

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2016

COUNCIL BILL NO. 16-0626
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 to be effective October 1, 2017, and dedicating a portion of the city’s existing property tax revenue capacity to the funding of affordable housing programs beginning with 2017 property taxes to be collected in 2018.

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

1 construction of more expensive units, both in the for-sale and rental markets; and

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

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

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

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

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

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

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

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

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

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

6 WHEREAS, the Mayor and the City Council have determined to allocate, beginning for
7 2017 property taxes to be collected in 2018 and continuing in future years, a portion of the city’s
8 lawful property tax revenue capacity for affordable housing programs in accordance with the
9 provisions of this ordinance; and

10 WHEREAS, the Mayor and the City Council expressly intend that a portion of dedicated tax
11 revenue for affordable housing shall be devoted to developing more permanent assistive housing
12 for residents of the city who are currently homeless and in the most desperate need of support and
13 assistance from the city.
14

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31

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

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

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

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

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

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

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

10
11
12 **Division 2. Linkage fees**

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

14 The city council has determined that Denver is experiencing an
15 unprecedented escalation in housing costs, and thus a critical lack of housing
16 opportunities for households with low or moderate incomes. In recent years, Denver
17 has ranked at or near the top of national reports of U.S. cities in terms of inflation in
18 housing costs. The declining availability of low and moderately priced housing in
19 Denver forces persons employed in the city to either spend a disproportionate
20 percentage of their disposable income on housing, thus sacrificing other necessities
21 of life, or forces them to seek housing opportunities outside the city. The
22 extraordinary housing cost increases in Denver are driven, in part, by the pace of
23 population and job growth in the city, resulting in a situation where demand for
24 housing has far outpaced supply, especially for persons who may find jobs in
25 Denver’s growing economy but are employed at low or moderate income levels.

26 The city council has determined that it is in the public interest to address the
27 severe social and economic impacts to the city and its citizens caused by the
28 increasing gap between supply and demand for housing by funding programs
29 designed to preserve and increase the supply of affordable housing available to low
30 and moderate income households. The city council specifically finds that it is

1 appropriate to fund a portion of the costs of such programs from a linkage fee on
2 new development for the following reasons:

3 (a) New residential and non-residential development is demonstrably associated
4 with the generation of new jobs at various income levels, with the number of jobs
5 associated with any particular development being correlated with the type and size of
6 the development.

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

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

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

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

29 (f) The city council further acknowledges that the revenue derived from the fees
30 provided herein must be used, not to address the existing gap between supply and
31 demand for affordable housing in the city, but instead to mitigate future increases in

1 the gap caused by new construction which will lead to new employment opportunities
2 in the city, and the increased demand for affordable housing associated with such
3 employment.

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

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

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

18
19 **Sec. 27-152. Definitions.**

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

- 22 a. *Dwelling, single unit; dwelling, two-unit; and dwelling, multi-unit* shall have the
23 same meaning as these terms are used in Article XI of the Denver Zoning
24 Code.
- 25 b. *Gross floor area* shall have the same meaning as the term is defined in Article
26 XIII of the Denver Zoning Code, excluding garages and any other structures or
27 areas used for the storage or parking of vehicles.
- 28 c. *Primary agricultural uses* shall have the same meaning as the term is used in
29 Article XI of the Denver Zoning Code.

- 1 d. *Primary civic, public and institutional uses* shall have the same meaning as
2 the term is used in Article XI of the Denver Zoning Code.
- 3 e. *Primary commercial sales, services and repair uses* shall have the same
4 meaning as the term is used in Article XI of the Denver Zoning Code.
- 5 f. *Primary industrial, manufacturing and wholesale uses* shall have the same
6 meaning as the term is used in Article XI of the Denver Zoning Code.
- 7 g. *Primary residential use* shall have the same meaning as the term is defined in
8 Article XI of the Denver Zoning Code, and shall be deemed to include any and
9 all primary residential uses and all uses accessory to a primary residential
10 uses, except accessory dwelling units, as set forth in Article XI of the Denver
11 Zoning Code
- 12 h. *Structure* shall have the same meaning as the term is defined in Article XIII of
13 the Denver Zoning Code, but shall not include any partially enclosed or open
14 structures such as porches, balconies, courtyards, and similar structures.

15

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

17 (a) *In general.* Effective October 1, 2017, and except as provided in
18 section 27-154, an affordable housing linkage fee shall be imposed prior to the
19 issuance of a building permit for any new structure or for any addition to an existing
20 structure that increases the gross floor area of the existing structure, according to the
21 following fee schedule:

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

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

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

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

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

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

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

23 (1) On July 1, 2018 and on each July 1 thereafter, the fees set forth
24 in subsection (a) of this section shall be adjusted in an amount
25 equal to the percentage change from the previous year in the CPI-
26 U. The adjustments will be reflected in a fee schedule issued by the
27 executive director (manager) of the department of community
28 planning and development and made publicly available in advance
29 of the fees becoming effective. The annual inflation adjustment
30 shall apply to and be collected in conjunction with the issuance of
31 any building permit on or after July of the year in which the

1 adjustment is made, regardless of when the application for the
2 building permit was made.

3 (2) As used in this subsection (d), the term “CPI-U” means the
4 United States Department of Labor Statistics (Bureau of Labor
5 Statistics) Consumer Price Index for All Urban Consumers, All
6 items, for the Denver-Boulder-Greeley, Colorado metropolitan area
7 (1982-84-100). In the event that the CPI-U is substantially changed,
8 re-named, or abandoned by the United States Government, then in
9 its place shall be substituted the index established by the United
10 States Government that most closely resembles the CPI-U.

11 (3) Except as provided in paragraph (1) of this section the fees set
12 forth in this section shall not be increased prior to January 1, 2022.
13 On and after January 1, 2022, the fees set forth in this section shall
14 not be increased in excess of the inflation adjustments set forth in
15 paragraph (2) unless and until the city commissions another study
16 to evaluate whether the fee increase will affect the economic
17 feasibility of any type of development to which the fee increase is
18 proposed to be applied.

19
20 **Sec. 27-154. Exceptions.**

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

23 (a) Construction upon any property which is, alone or in combination with
24 other properties, the subject of a preexisting contractual commitment or covenant
25 enforceable by the city to construct affordable housing, including by way of example
26 any development or subdivision agreement which includes an affordable housing
27 covenant and to which the city is a party, or any city-approved plan to build
28 moderately priced development units (MPDU’s) under Article IV of this Chapter 27.
29 The exception provided by this subsection (a) shall apply only for so long the
30 preexisting contractual commitment or covenant to construct affordable housing
31 remains in existence. Construction upon property that, alone or in combination with

1 other properties, was originally developed under such a contractual commitment or
2 covenant and is subsequently proposed for redevelopment shall be subject to
3 payment of linkage fees hereunder unless the redevelopment is governed by a new
4 contractual commitment or covenant to construct affordable housing, or otherwise
5 qualifies for an exception under any other provision of this section.

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

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

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

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

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

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

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

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

3
4 **Sec. 27-155. Build alternative.**

5 (a) As an alternative to the linkage fee requirement set forth in section 27-
6 153, an applicant for a building permit for any structure subject to the requirements
7 of this Division 2 may elect to build or cause to be built affordable housing units on
8 the subject property or within a one-quarter mile radius of the subject property, with
9 the required number of affordable housing units to be determined by the following
10 formulas:

11 (1) Structures containing multi-unit dwellings:

12 $(\text{Gross square feet of structure} / 1000) \times .0168 = \text{number of units}$

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

15 $(\text{Gross square feet of structure} / 1000) \times .0054 = \text{number of units}$

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

18 $(\text{Gross square feet of structure} / 1000) \times .0228 = \text{number of units}$

19 (4) Developments consisting of 50 or more single-unit dwellings or two-unit
20 dwellings: number of affordable housing units shall equal two percent
21 (2%) of the total number of housing units in the development.

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

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

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

17
18 **Sec. 27-156. Collection and remittance of linkage fees.**

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

29 (b) If, after the issuance of a building permit and collection of the
30 applicable linkage fees but before the issuance of a certificate of occupancy, the
31 amount of gross square footage of the construction project increases or a decision is
32 made by the applicant to change the use of the structure to a use category for which

1 a higher linkage fee would be imposed under section 27-153, then the applicant shall
2 be required to pay additional linkage fees in compliance with this division.

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

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

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

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

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

29
30 **Sec. 27-157. Reductions and Waivers.**

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

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

20
21 **Division 3. Affordable housing advisory committee**

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

23 There is hereby created an affordable housing advisory committee. The committee
24 shall consist of eleven (11) members as follows:

25 (a) Executive director of the mayor's office of housing and opportunities for people
26 everywhere (H&OPE).

27 (b) The following five (5) members appointed by the mayor and confirmed by the city
28 council:

29 (1) Housing finance expert.

30 (2) Representative of a major employer.

- 1 (3) Representative of the private-sector, commercial real estate industry.
- 2 (4) Representative of the private-sector, market rate multi-family real
- 3 estate industry.
- 4 (5) At-large community member.

5 (c) The following five (5) members appointed by the city council:

- 6 (1) Two (2) members of the city council.
- 7 (2) For-profit affordable housing developer.
- 8 (3) Non-profit affordable housing developer.
- 9 (4) At-large community member

10

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

12 (a) The appointed members of the committee shall serve for a period of three (3)

13 years, with terms to be staggered by initially appointing one-third of the appointed

14 members for three-year terms, another third for two years, and the remaining third for

15 one year. Initial terms shall be set by the appointing authority.

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

17

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

19 Any vacancy in any appointed position of the committee shall be promptly filled

20 by the appropriate appointing authority to serve the remainder of the unexpired term of

21 the member who vacated the position.

22

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

24 The members of the committee shall serve without compensation; provided,

25 however, that members may be reimbursed for reasonable expenses incurred in

26 performance of their duties pursuant to the rules and regulations of the city for such

27 reimbursement.

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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 and the city council in regard to the planning and implementation of city programs and services to preserve and increase the supply of affordable housing in the city, The specific powers and duties of the committee shall be:

(a) To recommend goals, objectives and policies to inform the adoption of 3-5 year strategic plans for the permanent funds established in Division 1 of this Article V, including but not limited to:

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

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

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

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

11
12 (b) To recommend goals, objectives and policies to inform budget priorities for
13 expenditures to be made from the permanent funds established in Division 1 of this
14 Article V prior to the submission of such priorities by the executive director to the mayor
15 and the city council as part of the city's annual budget process.

16 (c) To review semi-annual and annual performance and outlook reports
17 regarding past and potential future uses of revenue in the permanent funds established
18 by Division 1 of this Article V, as shall be submitted by the executive director to the
19 committee.

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

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

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

26 (3) Community engagement strategies;

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

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

1 (e) To conduct an independent study of the city's overall affordable
2 housing needs and then then to formulate and recommend for the approval of
3 the city council by October 1, 2017 a comprehensive affordable housing plan that
4 will govern all future expenditures by the city from all other sources of revenue to
5 promote or preserve affordable housing. The plan shall include, at a minimum,
6 the following elements:

7 (1) Identification of all sources of revenue for housing programs over
8 and above revenues dedicated to the permanent funds, including but not
9 limited to social impact bond revenue, CDBG funds, other city-
10 administered federal funds, other city funding, grant funding, and tax
11 increment funding through the Denver Urban Renewal Authority.

12 (2) Establishment of measurable goals for each category of revenue,
13 separately and in combination where applicable.

14 (3) A requirement for an annual action plan within the overall
15 comprehensive affordable housing plan to prioritize and allocate all
16 housing revenues based on current conditions tied to specific targets,
17 flexible to adjustment based upon predetermined periodic reviews and
18 assessment.

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

22 (5) A requirement for annual progress reports evaluating
23 implementation of housing expenditures and compliance with the
24 affordable housing plan by the office of economic development, with such
25 reports to be delivered to the affordable housing advisory committee and
26 the city council.

27 (6) A requirement for independent review and updating of the
28 comprehensive plan every three to five years, or at such other interval as
29 may be recommended by the affordable housing advisory committee and
30 agreed to by the city council.

1 (7) A requirement that no affordable housing funds shall be expended
2 except in furtherance of the goals set forth in the plan.

3 (f) To study and make recommendations regarding measures to
4 provide property tax relief to low and moderate income households, particularly
5 lower income households in neighborhoods experiencing the greatest impacts
6 from gentrification and involuntary displacement due to rapidly increasing
7 housing costs, including by way of example proposals to increase the scope and
8 eligibility for the type of property tax refunds provided by Article XI of Chapter 53
9 of the code.

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11
12 **Sec. 27-165. Staffing and administrative support.**

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

15
16
17 **Section 2.** That section 2-32, D.R.M.C. concerning Open Meetings shall be amended by
18 adding a new paragraph (2)(ddd), to read as follows:

19
20 **Sec. 2-32. - Definitions.**

21
22 (2) Public body:

23
24 (ddd) The affordable housing permanent funds advisory committee.

25
26
27 **Section 3.** That paragraph (b)(1) and subsection (e) of section 20-26, D.R.M.C., shall be
28 amended by adding the language underlined, to read as follows:

29
30 **Sec. 20-26. Constitutional revenue limitations.**

31 (b) *Definitions.* As used in this section, the following terms have the meanings

1 herein set forth:

2 (1) *Affected funds* means the general fund, the human service fund,
3 the police pension fund, the fire pension fund, for which a millage rate
4 has been itemized in the annual certification of city and county
5 property taxes, offset by temporary property tax credits or rate
6 reductions between tax years 1996 and 2011 in order to comply with
7 the constitutional property tax revenue limitation; and the affordable
8 housing property tax revenue fund.

9 (e) *Use of restored property tax revenues*. Restored property tax revenues shall
10 be expended exclusively for the following purposes, with the allocation of revenue
11 between and among these purposes to be determined on a year to year basis as a part of
12 the annual budget and appropriation process: public safety, services for children, street
13 maintenance, parks and recreation, libraries, and other essential city services; payments
14 to low-income elderly and disabled persons as provided in section 53-498; and business
15 incentive programs to retain and attract businesses to Denver. For 2017 property taxes to
16 be collected in 2018, the city's certification of levies in support of the affected funds shall
17 include a separate itemized levy at the rate of one-half of one mill (.5 mill) for the purpose
18 of funding affordable housing programs through the affordable housing property tax fund.
19 For 2018 taxes to be collected in 2019, and in each subsequent, the city shall continue to
20 maintain a separately itemized levy to fund affordable housing programs and, as provided
21 in subsection (d)(2) of this section, shall adjust the levy annually in coordination with the
22 adjustment of the levies for the other affected funds to the extent necessary to comply
23 with the city property tax revenue limitation, until such time as the credited mills are
24 entirely eliminated.

25
26 **Section 4. Establishment of Affordable Housing Permanent Funds.**

27 A. There is hereby established in the Community Development Special Revenue Fund,
28 Fund Number 16000, an Affordable Housing Property Tax Revenue Fund, Accounting No. 16606,
29 for the purpose of receiving and expending certain tax revenue and revenue from other sources to
30 promote the provision of affordable housing in accordance with the laws of the city. Revenues
31 derived from the component of the city's property taxes dedicated to affordable housing, as

1 provided in Section 20-26, D.R.M.C., including any such revenues transferred from the TABOR
2 excess revenue fund, Fund No. 19000, shall be deposited into the Treasury of the City and
3 credited to the Affordable Housing Property Tax Fund.

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

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

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

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

22

23 **Section 5. Effective Date.**

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

26 2. The provisions of this ordinance imposing an affordable housing linkage fee
27 shall become effective October 1, 2017; provided, however, that the fee shall not apply to
28 any applicant for a building permit who has, prior to close of business on Friday, September
29 29, 2017 submitted to the Department of Community Planning and Development either a
30 site development concept plan or a building permit application with associated permit
31 drawings and paid all applicable plan review fees, and the department has logged-in such
32 submissions for review by the department. An applicant for a building permit for residential

1 construction who has submitted only a residential zoning plan prior to October 1, 2017, shall
2 not be exempt from payment of linkage fees under this ordinance on and after October 1,
3 2017.

4
5 COMMITTEE APPROVAL DATE: August 24, 2016.

6 MAYOR-COUNCIL DATE: August 30, 2016.

7 PASSED BY THE COUNCIL _____

8 _____ - PRESIDENT

9 APPROVED: _____ - MAYOR _____

10 ATTEST: _____ - CLERK AND RECORDER,
11 EX-OFFICIO CLERK OF THE
12 CITY AND COUNTY OF DENVER
13

14 NOTICE PUBLISHED IN THE DAILY JOURNAL _____; _____

15
16 PREPARED BY: David W. Broadwell, Asst. City Attorney; DATE: September 8, 2016

17
18 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the
19 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
20 ordinance. The proposed ordinance **is not** submitted to the City Council for approval pursuant to §
21 3.2.6 of the Charter.
22

23 Denver City Attorney

24
25 BY: _____, Assistant City Attorney DATE: _____

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