “inclusionary housing ordinance” or “IHO” shall be
16 amended by deleting the language stricken and adding the language underlined, to read as
17 follows:

18
19 **Sec. 27-113. - Voluntary opportunities for developers of less than thirty (30)**
20 **dwelling units.**

21
22 Any Prior to January 1, 2017, any person, firm, partnership, association, joint
23 venture, corporation, or any other entity or combination of entities, or affiliated entities
24 and any transferee of all or part of the real property at one location, which after this
25 article takes effect develops less than thirty (30) new for sale dwelling units at one
26 location in Denver may request the incentives described in sections 27-107 and 27-
27 108 by voluntarily making application to the OED and meeting the requirements of
28 this article. Such entities shall be considered "applicants" for all purposes of this
29 article. Effective January 1, 2017, OED shall no longer accept voluntary applications
30 for incentives under this section.

31
32
33 **Section 5.** That section 27-114, D.R.M.C. concerning certain incentives offered under the
34 city ordinance commonly known as the “inclusionary housing ordinance” or “IHO” shall be

1 amended by deleting the language stricken and adding the language underlined in subsection (a)
2 and adding a new subsection (g), to read as follows:

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

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

(a) ~~For~~ Prior to January 1, 2017, for new developments of rental dwelling units, a rental applicant may request the incentives described in 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. Such entities shall be considered "applicants" for all purposes of this article. A high cost structure may provide MPDUs for households earning no more than eighty (80) percent of AMI. Incentives shall not be available for rental units provided in lieu of affordable for sale units provided under [sub]section subsection 27-106 (b). A rental applicant may request the enhanced standard incentive of an additional five thousand dollars (\$5,000.00) per rental MPDU unit made available to households earning no more than fifty (50) percent of AMI, adjusted by household size. 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.

(g) Effective January 1, 2015, OED shall no longer accept voluntary applications for incentives under this section.

Section 6. That subsection 27-119 (a), D.R.M.C. concerning the applicability of the city ordinance commonly known as the “inclusionary housing ordinance” or “IHO” shall be amended by adding the language underlined, to read as follow:

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 August 12, 2002

1 and prior to January 1, 2017. The amendments to this article apply to all applicants
2 and housing units developed by applicants, where any application for approval of a
3 site plan, development plan, or submission to the development review committee is
4 requested on or after December 1, 2014 and prior to January 1, 2017. Any
5 application for any approval set forth in this subsection submitted on or after January
6 1, 2017 shall not be subject to the requirements of this article. However, this article
7 shall continue to govern MPDU plans associated with applications for approvals
8 submitted prior to January 1, 2017.

9
10 **Section 7. Establishment of Affordable Housing Permanent Funds.**

11 A. There is hereby established in the Community Development Special Revenue Fund,
12 Fund Number 16000, an Affordable Housing Property Tax Revenue Fund, Accounting No. 16606,
13 for the purpose of receiving and expending certain tax revenue and revenue from other sources to
14 promote the provision of affordable housing in accordance with the laws of the city. Revenues
15 derived from the component of the city's property taxes dedicated to affordable housing, as
16 provided in Section 20-26, D.R.M.C., including any such revenues transferred from the TABOR
17 excess revenue fund, Fund No. 19000, shall be deposited into the Treasury of the City and
18 credited to the Affordable Housing Property Tax Fund.

19 B. There is hereby established in the Community Development Special Revenue Fund,
20 Fund Number 16000, an Affordable Housing Linkage Fee Revenue Fund, Accounting No. 16607,
21 for the exclusive purpose of receiving and expending revenues derived from the city affordable
22 housing linkage fees, as provided in Article V of Chapter 27, D.R.M.C. Any and all such fee
23 revenues shall be deposited into the Treasury of the City and credited to the Affordable Housing
24 Linkage Fee Revenue Fund.

25 (C) The Affordable Housing Property Tax Revenue Fund and the Affordable Housing
26 Linkage Fee Revenue Fund shall collectively be known as the city's Affordable Housing
27 Permanent Funds.

28 C. Expenditures are hereby authorized for the Affordable Housing Permanent Funds in an
29 amount not to exceed the total of deposits described in subsections (A) and (B) of this section, to
30 be expended by the Executive Director of the Office of Economic Development for the purposes
31 set forth in the governing law for each fund. Notwithstanding any other provision of the charter or

1 ordinances of the city, expenditures from the Affordable Housing Permanent Funds shall be
2 subject to annual appropriation by the city council.

3 D. The Chief Financial Officer (Manager of Finance) of the City and County of
4 Denver is hereby authorized and directed to make such book and record entries and to do
5 such other things as may be necessary to accomplish the purposes of this ordinance.
6

7 **Section 8. Effective Date.**

8 1. Except as otherwise provided herein, this ordinance shall be effective upon
9 final publication.

10 2. The provisions of this ordinance imposing an affordable housing linkage fee
11 shall become effective January 1, 2017; provided, however, that the fee shall not apply to
12 any applicant for a building permit who has, prior to close of business on Friday, December
13 30, 2016, submitted to the Department of Community Planning and Development either a
14 site development concept plan or a building permit application with associated permit
15 drawings and paid all applicable plan review fees, and the department has logged-in such
16 submissions for review by the department. An applicant for a building permit for residential
17 construction who has submitted only a residential zoning plan prior to January 1, 2017, shall
18 not be exempt from payment of linkage fees under this ordinance on and after January 1,
19 2017.

20
21 COMMITTEE APPROVAL DATE: August 24, 2016.

22 MAYOR-COUNCIL DATE: August 30, 2016.

23 PASSED BY THE COUNCIL _____

24 _____ - PRESIDENT

25 APPROVED: _____ - MAYOR _____

26 ATTEST: _____ - CLERK AND RECORDER,
27 EX-OFFICIO CLERK OF THE
28 CITY AND COUNTY OF DENVER
29

30 NOTICE PUBLISHED IN THE DAILY JOURNAL _____; _____

31
32 PREPARED BY: David W. Broadwell, Asst. City Attorney; DATE: September 8, 2016
33

34 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of

1 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
2 ordinance. The proposed ordinance **is not** submitted to the City Council for approval pursuant to §
3 3.2.6 of the Charter.
4

5 Denver City Attorney

6

7 BY: _____, Assistant City Attorney DATE: _____

8

9

10