

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2018

COUNCIL BILL NO. CB18-xxxx
COMMITTEE OF REFERENCE:
[fill in]

A BILL

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

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

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

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

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

WHEREAS, height incentives would allow the city to support appropriate and desired growth patterns (including building form standards) and mixed income housing opportunities

1 associated with greater density and height and encourage access to high capacity public transit as
2 part of a regional rail and bus transit system, thereby providing Denver citizens the opportunity to
3 live and work near transit while minimizing or mitigating undesirable consequences and
4 externalities.

5
6 **NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF**
7 **DENVER:**

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

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

11 **Division 1. General**

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

13 (a) *Dedicated revenues.* The Incentive Fee Fund is created for the exclusive
14 purpose of receiving and accounting for all revenues derived from the incentive height
15 linkage fees provided in this article VI.

16 (b) *Permitted uses of revenue in the incentive fee fund.* Revenue received in the
17 Incentive Fee Fund shall be used exclusively for the following purposes:

- 18 (1) For the production or preservation of rental housing, including the funding of
19 rental assistance programs, for qualified households earning eighty (80) percent or
20 less of AMI.
- 21 (2) For the production or preservation of for-sale housing for qualified
22 households earning one hundred (100) percent or less of AMI.
- 23 (3) For homebuyer assistance programs for qualified households earning one
24 hundred and twenty (120) percent or less of AMI, including by way of example
25 down payment and mortgage assistance programs.
- 26 (4) For the development of permanent supportive housing for homeless persons,
27 and for supportive services associated with such housing; provided, however, in no
28 event shall the amount expended from the Incentive Fee Fund for supportive
29 services under this paragraph (4) exceed ten (10) percent of the amount of revenue
30 received in the fund for the that year.

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

6 (c) *Cap on administrative costs.* Monies in the Incentive Fee Fund may be
7 expended to pay the costs incurred by the city associated directly with the administration of
8 this fund; provided, however, in no event shall the amount expended from the Incentive Fee
9 Fund for such administrative expenses in any year exceed eight (8) percent of the amount
10 of revenue received in this fund in that year.

11 (d) *Fund earnings.* Any interest on any balance in the Incentive Fee Fund shall
12 accrue to this fund.

13 (e) *Administration of fund.* The Incentive Fee Fund shall be administered by the
14 executive director of the office of economic development, or its successor city agency or
15 department.

16 **Sec. 27-181 Regulations**

17 The director may, from time to time, adopt rules and regulations necessary to
18 administer this article, including the procedures and requirements for expenditures from the
19 Incentive Fee Fund.

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

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

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

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

29 (c) *Mixed-use residential structure* means a structure containing both residential and

1 non-residential uses, and the gross floor area of all residential uses are greater than or
2 equal to fifty percent of the total gross floor area of the structure.

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

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

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

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

14 15 **Division 2. Height Incentives**

16 **Sec. 27-183. Intent.**

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

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

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

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

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

28 (b) *Community benefits agreement* means an agreement entered into between an

1 applicant and the city, and administered by the office of economic development, that allows
2 an applicant to provide community serving uses for a portion of a proposed structure in
3 place of payment of any applicable incentive height linkage fees. A community benefits
4 agreement shall not substitute for payment of the total structure linkage fee. The office of
5 economic development, in consultation with community planning and development and
6 considering demonstrated community needs and priorities in the surrounding
7 neighborhood(s), and the value of commensurate linkage fee savings and benefits, shall
8 determine applicable community serving uses for each community benefits agreement. The
9 community benefits agreement shall be executed by the city and the applicant using the
10 city's standard contract process, and prior to approval of a site development plan or
11 issuance of building permits. The community benefits agreement shall include, but is not
12 limited to the following: benefitting tenant use; rent-reduction rate; time period; collateral;
13 and default remedies such as re-leasing or recapture of any obtained incentive height
14 linkage fee savings.

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

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

30 (e) *Incentive height linkage fee* means the amount of linkage fee required for the portion
31 of a structure above the base height, which shall equal the product of the amount of

1 applicable linkage fee using the formulas in Sec. 27-153, D.R.M.C. for the incentive height
2 area only, and the specific incentive overlay multiplier in the table below. For example, if the
3 formula in 27-153, D.R.M.C. requires \$10,000 based on the gross floor area of the incentive
4 height, and the multiplier for that specific incentive overlay district is ten, then the Incentive
5 Height Linkage Fee for that structure in that specific incentive overlay district would equal
6 \$100,000. Incentive height linkage fees are provided in addition to the total structure linkage
7 fee.

8 **Sec. 27-185. Specific Increased Linkage Fee and Build Alternative Unit Requirements**

9 In order to take advantage of incentive heights, projects shall provide the increased linkage
10 fee or build alternative unit amounts, as applicable, based on the table below:

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

11
12 **Sec. 27-186. Repealer.**

13 The provisions of this division 2 shall cease to apply if Article V, Chapter 27, D.R.M.C. is
14 repealed.

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

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

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

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

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

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

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

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

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

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

21 **[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**
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1 COMMITTEE APPROVAL DATE: [fill in]

2 MAYOR-COUNCIL DATE: [fill in]

3 PASSED BY THE COUNCIL _____

4 _____ - PRESIDENT

5 APPROVED: _____ - MAYOR _____

6 ATTEST: _____ - CLERK AND RECORDER,
7 EX-OFFICIO CLERK OF THE
8 CITY AND COUNTY OF DENVER
9

10 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, ; _____,

11 PREPARED BY: Adam C. Hernandez, Assistant City Attorney DATE: [fill in]

12 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
13 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
14 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to
15 §3.2.6 of the Charter.
16

17 Kristin M. Bronson, City Attorney

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19 BY: _____, Assistant City Attorney Date: _____, 2018