

1 **BY AUTHORITY**

2 ORDINANCE NO. _____
3 SERIES OF 2013

COUNCIL BILL NO. CB13-0375
COMMITTEE OF REFERENCE:
Business, Workforce & Sustainability

6 **A BILL**

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

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

12 **WHEREAS**, since that time it has appeared that certain changes would enable the program
13 established thereunder to operate more effectively and to take the opportunity to make minor
14 typographic corrections.

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

17 **Section 1.** That Chapter 27-102, "Declaration of public policy", of the Revised Municipal
18 Code is hereby amended by deleting the language stricken as follows:

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

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

- 21 (a) Implement the comprehensive plan goal of providing for a full range of housing
- 22 choices, conveniently located in a suitable living environment, for all incomes, ages and family
- 23 sizes;
- 24 (b) Increase the availability of additional low and moderate income housing to address
- 25 existing and anticipated future housing needs in Denver;
- 26 (c) Assure that moderately priced housing is dispersed throughout Denver consistent
- 27 with the Comprehensive Plan;
- 28 (d) Encourage the construction of moderately priced housing by offering incentives;
- 29 (e) Require that all development of thirty (30) or more detached for sale single family
- 30 dwelling units and all for sale attached or multi-family projects of thirty (30) or more units include a
- 31 minimum number of moderately priced units;
- 32 (f) Allow developers of residential units in qualified projects flexibility to meet the broad
- 33 objectives of the policies set forth herein by allowing a developer, under specified circumstances,
- 34 to comply with this article by contributing to a special revenue fund;
- 35 (g) Assure that provision of moderately priced housing does not diminish existing
- 36 resources which have previously been devoted to development of low and very low income
- 37 housing in neighborhoods designated by the city as "focus neighborhoods"; and
- 38 (h) Direct any amounts in the special revenue fund in excess of all obligations remaining
- 39 for the next fiscal year to provide affordable housing in ~~such focus neighborhoods.~~

1 **Section 2.** That Chapter 27-103, "Definitions", of the Revised Municipal Code is hereby
2 amended by adding the language underlined and deleting the language stricken as follows:

3 **Section 27-103. Definitions.**

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

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

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

12 (c) ~~*Appraised value* means an appraised valuation made by a certified residential real~~
13 ~~estate appraiser.~~

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

15 (1) The properties are contiguous at any point;

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

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

21 (ed) *Available for development* means all real property:

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

23 (2) Zoned for residential development; and

24 (3) Which will use public water and sewerage.

25 (fe) *Comprehensive plan* means the Denver Comprehensive Plan 2000.

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

29 (hg) *Control period* means the time an MPDU is subject to restrictions to insure the long-
30 term affordability of the MPDU. The control period is fifteen (15) years and begins on the date of
31 initial sale as defined herein.

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

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

37 (k) ~~*DHND* means the City and County of Denver Division of Housing and Neighborhood~~
38 ~~Development.~~

39 (lj) *Director* means the director of ~~DHND~~ OED or director's designee.

40 (mk) ~~*Dwelling unit* has the same meaning as defined at D.R.M.C. chapter 59~~ means one
41 or more habitable rooms constituting a unit for permanent occupancy, having but one kitchen
42 together with facilities for sleeping and bathing, and which unit occupies a structure or portion of a
43 structure, but does not include hotels or other lodging accommodation, hospitals, tents, or similar
44 structures providing transient or temporary accommodation.

45 (nl) *Eligible household* means a household whose income qualifies the household to
46 participate in the MPDU program, and who holds a valid verification of eligibility from ~~DHND~~ OED
47 which entitles the household to buy an MPDU. To be qualified to participate in the MPDU program
48 as an eligible household at initial sale, the household must be able to demonstrate that its total

1 household income will allow it to pay the mortgage or rent on the unit and the household must earn
2 no more than eighty (80) percent of AMI or if the MPDU is in which buildings are greater than three
3 (3) stories, elevators are provided, and over sixty (60) percent of the parking is structured, no more
4 than ninety-five (95) percent of AMI. To be qualified to participate in the MPDU program as an
5 eligible household on a resale during the control period, the household must be able to
6 demonstrate that its total household income will allow it to pay the mortgage or rent on the unit and
7 the household must earn no more than the amount set forth in a schedule of eligibility provided by
8 OED, which schedule may not under any circumstances exceed one hundred (100) percent of
9 AMI. All nonprofit organizations designated by the director, governmental or quasi-governmental
10 bodies who purchase MPDUs for the purpose of sale or rental under any government city
11 approved program designed to assist the construction or occupancy of housing for families of low
12 or moderate income are deemed "eligible households" for the purposes of this article.

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

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

17 (eo) *Household* means:

18 (1) A single person;

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

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

29 (ep) *HUD* means the U.S. Department of Housing and Urban Development.

30 (eq) *Initial sale* means the sale by an applicant to an eligible household.

31 (er) *Low and moderate income* means the level of income as defined by the AMI, as
32 adjusted for household size, within the income range for low and moderate income established
33 from time to time by HUD for the Denver metropolitan area, under federal law.

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

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

41 (eu) *MPDU or moderately priced dwelling unit* means a dwelling unit which:

42 (1) Is offered to eligible households under the terms of this article and is priced at
43 initial sale to be affordable to households earning no more than eighty (80) percent of AMI,
44 adjusted for household size. For developments in which buildings are greater than three (3)
45 stories, elevators are provided, and over sixty (60) percent of the parking is structured, the
46 unit shall be priced at initial sale to be affordable to households earning no more than
47 ninety-five (95) percent of AMI, adjusted for household size; or

48 (2) Will not meet the requirements of this article but which has been determined
49 under section 27-119 to be eligible for the incentives set forth in sections 27-107 and 27-108
50 and which contain, by virtue of the contractual commitment described in article 27-119 (d),

1 the following characteristics with respect to the affordable dwelling units:

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

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

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

21 (D) An enforcement mechanism during the control period to ensure long
22 term affordability to eligible households

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

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

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

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

32 (aaz) *Parking reduction* means a reduction of up to twenty (20) percent in the parking
33 spaces required by the applicable zoning.

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

37 (~~ebb~~) *Special revenue fund* means a fund established by the director for use for affordable
38 housing purposes. Community Development Block Grant (CDBG) and HOME moneys may never
39 be deposited into this fund. All incentive payments must be paid only from the special revenue
40 fund. The director shall adopt procedures in the rules and regulations to determine whether there is
41 adequate funding of the special revenue fund for the subsequent fiscal year and estimated
42 incentive payments for the subsequent fiscal year. Amounts in the special revenue fund exceeding
43 adequate funding for the subsequent fiscal year may be expended to hire administration staff for
44 affordable housing purposes or to purchase or create affordable housing ~~solely in neighborhoods~~
45 ~~or census tracts where a majority of residents earn eighty (80) percent or less of AMI.~~

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

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

4 (~~ffee~~) *Verified or verification* means that a household has been determined to be eligible to
5 occupy an MPDU under this article.
6

7 **Section 3.** That Chapter 27-105, "MPDU requirements ", of the Revised Municipal Code
8 is hereby amended by adding the language underlined and deleting the language stricken as
9 follows:

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

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

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

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

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

29 (e) In calculating the number of MPDUs to be created, rounding shall be used such that
30 five-tenths (.5) or greater shall result in requiring that a whole unit shall be produced. For example,
31 ten (10) percent of thirty-three (33) units calculates to three and three-tenths (3.3) units, which
32 would require three (3) whole units to be MPDUs, but ten (10) percent of thirty-five (35) units
33 calculates to three and five-tenths (3.5) units, which would require four (4) whole units to be
34 MPDUs. Cash in lieu for a unit required to be an MPDU solely as a result of rounding up may be
35 offered in the affordable housing plan at the rate of fifty (50) percent of the established amount
36 under 27-106 (b)(1)(~~BC~~) for a cash in lieu payment.
37

38 **Section 4.** That Chapter 27-106, "Plan to build MPDUs; alternatives", of the Revised
39 Municipal Code is hereby amended by adding the language underlined and deleting the language
40 stricken as follows:

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

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

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

3 (b) Alternatives.

4 (1) In lieu of building the required number of MPDUs, the director may approve an
5 alternative in the MPDU plan to:

6 (A) Build more MPDUs at one (1) or more other sites in the same or an
7 adjoining statistical neighborhood as defined and approved by the director; or

8 (B) Build more MPDUs at one (1) or more other sites within five-tenths (.5)
9 miles of a light rail or commuter rail station and approved by the director; or

10 (C) Contribute to the special revenue fund an amount equal to fifty (50)
11 percent of the price per MPDU not provided but required under section 27-105. The
12 contribution amount shall be calculated at the prices set forth on the then current
13 table provided by OED DHND under section 27-105 for the maximum sale prices
14 without homeowners' association fees. This amount may be adjusted by the director
15 on an annual basis ~~and may be adjusted by CPI-U or~~ using a formula set forth in the
16 rules and regulations promulgated under this article.

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

19
20 **Section 5.** That Chapter 27-108, "Supplemental incentives", of the Revised Municipal
21 Code is hereby amended by adding the language underlined and deleting the language stricken as
22 follows:

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

24 (a) Applicants will, upon request in the plan as set forth in section 27-106(a), ~~(8)~~ receive a
25 density bonus, a parking reduction, and expedited processing as supplemental incentives set forth
26 under the terms of this section, pursuant to the procedures set forth in the zoning code and in rules
27 and regulations. The supplemental incentives requested shall be set forth in the applicant's MPDU
28 plan. The MPDU plan under 27-106 shall reflect how the applicant will meet the additional MPDU
29 requirements for any supplemental incentives.

30 (b) Density bonus.

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

34 (c) Parking reduction.

35 ~~—(1) Except for existing PUDs, reduced parking requirements of up to twenty~~
36 ~~(20) percent of the spaces required by the applicable zoning will be granted as reflected at Chapter~~
37 ~~59 of the D.R.M.C. or the City zoning code. sections 59-239, 59-249, 59-316, 59-332, 59-450,~~
38 ~~and 59-586.~~

39 (d) Expedited processing.

40 (1) ~~Community planning and development (CPD) Development Services~~ shall
41 provide a development review check list to applicants, upon request.

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

1 (3) To provide notice to ~~CPD~~Development Services, in addition to a request for
2 expedited processing in the MPDU plan under 27-106, applicants shall file a written request
3 for expedited processing with submission of the completed application for site development
4 plan review.
5

6 **Section 6.** That Chapter 27-109, "Eligibility standards", of the Revised Municipal Code is
7 hereby amended by adding the language underlined and deleting the language stricken as follows:

8 **Section 27-109. Eligibility standards.**

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

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

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

25 (d) The director shall adopt regulations for approving eligibility and for approving the sale
26 or rental of MPDUs to eligible households.
27

28 **Section 7.** That Chapter 27-110, "Initial offering of MPDUs ", of the Revised Municipal
29 Code is hereby amended by adding the language underlined and deleting the language stricken as
30 follows:

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

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

37 (b) Initial sale to eligible households.

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

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

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

44 (4) An applicant shall not sell any unit without first obtaining a verification of
45 eligibility issued by ~~DHND~~ OED from the buyer.
46

1 **Section 8.** That Chapter 27-111, "Covenants", of the Revised Municipal Code is hereby
2 amended by adding the language underlined and deleting the language stricken as follows:

3 **Sec. 27-111. Covenants.**

4 (a) The applicant shall execute and pay the recording fees for OED ~~DHND~~ to record with
5 the clerk and recorder for the City and County of Denver a completed covenant on the MPDU
6 property, which shall comply with the provisions in the rules and regulations promulgated
7 hereunder. Partnerships, associations or corporations shall not evade this article through voluntary
8 dissolution.

9 (b) The covenants shall at a minimum contain the information that the property value and
10 that use and resale are restricted and shall set forth the control period, the maximum purchase
11 price calculation, the eligibility requirements, penalties for violation, and any other restriction
12 provided herein or in the rules and regulations adopted hereunder. The covenants shall also
13 include provisions which govern the first resale within ten (10) years after the end of the control
14 period ("final MPDU sale") as set forth in 27-112

15 (c) The director may waive the covenant restrictions on the resale prices for MPDUs if
16 the director finds that the restrictions conflict with regulations of federal or state housing programs
17 and thus prevent eligible households from buying dwelling units under the MPDU program. Any
18 waiver shall be in writing and signed by the director, shall reference the recorded covenant, and
19 shall be recorded in the records of the clerk and recorder for the City and County of Denver,
20 Colorado.

21 (d) At the time of conveyance, all grantors of MPDUs shall require the grantee to execute
22 a memorandum of acceptance which states that the conveyed property is a MPDU and is subject
23 to the restrictions contained in the covenants required under this article during the control period.

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

27
28 **Section 9.** That Chapter 27-112, "Final MPDU sale", of the Revised Municipal Code is
29 hereby amended by adding the language underlined and deleting the language stricken as follows:

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

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

43 (b) *Final MPDU payment.* In return for the benefits received by the owner in being able
44 to purchase the MPDU, the owner shall upon the final MPDU sale pay to the city's affordable
45 housing special revenue fund an amount equal to the following calculation:
46 One-half (1/2) of the excess of the total resale price over the sum of:

47 (i) The prior purchase price (prior maximum purchase price);

- 1 (ii) A percentage of the MPDU's prior purchase price equal to the increase in the
2 cost of living since the MPDU was last sold, as determined by the Consumer Price Index;
3 (iii) The fair market value of documented capital improvements made to the MPDU
4 between the date of the last sale and the date of resale; and
5 (iv) A reasonable sales commission.
6 (iv) In the event that the amount remaining after the calculation of items (i)--(iv)
7 above, is less than twenty thousand dollars (\$20,000.00) the amount which shall be due to
8 the special revenue fund shall be adjusted in each case so that the owner/seller will retain
9 ten thousand dollars (\$10,000.00) or the entire amount, of the excess of the final MPDU
10 sales price, which ever is less. This section does not apply to any designated non-profit
11 corporation or organization, or any governmental entity, or any quasi-governmental entity which
12 owns an MPDU.
13

14 **Section 10.** That Chapter 27-113, "Voluntary opportunities for developers of less than thirty
15 (30) dwelling units", of the Revised Municipal Code is hereby amended by adding the language
16 underlined and deleting the language stricken as follows:

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

18 Any person, firm, partnership, association, joint venture, corporation, or any other entity or
19 combination of entities, or affiliated entities and any transferee of all or part of the real property at
20 one location, which after this article takes effect develops less than thirty (30) new for sale-dwelling
21 units at one location in Denver may request the incentives described in sections 27-107 and 27-
22 108 by voluntarily making application to the OED ~~DHND~~ and meeting the requirements of this
23 article. Such entities shall be considered "applicants" for all purposes of this article.
24

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

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

29 (a) For new developments of rental dwelling units, a rental applicant may request the
30 incentives described in sections 27-107 and 27-108 by voluntarily making application to the ~~DHND~~
31 OED and submitting for approval a written MPDU plan which meets the requirements of section
32 27-106 and which provides that at least ten (10) percent of the units will be made available to
33 households earning no more than sixty-five (65) percent of AMI, adjusted by household size, with a
34 rent not exceeding thirty (30) percent of sixty-five (65) percent of AMI, less a utility allowance as
35 calculated by HUD. A development in which the building is more than three stories, elevators are
36 provided, and over sixty (60) percent of the parking is structured, may provide MPDUs for
37 households earning no more than eighty (80) percent of AMI, with a rent not exceeding thirty (30)
38 percent of eighty (80) percent of AMI. A rental applicant may request the enhanced standard
39 incentive of ten thousand dollars (\$10,000.00) by providing a rental MPDU unit available to
40 households earning no more than fifty (50) percent of AMI, adjusted by household size, with a rent
41 not exceeding thirty (30) percent of fifty (50) percent of AMI, less a utility allowance as calculated
42 by HUD. The specific incentives requested shall be set forth in the MPDU plan.

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

- 45 (1) *Control period* means the time period an MPDU is subject to maximum rental
46 rate requirements set forth in this section. The control period is fifteen (15) years and begins

1 on the date of initial rental as defined herein. If an individual rental MPDU is offered for
2 sale during the control period, the unit shall be treated as a resale MPDU for purposes
3 of pricing and eligibility.

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

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

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

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

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

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

27 (c) Eligibility standards. To be eligible to rent an MPDU, households must be earning no
28 more than sixty-five (65) percent of AMI adjusted for household size, less a utility allowance as
29 calculated by HUD, or no more than eighty (80) percent of AMI for developments in which buildings
30 are greater than three (3) stories, elevators are provided, and over sixty (60) percent of the parking
31 is structured. Eligibility standards shall be based on the HUD AMI calculation. ~~DHND~~ OED shall
32 provide an eligibility application form and may adopt rules and regulations for verification and
33 leasing consistent with those provided under section 27-109. Eligibility shall be determined as of
34 the date a lease is initially signed by the parties.

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

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

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

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

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

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

9 (h) Offering of rental MPDUs.

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

15 (2) Rental to eligible households.

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

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

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

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

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

26
27 **Section 12.** That Chapter 27-115, "Foreclosure", of the Revised Municipal Code is hereby
28 amended by adding the language underlined and deleting the language stricken as follows:

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

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

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

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

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

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

46 (b) OED ~~DHND~~ shall maintain a list of all MPDUs constructed, sold or rented under this
47 article.

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

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

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

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

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

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

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

25
26 **Section 14.** That Chapter 27-117, “Administrative review and appeal”, of the Revised
27 Municipal Code is hereby amended by adding the language underlined and deleting the language
28 stricken as follows:

29 **Sec. 27-117. Administrative review and appeal.**

30 (a) Any persons aggrieved by a denial, suspension or revocation of a building or
31 occupancy permit or denial, suspension or revocation of approval of a preliminary plan of
32 subdivision, development plan, or site plan may appeal to the official, agency, board, agency or
33 other entity designated by law to hear such appeal.

34 (b) Any person aggrieved by a final administrative action or decision of OED ~~DHND~~
35 under this article may appeal by the procedure described in D.R.M.C. section 56-106 with the
36 director of the office of economic development to serve as the designated official in the stead of
37 the manager of public works.

38
39 **Section 15.** That Chapter 27-120, “Evaluation of article”, of the Revised Municipal Code is
40 hereby amended by adding the language underlined and deleting the language stricken as follows:

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

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

46 (b) *Evaluation.* Every twelve (12) months, OED ~~DHND~~ shall prepare a written report of
47 OED's ~~DHND's~~ workforce housing activities and assess its progress toward the goals of this

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

6 (1) Testimony from OED DHND, including a written report of OED's DHND's
7 affordable housing activities;

8 (2) Testimony from the other appropriate city officials on how the city is meeting
9 its responsibilities as to:

10 (A) Ensure compliance with the affordable housing ordinance by applicants
11 and subsequent owners of MPDUs;

12 (B) Monitor availability of affordable housing produced under the terms of
13 this article;

14 (C) Evaluate the continued level of the need for housing in the affordable
15 categories; and

16 (D) Evaluate market factors: and

17 (3) Testimony from the community as a whole, including the development
18 community and the housing community.
19

1 COMMITTEE APPROVAL DATE: June 5, 2013
2 MAYOR-COUNCIL DATE: (by Consent) June 11, 2013
3 PASSED BY THE COUNCIL: _____, 2013
4 _____ - PRESIDENT
5 APPROVED: _____ - MAYOR _____, 2013
6 ATTEST: _____ - CLERK AND RECORDER,
7 EX-OFFICIO CLERK OF THE
8 CITY AND COUNTY OF DENVER

9 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2013; _____, 2013

10 PREPARED BY: Laurie J. Heydman, Assistant City Attorney DATE: June 13, 2013

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

15
16 Douglas J. Friednash, City Attorney,
17

18 BY: _____, Assistant City Attorney DATE: _____, 2013