

BY AUTHORITY

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ORDINANCE NO. _____
SERIES OF 2016
AS AMENDED 9-12-16
AS AMENDED 9-19-16

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%)~~ **eighty percent (80%)** or less of AMI, in
10 response to increased housing demand linked to new construction and new
11 employment.

12 (3) To support homebuyer assistance programs, including by way of example
13 down payment and mortgage assistance programs, for qualified households
14 earning ~~one hundred and twenty percent (120%)~~ **eighty percent (80%)** or
15 less of AMI, in response to increased housing demand linked to new
16 construction and new employment.

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

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

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

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

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

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

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

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

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

1 **strategie comprehensive housing** plan for the funds, as provided in Sec. 27-
2 164(a).

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

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

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

23 24 **Division 2. Linkage fees**

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

26 The city council has determined that Denver is experiencing an unprecedented
27 escalation in housing costs, and thus a critical lack of housing opportunities for
28 households with low or moderate incomes. In recent years, Denver has ranked at or
29 near the top of national reports of U.S. cities in terms of inflation in housing costs.
30 The declining availability of low and moderately priced housing in Denver forces

1 persons employed in the city to either spend a disproportionate percentage of their
2 disposable income on housing, thus sacrificing other necessities of life, or forces
3 them to seek housing opportunities outside the city. The extraordinary housing cost
4 increases in Denver are driven, in part, by the pace of population and job growth in
5 the city, resulting in a situation where demand for housing has far outpaced supply,
6 especially for persons who may find jobs in Denver's growing economy but are
7 employed at low or moderate income levels.

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

15 (a) New residential and non-residential development is demonstrably associated
16 with the generation of new jobs at various income levels, with the number of jobs
17 associated with any particular development being correlated with the type and size of
18 the development.

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

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

30 (d) For the foregoing reasons, the city council has determined there is a direct
31 nexus between both non-residential and residential development, job growth, and

1 demand for new housing that is affordable to households with low or moderate
2 incomes.

3 (e) The city council acknowledges that monetary exactions on new development
4 cannot exceed an amount that is justified by the impacts caused by the development.
5 The city council has determined that the fees set forth herein fall far below the
6 amount of revenue that would actually be necessary to meet the demand for new
7 affordable housing driven by the job growth that is associated with new development,
8 and thus these fees do not exceed the applicable standards that define the maximum
9 legally justifiable fee.

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

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

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

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

30

1 **Sec. 27-152. Definitions.**

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

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

26
27 **Sec. 27-153. Imposition of linkage fee.**

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

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

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

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

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

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

29 (c) *Modification of existing structures.* The linkage fees imposed by
30 this section shall not be required for the issuance of building permits associated
31 with any improvement, repair, remodeling, tenant finish, or any other

1 modifications to an existing structure unless the modification increases the
2 gross floor area of the structure

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

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

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

23 (3) Except as provided in paragraph (1) of this section the fees set forth
24 in this section shall not be increased prior to January 1, ~~2022~~ 2020.
25 On and after January 1, 2022, the fees set forth in this section shall
26 not be increased in excess of the inflation adjustments set forth in
27 paragraph (2) unless and until the city commissions another study to
28 evaluate whether the fee increase will affect the economic feasibility
29 of any type of development to which the fee increase is proposed to
30 be applied.

31

1 **Sec. 27-154. Exceptions.**

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

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

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

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

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

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

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

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

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

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

15
16 **Sec. 27-155. Build alternative.**

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

23 (1) Structures containing multi-unit dwellings:

24 $(\text{Gross square feet of structure} / 1000) \times .0168 = \text{number of units}$

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

27 $(\text{Gross square feet of structure} / 1000) \times .0054 = \text{number of units}$

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

3 (Gross square feet of structure / 1000) X .0228 = number of units

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

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

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

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

28
29 **Sec. 27-156. Collection and remittance of linkage fees.**

1 (a) The responsibility for the calculation and collection of linkage fees shall
2 reside with personnel in the department of community planning and development,
3 and the fees required by this division shall be collected in conjunction with the
4 administration of the city's system for issuing building permits. Any and all linkage
5 fees applicable to a construction project shall be paid in full prior to the issuance of
6 any building permit, excluding the shoring or excavation permit, for that project. For
7 projects such as townhomes where units receive separate building permits, fees shall
8 be assessed on a permit-by-permit basis. All fees collected by the department shall
9 be remitted to the Affordable Housing Linkage Fee Revenue Fund as provided in
10 section 27-150 and used exclusively for the purposes set forth therein.

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

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

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

1 the executive director within sixty (60) days from the day any grounds for a refund
2 arise.

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

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

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

11
12 **Sec. 27-157. Reductions and Waivers.**

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

1 (b) The executive director shall promptly notify in writing the executive
2 director (manager) of the department of community planning and development of any
3 reduction or waiver or linkage fees granted under the authority of this section.
4

5 **Division 3. Affordable housing ~~permanent funds~~ advisory committee**

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

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

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

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

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

13 (3) Executive director (manager) of department of community planning
14 and development.

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

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

17 (6) Executive director of Denver Housing Authority.

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

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

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

23
24 (b) The following eleven (11) members appointed by the mayor and confirmed by the
25 city council:

26 (1) Housing finance expert.

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

- 1 (3) Representative of a community housing development organization.
- 2 (4) Representative of a major employer.
- 3 (5) Resident of an affordable housing project or unit, such as a project or
- 4 unit that is deed-restricted for affordability.
- 5 (6) Representative of the private-sector, commercial real estate industry.
- 6 (7) Representative of the private-sector, market rate single-family
- 7 residential real estate industry.
- 8 (8) Representative of the private-sector, market rate multi-family real
- 9 estate industry.
- 10 (9) For-profit affordable housing developer.
- 11 (10) Non-profit affordable housing developer.
- 12 (11) At-large community member.

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

- 14 (1) A member of the city council.
- 15 (2) Affordable housing advocate.
- 16 (3) At-large community member.

17
18 **Sec. 27-159. Term of appointed committee members.**

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

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

24
25 **Sec. 27-160. Vacancies.**

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

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Sec. 27-161. Compensation

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

Sec. 27-162. Officers.

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

Sec. 27-163. Meetings and procedures.

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

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

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

Sec. 27-164. Powers and duties.

The general purpose of the committee is to render advice and recommendations to the executive director of the office of economic development in regard to the planning and implementation of city programs and services to preserve and increase the supply of affordable housing in the city, to the extent such programs and services

1 are supported by expenditures from the affordable housing permanent funds, as
2 provided in section 27-150, and federal or other funds allocated by the executive
3 director of the office of economic development for housing development,
4 preservation or programs. The specific powers and duties of the committee shall
5 be:

6
7 ~~(a) To recommend goals, objectives and policies to inform the~~
8 ~~adoption of 3-5 year strategic plans for the permanent funds, including but~~
9 ~~not limited to:~~

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

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

14 ~~(3) Parameters for usage of a portion of the revenue in the~~
15 ~~permanent fund derived from the dedicated affordable housing~~
16 ~~property tax levy for supportive services; and~~

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

20
21 ~~(b) To recommend goals, objectives and policies to inform budget~~
22 ~~priorities for expenditures to be made from the permanent funds, prior to the~~
23 ~~submission of such priorities by the executive director to the mayor and the city~~
24 ~~council as part of the city's annual budget process.~~

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

28 (a) To recommend goals, objectives and policies to inform the
29 adoption of 3-5 year comprehensive housing plans for city housing
30 expenditures, including but not limited to the permanent funds and any federal
31 or other funds allocated by the executive director of the office of economic
32 development for housing development, preservation or programs. The

1 executive director of the office of economic development shall direct city staff,
2 independent consultants, or a combination thereof, to solicit input and develop
3 the comprehensive housing plan to be reviewed by the affordable housing
4 advisory committee and recommended for submittal to the city council by
5 September 1 of the year prior to the plan's first program year for subsequent
6 approval. The first 3-5 year comprehensive housing plan shall be submitted to
7 the city council by September 1, 2017 for subsequent approval. The 3-5 year
8 comprehensive housing plan shall include, at a minimum, the following
9 elements:

- 10 (1) Comprehensive list of city housing expenditures intended to
11 preserve and increase the supply of affordable housing, to be
12 developed in coordination with agencies such as the Denver
13 Housing Authority and Denver Urban Renewal Authority where
14 external housing expenditures are planned;
15
- 16 (2) Establishment of measurable goals for each type and category of
17 city housing expenditure with consideration and reference to
18 planned external housing expenditures where possible, including
19 financial and production goals for a mix of housing affordable to
20 households in various ranges of area median income (AMI), subject
21 to the AMI limitations set forth in section 27-150 for the permanent
22 funds, and appropriate income limitations according to other
23 housing program requirements;
- 24 (3) Financial and production goals for a mix of affordable rental and
25 for-sale housing;
- 26 (4) Specific provisions for tracking and reducing the effects of
27 gentrification and displacement on lower income households in
28 neighborhoods with the most rapidly escalating housing costs;
- 29 (5) Parameters for usage of a portion of the revenue in the permanent
30 fund derived from the dedicated affordable housing property tax
31 levy for supportive services;
- 32 (6) Parameters for usage of a portion of the revenue in the permanent
33 funds for land banking and other tools to preserve locations in the
34 city for future development of affordable housing; and
- 35 (7) Parameters for the use of permanent funds to maximize mixed-income
36 development.

37 (b) To recommend annual action plans intended to implement the
38 overall comprehensive housing plan to prioritize and allocate city housing
39 expenditures based on current conditions;

40 (c) To review annual progress reports evaluating implementation of
41 city housing expenditures on unit production, including an explanation of
42 discrepancies between plan goals and actual unit production where possible,
43 and compliance with the comprehensive housing plan by the office of economic
44 development, with such reports to be delivered to the city council;

1 (d) To recommend annual goals, objectives and policies to inform
2 budget priorities for expenditures to be made from the permanent funds, prior
3 to the submission of such priorities by the executive director of the office of
4 economic development to the mayor and the city council as part of the city's
5 annual budget process.

6
7 ~~(d)~~ (e) To recommend to the executive director on an ongoing basis:

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

10 (2) Metrics to be tracked in order to monitor the success of the
11 expenditures from the ~~permanent funds in achieving the purposes of~~
12 ~~the fund~~; funds in achieving their intended purposes;

13 (3) Community engagement strategies, including no less than one
14 public hearing annually.

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

17 (5) Methods to leverage and maximize expenditures from the
18 permanent funds.

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

22
23
24 **Sec. 27-165. Staffing and administrative support.**

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

27 **Division 4. Sunset Provision**

28
29 **Sec. 27-170. Repealer.** This Article V shall be repealed effective December
30 31, 2026.
31
32

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

3
4 **Sec. 2-32. - Definitions.**

5
6 (2) Public body:

7
8 (ddd) The affordable housing permanent funds advisory committee.

9
10
11 ~~**Section 3.** That paragraph (b)(1) and subsection (e) of section 20-26, D.R.M.C., shall~~
12 ~~**be amended by adding the language underlined, to read as follows:**~~

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

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

16 ~~**(1) Affected funds** means the general fund, the human service~~
17 ~~**fund, the police pension fund, the fire pension fund, for which a**~~
18 ~~**millage rate has been itemized in the annual certification of city**~~
19 ~~**and county property taxes, offset by temporary property tax**~~
20 ~~**credits or rate reductions between tax years 1996 and 2011 in**~~
21 ~~**order to comply with the constitutional property tax revenue**~~
22 ~~**limitation; and the affordable housing property tax revenue fund,**~~

23 ~~**(e) Use of restored property tax revenues.** Restored property tax revenues~~
24 ~~**shall be expended exclusively for the following purposes, with the allocation of**~~
25 ~~**revenue between and among these purposes to be determined on a year to year**~~
26 ~~**basis as a part of the annual budget and appropriation process: public safety,**~~
27 ~~**services for children, street maintenance, parks and recreation, libraries, and other**~~
28 ~~**essential city services; payments to low-income elderly and disabled persons as**~~
29 ~~**provided in section 53-498; and business incentive programs to retain and attract**~~
30 ~~**businesses to Denver. For 2016 property taxes to be collected in 2017, the city's**~~
31 ~~**certification of levies in support of the affected funds shall include a separate**~~
32 ~~**itemized levy at the rate of one-half of one mill (.5 mill) for the purpose of funding**~~
33 ~~**affordable housing programs through the affordable housing property tax fund. For**~~

1 ~~2017 taxes to be collected in 2018, and in each subsequent, the city shall continue~~
2 ~~to maintain a separately itemized levy to fund affordable housing programs and, as~~
3 ~~provided in subsection (d)(2) of this section, shall adjust the levy annually in~~
4 ~~coordination with the adjustment of the levies for the other affected funds to the~~
5 ~~extent necessary to comply with the city property tax revenue limitation, until such~~
6 ~~time as the credited mills are entirely eliminated.~~

7
8 **Section 3.** That section 27-104, D.R.M.C. concerning the applicability of the city ordinance
9 commonly known as the “inclusionary housing ordinance” or “IHO” shall be amended by deleting
10 the language stricken and adding the language underlined in subsection (a), and adding a new
11 subsection (c), to read as follow:

12
13 **Sec. 27-104. - Applicable development.**

14
15 (a) This article is applicable to all applicants who, prior to January 1, 2017:

16
17 (1) Submit for approval or extension of approval a development plan, rezoning, or
18 site review, or seek a building permit which provides or will provide for the
19 construction or development of a total of thirty (30) or more for sale dwelling units at
20 one location in one or more subdivisions, parts of subdivisions, or stages of
21 development; or

22
23 (2) With respect to all real property in zones not subject to subdivision approval or
24 site plan review, apply for a general zoning approval for the construction of a total of
25 thirty (30) or more for sale dwelling units at one location.

26
27 (c) Any application for any approval as set forth in subsection (a) of this section
28 submitted on or after January 1, 2017 shall not be subject to the requirements of this
29 article. However, this article shall continue to govern MPDU plans associated with
30 applications for approvals submitted prior to January 1, 2017.

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

5
6 **Sec. 27-113. - Voluntary opportunities for developers of less than thirty (30)**
7 **dwelling units.**

8
9 ~~Any~~ Prior to January 1, 2017, any person, firm, partnership, association, joint
10 venture, corporation, or any other entity or combination of entities, or affiliated entities
11 and any transferee of all or part of the real property at one location, which after this
12 article takes effect develops less than thirty (30) new for sale dwelling units at one
13 location in Denver may request the incentives described in sections 27-107 and 27-
14 108 by voluntarily making application to the OED and meeting the requirements of
15 this article. Such entities shall be considered "applicants" for all purposes of this
16 article. Effective January 1, 2017, OED shall no longer accept voluntary applications
17 for incentives under this section.

18
19
20 **Section 5.** That section 27-114, D.R.M.C. concerning certain incentives offered under the
21 city ordinance commonly known as the “inclusionary housing ordinance” or “IHO” shall be
22 amended by deleting the language stricken and adding the language underlined in subsection (a)
23 and adding a new subsection (g), to read as follows:

24
25 **27-114. - Voluntary opportunities for developers of rental dwelling units.**

26
27 (a) ~~For~~ Prior to January 1, 2017, for new developments of rental dwelling
28 units, a rental applicant may request the incentives described in this chapter by
29 voluntarily making application to the OED and submitting for approval a written
30 MPDU plan which meets the requirements of section 27-106 and which provides that
31 at least ten (10) percent of the units will be made available to households earning no
32 more than sixty-five (65) percent of AMI, adjusted by household size. Such entities
33 shall be considered "applicants" for all purposes of this article. A high cost structure
34 may provide MPDUs for households earning no more than eighty (80) percent of

1 AMI. Incentives shall not be available for rental units provided in lieu of affordable for
2 sale units provided under [sub]section subsection 27-106 (b). A rental applicant may
3 request the enhanced standard incentive of an additional five thousand dollars
4 (\$5,000.00) per rental MPDU unit made available to households earning no more
5 than fifty (50) percent of AMI, adjusted by household size. The specific incentives
6 requested shall be set forth in the MPDU plan. Rents shall be limited and the formula
7 for determining allowed rent shall be set forth in rules and regulations.

8
9 (g) Effective January 1, 2015, OED shall no longer accept voluntary applications for
10 incentives under this section.

11
12
13 **Section 6.** That subsection 27-119 (a), D.R.M.C. concerning the applicability of the city
14 ordinance commonly known as the “inclusionary housing ordinance” or “IHO” shall be amended by
15 adding the language underlined, to read as follow:

16
17 **Sec. 27-119. - Applicability.**

18
19 (a) This article applies to all applicants and housing units developed by
20 applicants, where an application for approval of a site plan, development plan, or
21 submission to the development review committee is requested after August 12, 2002
22 and prior to January 1, 2017. The amendments to this article apply to all applicants
23 and housing units developed by applicants, where any application for approval of a
24 site plan, development plan, or submission to the development review committee is
25 requested on or after December 1, 2014 and prior to January 1, 2017. Any
26 application for any approval set forth in this subsection submitted on or after January
27 1, 2017 shall not be subject to the requirements of this article. However, this article
28 shall continue to govern MPDU plans associated with applications for approvals
29 submitted prior to January 1, 2017.

30
31 **Section 7. Establishment of Affordable Housing Permanent Funds.**

32 A. There is hereby established in the Community Development Special Revenue Fund,
33 Fund Number 16000, an Affordable Housing Property Tax Revenue Fund, Accounting No. 16606,

1 for the purpose of receiving and expending certain tax revenue and revenue from other sources to
2 promote the provision of affordable housing in accordance with the laws of the city. Revenues
3 derived from the component of the city's property taxes dedicated to affordable housing, as
4 provided in Section 20-26, D.R.M.C., including any such revenues transferred from the TABOR
5 excess revenue fund, Fund No. 19000, shall be deposited into the Treasury of the City and
6 credited to the Affordable Housing Property Tax Fund.

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

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

16 C. Expenditures are hereby authorized for the Affordable Housing Permanent Funds in an
17 amount not to exceed the total of deposits described in subsections (A) and (B) of this section, to
18 be expended by the Executive Director of the Office of Economic Development for the purposes
19 set forth in the governing law for each fund. Notwithstanding any other provision of the charter or
20 ordinances of the city, expenditures from the Affordable Housing Permanent Funds shall be
21 subject to annual appropriation by the city council.

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

25

26 **Section 8. Effective Date.**

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

29 2. The provisions of this ordinance imposing an affordable housing linkage fee
30 shall become effective January 1, 2017; provided, however, that the fee shall not apply to
31 any applicant for a building permit who has, prior to close of business on Friday, December
32 30, 2016, submitted to the Department of Community Planning and Development either a

1 site development concept plan or a building permit application with associated permit
2 drawings and paid all applicable plan review fees, and the department has logged-in such
3 submissions for review by the department. An applicant for a building permit for residential
4 construction who has submitted only a residential zoning plan prior to January 1, 2017, shall
5 not be exempt from payment of linkage fees under this ordinance on and after January 1,
6 2017.

7
8 COMMITTEE APPROVAL DATE: August 24, 2016.

9 MAYOR-COUNCIL DATE: August 30, 2016.

10 PASSED BY THE COUNCIL _____

11 _____ - PRESIDENT

12 APPROVED: _____ - MAYOR _____

13 ATTEST: _____ - CLERK AND RECORDER,
14 EX-OFFICIO CLERK OF THE
15 CITY AND COUNTY OF DENVER
16

17 NOTICE PUBLISHED IN THE DAILY JOURNAL _____; _____

18

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

20

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

25

26 Denver City Attorney

27

28 BY:  _____, Assistant City Attorney DATE: _____

29

30

31