



OTTEN JOHNSON ALERT

Denver Releases Updated Proposal for Affordable Housing Mandate

February 2022 • [Alexandra Haggarty](#)

As we reported in our [November 2021 Client Alert](#), the City and County of Denver is in the process of evaluating its existing affordable housing requirements applicable to new development through a process the city calls its “Expanding Housing Affordability Project.” Through the project, the city has prepared amendments to the sections of the Denver Zoning Code and Denver Revised Municipal Code that set forth affordable housing requirements applicable to new development. In early February, the city released an update to its comprehensive policy report and further released draft code amendments that are anticipated to be adopted by the city council later this spring. As expected, the draft code amendments include requirements for new rental and for-sale residential development projects to provide a certain number of units as income-restricted units, or pay a steep fee in lieu of providing such units.

Below, we outline the most significant elements of the proposed policy approach and draft code amendments.

IRU Requirements

Under the draft policy and code amendments, non-exempt residential developments of ten or more units must include income-restricted units (IRUs), pay a fee-in-lieu of providing such units, or provide some other form of alternative compliance. The number of IRUs a new residential development must provide will depend on whether it

is in a “typical” or “high cost” market, the latter of which would initially include the Central Business District, Golden Triangle/Civic Center, Union Station, and Cherry Creek.

Developers will be provided with two options to meet IRU requirements through on-site construction. As more specifically laid out in the draft policy:

		Staff On-Site Build Recommendations	
		Typical-Cost Market Area	High-Cost Market Area
Option 1	Rental Units	8% of units maximum 60% AMI	10% of units maximum 60% AMI
	Ownership Units	8% of units maximum 80% AMI	10% of units up to 80% AMI
Option 2	Rental Units	12% of units averaging 70% AMI	15% of units averaging 70% AMI
	Ownership Units	12% of units averaging 90% AMI	15% of units averaging 90% AMI

Regardless of the option a developer chooses, restrictions must remain in place for 99 years.

Developers will also have the option to pay a fee in lieu of providing IRUs. These fees will range from \$250,000-\$478,000 per IRU, depending on whether the development provides rental or ownership units and is in a high cost or typical market area. Additionally, discretionary agreements that allow for greater flexibility, such as a land dedication or off-site development agreement, may be provided as an alternative to IRU construction.

Incentives

In addition to mandating the creation of affordable units in new projects, the city’s proposal would create incentives for the development of affordable housing above and beyond the base requirements of the code amendments. The draft policy and code amendments set forth two types of incentives: (1) base incentives that encourage the satisfaction of IRU requirements through on-site construction, and (2) enhanced incentives that encourage the construction of on-site IRUs beyond the minimum requirement.

Proposed base incentives include a permit fee reduction of \$6,500 to \$10,000 per IRU constructed and a parking reduction of 0.5 spaces per unit for all residential units constructed. Enhanced incentives include a height bonus in mixed-use and multi-unit zone districts that allow at least three stories, a parking exemption in transit-oriented areas, and permit review through a dedicated affordable housing review team (subject to staff availability).

Linkage Fees

Currently, Denver imposes a linkage fee on most new developments, although residential developments that provide IRUs are exempted from the linkage fee. The current linkage fee on multi-family residential projects is \$1.64 per square foot. Due to the imposition of IRU requirements discussed above, the draft policy and code amendments do not require linkage fees for residential developments of ten or more units. Similarly, the draft code amendments do not include provisions on a build alternative.

Under the draft code amendments, linkage fees will apply to most new commercial, industrial, and residential development under ten units and will increase annually over a three-year period. For example, the current linkage fee for industrial development is \$0.44 per square foot; effective July 1, 2022, it will be \$0.96 per square foot; effective July 1, 2023, it will be \$1.48 per square foot; and effective July 1, 2024, it will be \$2.00 per square foot. For commercial; office; and sales, service, and repair uses, fees will vary depending on whether the development is in a typical or high cost market.

Grace Period

To avoid applicability of updated requirements, a concept site development plan must be submitted by June 30, 2022, and a final SDP must be approved by August 30, 2023. For projects under residential review, a building permit must be submitted and all applicable plan review fees must be paid by June 30, 2022, and a building permit must be approved and issued by December 30, 2022.

Next Steps

The city is accepting comments on the proposed draft language through March 14, 2022 and is planning to release an updated proposal by the end of March. Public hearings before the Planning Board and City Council on the code amendments are expected to begin later this spring.

Although the foregoing is intended to serve as a general summary of the proposed code amendments, Otten Johnson is actively tracking the city's progress in developing the code amendments, and we will be happy to consult with clients interested in the specific impact of these code amendments on forthcoming projects.

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