

1 **BY AUTHORITY**

2 ORDINANCE NO.
3 SERIES OF 2021

COUNCIL BILL NO. CB21-0636
COMMITTEE OF REFERENCE:
4 Land Use, Transportation & Infrastructure

5 **A BILL**

6 **For an ordinance amending Article VI of Chapter 27 (Housing) of the Revised**
7 **Municipal Code relating to incentives for affordable housing to implement**
8 **incentive requirements for the Downtown-Golden Triangle zone district.**

9
10 **BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

11 **Section 1.** That Section 27-180(a), D.R.M.C. is amended by adding the language
12 underlined in subsection (a) to read as follows:

13 **Sec. 27-180. – Incentive fee fund.**

14 (a) The affordable housing incentive fee fund is created for the exclusive
15 purpose of receiving and accounting for all revenues derived from the incentive height
16 fees and other incentive fees provided in this article VI.

17 **Section 2.** That section 27-182, D.R.M.C. is amended by deleting the language stricken
18 and adding the language underlined to read as follows:

19 **Sec. 27-182. – General definitions.**

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

23 (a) *AMI* means the area median income, adjusted for household size, for the
24 Denver 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
27 residential and non-residential uses, and the gross floor area of all residential uses are
28 less than fifty (50) percent of the total gross floor area of the structure.

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

1 residential and non-residential uses, and the gross floor area of all residential uses are
2 greater than or equal to fifty (50) percent of the total gross floor area of the structure.

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

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

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

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

14 **Section 3.** That the title to Division 2, chapter 27, D.R.M.C. is amended by adding the
15 language underlined to read as follows:

16 **DIVISION 2. – HEIGHT AND FLOOR AREA RATIO INCENTIVES**

17 **Section 4.** That section 27-183, D.R.M.C. is amended by deleting the language stricken
18 and adding the language underlined in subsection (a) to read as follows:

19 **Sec. 27-183. – Intent.**

20 (a) The Denver Zoning Code has established certain underlying zone districts
21 and incentive overlay districts to allow a structure to exceed its base height or base floor
22 area ratio in exchange for payment of increased incentive ~~height~~ fees, construction of
23 additional affordable units, or provision of other benefits to the city, in excess of standard
24 requirements, in compliance with the affordable housing requirements set forth below.

25 **Section 5.** That section 27-184, D.R.M.C. is amended by deleting the language stricken
26 and adding the language underlined as follows:

1 **Sec. 27-184. – Additional definitions.**

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

3 (a) Base floor area ratio (FAR) has the same meaning as the term is defined in
4 Article 13 of the Denver Zoning Code.

5 (b) *Base height* shall have the same meaning as the term is defined in Article
6 13 of the Denver Zoning Code.

7 (b c) *Community serving use agreement* means an agreement entered into
8 between an applicant and the city, and administered by the Denver economic
9 development & opportunity agency, that allows an applicant to provide community serving
10 uses for a portion of a proposed structure in place of payment of any applicable incentive
11 height fees. A community serving use agreement shall not substitute for payment of the
12 total structure linkage fee. The Denver economic development & opportunity agency, in
13 consultation with community planning and development and considering demonstrated
14 community needs and priorities in the surrounding neighborhood(s), and the value of
15 commensurate incentive height fee savings and benefits, shall determine applicable
16 community serving uses for each community serving use agreement. The community
17 serving use agreement shall be executed by the city and the applicant using the city's
18 standard contract process, and prior to approval of a site development plan or issuance
19 of building permits. The community serving use agreement shall include, but is not limited
20 to the following: benefitting tenant use; rent-reduction rate; time period; collateral; and
21 default remedies such as re-leasing or recapture of any obtained incentive height fee
22 savings.

23 (d) Incentive floor area ratio (FAR) has the same meaning as the term is
24 defined in Article 13 of the Denver Zoning Code.

25 (e e) *Incentive height* shall have the same meaning as the term is defined in
26 article 13 of the Denver Zoning Code.

27 (f f) *Incentive height build alternative unit(s)* means the number of build
28 alternative units required for the portion of a structure above the base height, which shall
29 equal the product of the amount of applicable build alternative units using the formulas in

1 section 27-155, D.R.M.C. for the incentive height area only, and the specific incentive
2 overlay multiplier in the table below. For example, if the formula in 27-155, D.R.M.C.
3 requires two (2) build alternative units based on the gross floor area located above the
4 base height, and the multiplier is ten (10), then the incentive height build alternative units
5 would equal twenty (20) units. ~~Unless and until any rules and regulations have been~~
6 ~~adopted specific to this article VI, incentive height build alternative units shall be approved~~
7 ~~in accordance with the department of housing stability's affordable housing permanent~~
8 ~~funds ordinance administrative rules and regulations; however, in~~ In no event will the
9 approved number of incentive height build alternative units result in zero (0) units.
10 Incentive height build alternative units are provided in addition to total structure build
11 alternative units.

12 (e g) *Incentive height fee* means the amount of incentive fee required for the
13 portion of a structure above the base height, which shall equal the product of the amount
14 of applicable linkage fee using the formulas in section 27-153, D.R.M.C. for the incentive
15 height area only, and the specific incentive height multiplier in the table below. For
16 example, if the formula in 27-153, D.R.M.C. requires ten thousand dollars (\$10,000.00)
17 based on the gross floor area of the incentive height, and the multiplier for that specific
18 incentive overlay district is ten (10), then the incentive height fee for that structure in that
19 specific incentive overlay district would equal one hundred thousand dollars
20 (\$100,000.00). Incentive height fees are provided in addition to the total structure linkage
21 fee.

22 (f j) *Large or phased project* means any combination of residential, mixed-use
23 residential, non-residential, and mixed-use non-residential structures that are built as part
24 of a development with one (1) or more of the following features:

- 25 (1) The development will be built on five (5) or more acres;
- 26 (2) The development will include five hundred (500) or more residential units;
- 27 (3) The development will occur in more than one (1) phase; or
- 28 (4) The development will use one (1) or more city-approved financing tools,
29 such as tax increment financing or a metropolitan district.

1 (e~~h~~) *Underlying zone district* shall have the same meaning as the term is defined
2 in Article 13 of the Denver Zoning Code.

3 (i) *Zone lot* shall have the same meaning as the term is defined in Article 13 of
4 the Denver Zoning Code, and as administered in Division 1.2 of the Denver Zoning Code.

5 **Section 6.** That section 27-186, D.R.M.C. is amended by deleting the language stricken and
6 adding the language underlined to read as follows:

7 **Sec. 27-186. – Effect of repeal of build alternative and linkage fee provisions of article**
8 **V, chapter 27, D.R.M.C.**

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

17 **Section 7.** That Article VI, Chapter 27, D.R.M.C. is amended by the addition of a new
18 subsection 27-188.5 to read as follows:

19 **Sec. 27-188.5. – Incentive FAR requirements for the Downtown Golden Triangle (D-**
20 **GT) district.**

21 (a) *Primarily residential zone lot.* A zone lot that will contain fifty percent or more
22 of its gross floor area from new construction as primary residential uses must comply with
23 the following requirements in order to build within the allowed incentive FAR:

24 (1) An applicant for a building permit on a zone lot must provide the following
25 quantities of affordable housing units:

26 a. Total structure build alternative units for all new structures and
27 additions on the zone lot; and

1 b. Except as specifically allowed in subsection (d) below, an incentive
2 amount of affordable housing units required for gross floor area within the
3 incentive FAR of the zone lot only using the formulas in Sec. 27-155,
4 D.R.M.C., multiplied by four.

5 c. In calculating the units above, the fractional amounts of the units will
6 be added together, and then rounded so that five-tenths or greater will result
7 in requiring that a whole unit must be produced.

8 (2) The affordable housing units required in this subsection (a) must meet all
9 the requirements for build alternative units set forth in Art. V, Ch. 27, D.R.M.C. and
10 adopted rules implementing Art. V, Ch. 27, D.R.M.C.; provided, however, that
11 affordable housing units required as part of a development providing rental housing
12 must be restricted to households earning sixty (60) percent or less of AMI.

13 (3) The units required in subsection (1) above may be located in a new
14 structure constructed on the zone lot, or in a new structure at an off-site location
15 anywhere with a zone district designation of D-GT, regardless of whether that
16 location is within a quarter-mile of the subject property. The executive director of
17 the department of housing stability may reject a proposal for off-site build
18 alternative units for any reason.

19 (4) A zone lot proposing to use incentive FAR under this subsection (a) must
20 provide the units in subsection (1); payment of fees described in subsection (b)
21 below is not allowed.

22 (b) *Primarily non-residential zone lot.* A zone lot that will contain less than fifty
23 percent of its gross floor area from new construction as primary residential uses may
24 comply with either subsection (a) above, or the following requirements in order to build
25 within the allowed incentive FAR:

26 (1) An applicant for a building permit on the zone lot must provide the following
27 amount of fees:

28 a. Payment of the required total structure linkage fee for all new
29 structures and additions on the zone lot; and

1 b. Except as specifically allowed in subsection (d) below, an incentive
2 payment based on the linkage fee required for the gross floor area within
3 the incentive FAR only using the formulas in section 27-153, D.R.M.C.,
4 multiplied by four.

5 (c) *Determination of incentive floor area ratio.* When development on a zone lot
6 proposes a single structure or single addition to an existing structure, the gross floor area
7 for the incentive FAR will be determined from the uppermost portion of the structure or
8 addition. When development on a zone lot proposes multiple new structures, multiple
9 new additions to existing structures, or a combination of new structures and new additions
10 to existing structures, the gross floor area for the incentive FAR will be determined using
11 a proportion of the gross floor area of the uppermost portion of the structures or additions.
12 This proportion is determined by the amount of overall FAR contributed by each new
13 structure or new addition to the total FAR of new structures or new additions on a zone
14 lot.

15 (d) *Alternative requirements.* A zone lot may choose to comply with alternative
16 requirements for the portion of a zone lot exceeding 12:1 floor area ratio instead of
17 providing the required number of affordable housing units required in subsection (a)(1)(b)
18 or the incentive payment required in subsection (b)(1)(b) for the portion of the zone lot
19 exceeding 12:1 floor area ratio; however, the zone lot must provide the required number
20 of affordable housing units or amount of incentive payment for the portion of the zone lot
21 that exceeds the base FAR up to and including 12:1 floor area ratio. The alternative
22 requirements are located in article 8 of the Denver Zoning Code for the Downtown-Golden
23 Triangle zone district.

24 **REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

1 COMMITTEE APPROVAL DATE: June 8, 2021
2 MAYOR-COUNCIL DATE: June 15, 2021
3 PASSED BY THE COUNCIL: _____ July 19, 2021
4 *Steve Filmore* - PRESIDENT
5 APPROVED: _____ - MAYOR _____
6 ATTEST: _____ - CLERK AND RECORDER,
7 EX-OFFICIO CLERK OF THE
8 CITY AND COUNTY OF DENVER
9 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____ ; _____
10 PREPARED BY: Adam C. Hernandez, Assistant City Attorney DATE: July 8, 2021
11 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of
12 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
13 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to §
14 3.2.6 of the Charter.
15
16 Kristin M. Bronson, Denver City Attorney
17
18 BY: *Jonathan Griffin* , Assistant City Attorney DATE: Jul 8, 2021