



OTTEN JOHNSON ALERT

Denver City Council Passes Expanding Housing Affordability Ordinance and Related Changes to Zoning Code

June 2022 • [Cory Rutz](#)

On Monday night, Denver’s City Council passed a series of amendments to the municipal and zoning codes known as the “Expanding Housing Affordability” proposal. As covered in our [February 2022](#) and [November 2021](#) alerts, the proposal is the first in the state to take advantage of [recent state legislation](#) that superseded a prior Colorado Supreme Court decision prohibiting local governments from requiring rental housing developers to provide affordable units in new projects.

Since the version of the proposal unveiled in February, the requirements for both the number of units and level of affordability have increased following input from City Council and the Land Use and Transportation Infrastructure committee. Final affordability requirements, as well as updated linkage fees for non-residential development, are available in [Denver’s two-page summary of the proposal](#).

For on-site compliance, developers are provided with two options: the first (“Option 1”) treats the area median income (AMI) threshold as a minimum for all required affordable units, while the second (“Option 2”) calculates the AMI threshold as an “effective average” of all affordable units on site. The final requirements vary depending on whether the project is located within a “high market area” or a “typical market area,” and while Denver has not formally set those boundaries yet, the distinction generally defers to land value relative to the rest of the city. The ordinance also allows for

developers to pay a fee-in-lieu of building affordable units, the amount of which ranges from \$250,000 per required affordable unit (under Option 1) for small rental developments in typical market areas to \$478,000 per required affordable unit (under Option 1) for for-sale developments in high market areas. The approved proposal also leaves the door open for negotiated agreements for alternative compliance, such as fewer affordable units at a greater depth of affordability. For example, a proposed seven-story project consisting of 100 rental units in a “typical” market area could choose to comply with the new requirements in any of the following ways:

- Constructing eight affordable units restricted to 60% AMI;
- Constructing 12 affordable units, of which six are restricted to 50% AMI and the other six are restricted to 90% AMI (or any other allocation that averages 70% AMI);
- Paying a fee-in-lieu of \$2,000,000 (eight required affordable units times \$250,000 per unit); or
- Negotiating an alternative agreement, for example to provide five affordable units restricted to 40% AMI, subject to the approval of City staff.

Bundled with the Expanding Housing Affordability proposal are several changes to the zoning code itself aimed at further encouraging the construction of affordable units by offering various types of incentives to provide “enhanced” compliance with the new structure. Like the baseline standard, the requirements for “enhanced” compliance vary depending on the location and type of residential construction, but generally require providing an additional two to three percent of affordable units at the current AMI level:

	High Market Areas		Typical Market Areas	
	Option 1	Option 2	Option 1	Option 2
Rental Housing Requirement	10% of units 60% AMI	15% of units 70% AMI	8% of units 60% AMI	12% of units 70% AMI
Rental Housing Enhanced Compliance	12% of units 60% AMI	18% of units 70% AMI	10% of units 60% AMI	15% of units 70% AMI
For Sale Housing Requirement	10% of units 80% AMI	15% of units 90% AMI	8% of units 80% AMI	12% of units 90% AMI
For Sale Housing Enhanced Compliance	12% of units 80% AMI	18% of units 90% AMI	10% of units 80% AMI	15% of units 90% AMI

In the Suburban, Urban Edge, Urban, General Urban, and Urban Center contexts, incentives generally allow for an additional story of building height in a three-story district, two stories in a five-story district, four stories in eight- and twelve-story districts, and ten stories in twenty-story districts, for projects that provide “enhanced” onsite compliance (or, for nonresidential buildings, payment of two times the currently applicable linkage fee). A similar incentive structure applies in certain Industrial Mixed-Use districts as well.

Perhaps more notably, floor area ratio (FAR) premiums in many of the Downtown

contexts have been revised as well. For example, in the Downtown Core district, which applies to much of downtown Denver, FAR premiums that formerly granted significant density bonuses for construction of market rate residential units have been eliminated, along with density bonuses for ground floor retail uses. These bonuses have been replaced with new premiums granted only for construction of “enhanced” affordable units (or, for nonresidential buildings, payment of two times the currently applicable linkage fee). A similar premium structure will apply in the zone districts applicable to the Golden Triangle and Arapahoe Square, although of those two, only the Arapahoe Square zone districts previously awarded bonuses for market rate residential units. While the overall cap on density will not change as a result of the Expanding Housing Affordability Act, developers will find those caps more difficult to reach without providing some measure of “enhanced” affordability.

Projects that provide “enhanced” affordability that are located proximate to public transit will be fully exempt from the City’s minimum parking requirements under the new regime, while those less proximate to transit will be eligible for reduced parking minimums.

Throughout the process, the proposal, and the approved ordinance, has included deadlines for projects to continue under the prior regulations—*i.e.*, to be exempt from the approved proposal. For most commercial developments, projects must have submitted a concept plan by June 30, 2022, and have a final site development plan approved by August 30, 2023, although for projects subject to large development review or subdivision requirements, that later date is extended to December 31, 2023. The deadlines applicable to single and two-unit residential projects are shorter, with permits approved and issued by December 30, 2022.

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