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**AFFORDABLE HOUSING PERMANENT FUNDS ORDINANCE**

**ADMINISTRATIVE RULES AND REGULATIONS**

*Adopted July 7, 2017; Amended 18 Dec 2019*

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Adopted pursuant to Article V, Chapter 27 (Housing) of the Denver Revised Municipal Code (D.R.M.C.)

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## **SECTION 1: PURPOSE, DEFINITIONS AND RESPONSIBILITY**

### **I. PURPOSE**

The purpose of these rules and regulations is to set forth the procedures for administration and implementation of the Affordable Housing Permanent Funds Ordinance (“Housing Funds Ordinance”) codified at Article V, Chapter 27 (Housing) of the Denver Revised Municipal Code (“D.R.M.C.”). The rules are to be used for any new residential or commercial development under the linkage fee as defined in the Housing Funds Ordinance. The rules establish the responsibility for collection and administration of the housing linkage fee under the Housing Funds Ordinance between the benefited applicant or developer of a project subject to the requirements of the Housing Fund Ordinance (“Applicant/Developer”) and the City and County of Denver (the “City”).

The rules shall also be used as guiding principles for investments into housing development, preservation or programs under the Housing Funds Ordinance.

Recognizing that no set of regulations can anticipate every conceivable situation in which an ordinance may apply, it is anticipated that these rules may be amended or supplemented as needed. Further, these regulations are not intended to limit the administrative discretion of those persons implementing the Housing Funds Ordinance on subjects not covered herein. In some instances, these rules and regulations attempt to summarize portions of the Housing Funds Ordinance. In the event of a disagreement between these rules and regulations and the Housing Funds Ordinance, the Housing Funds Ordinance always controls.

Forms or Applications as required by these rules and regulations may be updated from time to time as needed by the Executive Director of the Office of Economic Development (“OED”) and the Executive Director of the Department Community Planning and Development (“CPD”), or any successor offices or departments. The most current version of each form or application shall be available on OED and CPD’s websites as applicable.

### **II. DEFINITIONS**

Any terms or phrases stated but not defined herein are implied from or deferred to the Housing Funds Ordinance. Terms or phrases specific to or introduced in this document are defined in this section and throughout these rules and regulations.

“Affordable housing project” for the purposes of these rules means development of a project designed to provide a dwelling, single unit; a dwelling, two-unit; or a dwelling, multi-unit for

households with earning below 80% of the Area Median Income. For purposes of these rules, an “affordable housing project” does not include portions of a development attributable to non-residential uses or structures built solely as market rate residential.

“Affordable housing programs” for the purpose of these rules means programs designed to preserve and increase the supply of affordable housing available to low and moderate income households.

“Build Alternative Plan (BAP)” for the purposes of these rules means a plan approved by the Executive Director of the Office of Economic Development outlining the number and type of units to be provided when an Applicant/Developer elects to build affordable housing units in lieu of payment of the linkage fee.

“Build Alternative For-Sale Units” for the purposes of these rules means an affordably priced unit constructed under the terms of the Housing Fund Ordinance and these rules and regulations that include the following,

- A. Price limitations on sales such that the units are affordable to those earning no more than eighty percent (80%) of Denver’s Area Median Income (AMI)
- B. A covenant period beyond the initial sale for a defined term of not less than sixty (60) years; and
- C. An enforcement mechanism during the covenant period to ensure long term affordability to eligible households;

“Build Alternative Rental Units” for the purposes of these rules means an affordably priced unit constructed under the terms of the Housing Fund Ordinance and these rules and regulations that include the following,

- A. Rent limitations such that the units are affordable to those earning no more than eighty percent (80%) of Denver’s Area Median Income (AMI)
- B. A covenant period beyond the initial sale for a defined term of not less than sixty (60) years; and
- C. An enforcement mechanism during the covenant period to ensure long term affordability to eligible households;

“Build Alternative Units” for the purpose of these rules means, collectively, Build Alternative Rental Units and Build Alternative For-Sale Units.

“Eligible household” for the purpose of these rules means a household whose income qualifies the household to purchase a Build Alternative For-Sale Unit or rent a Build Alternative Rental Unit,

and who holds a valid verification of eligibility from OED which entitles the household to buy or rent a Build Alternative Unit. To be qualified to purchase a Build Alternative For-Sale Unit as an eligible household, the household must be able to demonstrate that its total household income will allow it to pay the mortgage on a Build Alternative For-Sale Unit and the household must earn at least fifty (50) percent AMI and no more than eighty (80) percent of AMI.

“Perpetual Affordability” for the purpose of these rules means a period of at least 99 years in which Build Alternative Units are subject to affordability restrictions of the Housing Funds Ordinance through a covenant.

To assure households have sufficient assets to make the Build Alternative For-Sale Unit affordable to that household, OED may calculate the monthly mortgage principal, interest, taxes, insurance (PITI) and homeowners’ association dues of the Build Alternative For-Sale Unit and make sure that the payment shall not exceed 30% (or if determined appropriate by the Executive Director of the OED, a percentage currently published by the U.S. Department of Housing and Urban Development (HUD) or required by the Federal Housing Administration) of that household’s income.

To be qualified to rent a Build Alternative Rental Unit as an eligible household, the household must be able to demonstrate that, as of the date the lease is signed, its total household income will allow it to pay the rent under the formula provided by OED for the unit and the household must earn no more than eighty (80) percent of AMI. Eligibility standards shall be based on the HUD AMI calculation.

### **III. ASSIGNMENT OF AUTHORITY**

Under authority of the Housing Funds Ordinance, OED and CPD bear responsibility for the administration and implementation of the Housing Fund Ordinance. OED facilitates the development of viable urban neighborhoods by providing quality affordable housing, a suitable and enhanced living environment, and expanded economic opportunities for persons of low and moderate income. CPD facilitates building community through envisioning, enabling and ensuring a better Denver.

#### **A. Responsibility of Applicant/Developer**

The Applicant/Developer of any project determined to be subject to the provisions of the housing linkage fee under the Housing Fund Ordinance shall be responsible for providing current, complete, accurate and valid information regarding the development; and for

responding to additional inquiries determined by the Executive Director of CPD, the Executive Director of OED or other City department or agencies as appropriate to be necessary for making a determination of compliance and for implementing applicable provisions of the Housing Fund Ordinance. In addition to the application documents required by CPD and other City departments and agencies for site plan or building permit approval, the Applicant shall submit information sufficient to confirm applicability and calculation of the affordable housing linkage fee, and whether the Applicant/Developer is applying to the City for a waiver or reduction in the housing linkage fee or is exempt from the housing linkage fee.

In the event that an Applicant/developer elects to build units as an alternative to payment of the linkage fee for a rental development in accordance with the Housing Fund Ordinance and these rules and regulations, the Applicant/Developer of the property that includes Build Alternative Rental Units shall be responsible for verifying income of prospective tenants.

**B. Responsibility of Community Planning and Development**

CPD shall impose and collect the housing linkage fee prior to the issuance of a building permit for any new structure or addition to an existing structure that increases the gross floor area of the existing structure excluding parking. CPD is the point of initial contact for any Applicant/Developer seeking a site development plan review or building permit. CPD staff will provide initial information about the housing linkage fee, calculate the total linkage fee payment due at the time of building permit issuance, oversee the collection of the housing linkage fee, coordinate with OED to administer waivers, reductions or refunds of the linkage fee payment, and refer the Applicant/Developer to OED for further information and processing if the Applicant elects to build or cause to be built Build Alternative Units.

Instruments for calculation and collection of the housing linkage fee shall be developed and maintained by CPD. CPD is responsible for:

1. Updating the housing linkage fee annually beginning in July 2018 to reflect any percentage change from the previous year according to the Consumer Price Index for all Urban Consumers (CPI-U).
2. Approving an exception to the housing linkage fee if the Applicant/Developer is developing on a site with a preexisting obligation as a condition of zoning to provide affordable housing on the property.

3. Approving an exception to the housing linkage fee if the Applicant/Developer is a federal, state or local government or any department or agency thereof where the structure is intended to be used solely for a governmental or educational purpose.
4. Approving an exception to the housing linkage fee if the Applicant/Developer is replacing or reconstructing a structure due to involuntary demolition or involuntary destruction.
5. Approving an exception to the housing linkage fee if the Applicant/Developer is building an addition of four-hundred gross square feet or less to an existing structure containing a single-unit or two-unit dwelling.
6. Approving an exception to the housing linkage fee if the Applicant/Developer is building an accessory dwelling unit.
7. Approving a reduction in the housing linkage fee when authorized by OED.
8. Approving a refund of the housing linkage fee or assessing additional fees if the gross square footage or the proposed use(s) are changed following permit issuance but before the issuance of a certificate of occupancy or certificate of completion.
9. Approving an exception to the housing linkage fee if the Applicant/Developer submitted a concept site development plan or for building and zoning permits, as appropriate, on or prior to December 30, 2016.
10. Coordinating with OED when an exception to the housing linkage fee is requested due to an affordable housing plan, is an affordable housing project, a deed restricted residential project, a nonresidential project built by a nonprofit to provide housing services to the homeless, is requesting the build alternative, or is requesting a waiver of the fee or fee reduction for a non-residential project.
11. Approving an exception to the housing linkage fee if the project is not adding any additional square footage.

**C. Responsibility of Office of Economic Development**

OED shall coordinate with CPD staff to administer waiver, reductions or refunds of the linkage fee payment and oversee the development and approval of a Build Alternative Plan (BAP) when an Applicant/Developer elects to build or cause to be built Build Alternative Units. OED shall implement and oversee investments made under the Housing Funds Ordinance into housing development, preservation or programs. All instruments for implementation and investments under the Housing Funds Ordinance will be developed and maintained by OED in collaboration with other agencies. OED is responsible for:

1. Maintaining a Build Alternative Plan for the purpose of determining the number and type of units to be provided when an Applicant/Developer elects to build



- affordable housing units as an alternative to payment of the housing linkage fee.
2. Maintaining a Housing Linkage Fee Exception Form for the purpose of approving exceptions to the housing linkage fee as outlined in the Housing Funds Ordinance and these regulations. The Housing Linkage Fee Exception Form shall be provided to CPD along with the required documentation provided by the Applicant/Developer at the time of building plan review submittal.
  3. Maintaining a Housing Linkage Fee Reduction or Waiver Form for the purpose of approving reductions or waivers to the housing linkage fee as outlined in the Housing Funds Ordinance and these regulations. The Housing Linkage Fee Reduction or Waiver Form shall be provided to OED along with the required documentation provided by the Applicant/Developer at the time of building plan review submittal, and the request must be approved or denied prior to payment of building permits.
  4. Approving a Build Alternative Plan (BAP) when an Applicant/Developer elects to build affordable housing units as an alternative to payment of the housing linkage fee.
  5. Approving an exception to the housing linkage fee if the Applicant/Developer is constructing an affordable housing project with support of any combination of federal, state or local financial resources and that are restricted by law, contract, deed, covenant, or any other legally enforceable instrument to provide housing units only to income-qualified households.
  6. Approving an exception to the housing linkage fee if the Applicant/Developer is constructing residential dwelling units built by any charitable, religious, or other non-profit entity and the units are deed restricted to ensure the affordability of the dwelling unit to low and moderate income households.
  7. Approving an exception to the housing linkage fee if the Applicant/Developer is constructing a non-residential project built by any charitable, religious or other non-profit entity and that are primarily used to provide shelter, housing, housing assistance, or related services to low income households or persons experiencing homelessness.
  8. Approving a reduction or waiver of the housing linkage fee if the Applicant/Developer demonstrates that the required amount of fees exceeds the amount that would be needed to mitigate the actual demand for affordable housing created by the development.
  9. Overseeing investment into housing development, preservation and programs under the Housing Funds Ordinance.

10. Overseeing directly or through a partner, the application and income verification process to identify eligible households and individuals to occupy Build Alternative For-Sale Units, including but not limited to:
  - i. Taking applications from households and individuals to determine their eligibility for Build Alternative For-Sale Units;
  - ii. Issuing compliance letters or affidavits periodically to households occupying Build Alternative Units, and to rental property managers or owners to ensure compliance with the Housing Fund Ordinance and these rules and regulations;
  - iii. Maintaining a list of all Build Alternative Units built and tracking program inventory, including the dates ending the covenant period;
  - iv. Maintaining a list of approved home ownership counseling agencies in the Denver Metro area;
11. Working with the Affordable Housing Advisory Committee to develop materials for submission to City Council as required by the Housing Fund Ordinance.
12. Issue compliance letters or affidavits periodically to rental property managers or owners to ensure compliance with the Housing Fund Ordinance and these rules and regulations;

## **SECTION 2: ADMINISTRATION OF THE HOUSING LINKAGE FEE**

### **I. SUBMITTAL INFORMATION**

CPD staff shall provide the Applicant/Developer with information pertaining to mandatory compliance with the housing linkage fee under the Housing Fund Ordinance requirements. CPD will maintain a current list of the housing linkage fees to be updated annually to reflect any percentage change from the previous year according to the Consumer Price Index for all Urban Consumers (CPI-U).

At the time of building plan review submittal, the Applicant/Developer shall submit information sufficient to confirm applicability of the affordable housing linkage fee, and, as applicable, to calculate the affordable housing linkage fee and determine exceptions. The Applicant/Developer shall provide the following information:

- A. Project address;
- B. Project Type;
- C. Land use type:
  1. Single unit, two-unit or multi-unit dwelling designed and regulated under the

International Residential Code (IRC), or any primary residential use other than multi-unit dwelling designed and regulated under the International Building Code (IBC)

2. Multi-unit dwellings designed and regulated under the IBC
  3. Commercial sales, services and repair
  4. Civic, public or institutional
  5. Industrial, manufacturing and wholesale
  6. Agricultural
- D. If the project is a new structure, Applicant/Developer must provide the gross floor area of the project excluding any areas for parking by land use type;
- E. If the project is an addition to an existing structure, Applicant/Developer must provide the gross floor area of the addition to the existing structure excluding any areas for parking by land use type;
- F. Whether the project is requesting an exception from the affordable housing linkage fee; and
- G. Whether the project has received a waiver or reduction in linkage fees from OED.

CPD staff shall review and verify the required documentation provided by the Applicant/Developer in coordination with OED or other agencies as appropriate.

## **II. SUBMITTAL REQUIREMENTS FOR EXCEPTIONS TO THE HOUSING LINKAGE FEE**

An Applicant/Developer applying for an exception to the housing linkage fee shall provide documentation necessary to demonstrate that the project complies with one of the allowed exceptions, as outlined in the Housing Fund Ordinance. The allowable exceptions are restated below, with a description of the documentation required. Such documentation shall be submitted to CPD at the time of building plan review submittal.

- A. Construction on any property subject to a contractual commitment or covenant to construct affordable housing that is dated and properly recorded prior to the imposition of a linkage fee on the first structure on the property, including but not limited to any development with an approved Affordable Housing Plan to construct moderately priced development units (MPDU's) under Article IV of Chapter 27 of the D.R.M.C - An approved copy of the contractual commitment or covenant (such as the recorded affordable housing plan).
- B. Construction on any property subject to a preexisting obligation as a condition of zoning to provide affordable housing on the property - Provide the zoning ordinance number for the ordinance that contains this zoning obligation.

- C. Affordable housing projects that are constructed with the support of any combination of federal, state or local financial resources, including private activity bonds, tax credits, grants, loans, or other subsidies to incentivize the development of affordable housing, including but not limited to tax increment financing. Evidence of federal, state or local financing may be one of the following: (a) covenant or land use restriction agreement, (b) approved loan agreement with the City if a covenant or land use restriction is pending, (c) instrument of affordability, (d) U.S. Department of Housing and Urban Development (HUD) contract or similar, or (e) provide evidence that an affordable housing project is being developed by or on behalf of the Denver Housing Authority. Affordable housing projects seeking this exception from the housing linkage fee must provide affordable units at a number equal to or greater than the requirements of the build alternative as outlined in the Housing Fund Ordinance and these rules and regulations.
- D. Residential dwelling units that are built by any charitable, religious, or other non-profit entity and deed-restricted - Documentation of their 501(c)3 status and one of the following: (a) covenant or land use restriction agreement, (b) instrument of affordability, or (c) U.S. Department of Housing and Urban Development (HUD) contract or similar. Affordable housing projects seeking this exception from the housing linkage fee must provide affordable units at an AMI level and a number equal to or greater than the requirements of the build alternative as outlined in the Housing Fund Ordinance and these rules and regulations.
- E. Non-residential projects that are built by any charitable, religious or other non-profit entity and that are primarily used to provide, shelter, housing, housing assistance, or related services to low income households or persons experiencing homelessness - Documentation of their 501(c)3 status and a description of how their project will be used primarily to provide shelter, housing, housing assistance, or related services to low income households or persons experiencing homelessness.
- F. Construction by or on behalf of the federal, state or local government or any department or agency thereof so long as it will be used solely for a governmental or educational purpose - Proof of property ownership such as a deed or lease that documents ownership and/or use, and a description of the proposed project's use as solely for a governmental or educational purpose.
- G. A structure being reconstructed due to involuntary demolition or involuntary destruction, but which also includes involuntary man-made forces - An insurance report, report from Denver Fire, report from Denver Police or similar.
- H. An addition of four hundred gross square feet or less to an existing single-unit dwelling or two-unit dwelling - Floor plans that clearly outline an addition with square footage

information and dimensions, as well as evidence that the existing structure is only a single-unit or two-unit dwelling.

- I. An accessory dwelling unit (ADU) - Plans that clearly indicate what is shown is an accessory dwelling unit, as well as the status of the primary structure to ensure what is being built is not an additional primary structure on a lot.
- J. OED approved form for a Linkage Fee Reduction or Waiver indicating there would be no fee or a reduced fee for a non-residential project due to proof of a lack of employment impact.
- K. A project that is meeting the build alternative outlined in the Housing Fund Ordinance - An Approved Build Alternative Plan from OED indicating that the project will satisfy the build alternative for construction of a project.
- L. Project submitted a concept site development plan prior to December 30, 2016 - The date of the concept site development plan submittal and concept site development plan project number.

### **III. WAIVER AND REDUCTIONS UNDER THE HOUSING LINKAGE FEE**

Applicants/developers may apply for a waiver or reduction from the housing linkage fee under specific circumstances outlined in the Housing Funds Ordinance by submitting to OED a completed Linkage Fee Reduction or Waiver Form. Applicants/Developers applying for a waiver or reduction from the housing linkage fee must provide documentation that demonstrates that the required fees exceed the amount that would be needed to mitigate the actual demand for affordable housing created by the development. An application for such a reduction or waiver shall include information demonstrating the reduced affordable housing impacts created by the development, based on actual characteristics of the development to be evaluated by OED on a case by case basis. In the event that an Applicant/Developer's required documentation does not clearly demonstrate a lower affordable housing impact, an application for a reduction or waiver in the housing linkage fee will be denied and the Applicant/Developer will be required to pay the housing linkage fee as outlined by the Housing Funds Ordinance and these rules and regulations. OED shall provide written confirmation to the Applicant/Developer and CPD when a waiver or reduction from the housing linkage fee has been approved or denied.

### **IV. CALCULATION OF THE AFFORDABLE HOUSING LINKAGE FEE FOR CORE AND SHELL BUILDINGS**

New core and shell buildings, where either the entire building or a portion of a building is built without an occupant or tenant and is not suitable for occupancy, are required to pay the affordable housing linkage fee upon issuance of a building permit for the core and shell building. The Applicant/Developer shall make an assumption on the appropriate use category of the space in order to calculate a linkage fee. The use category determination must be consistent with the

proposed building code occupancy for which the building is being designed, as well as the project's site development plan.

If, upon first occupancy of the core and shell building, the actual use category of the space is different than the use that was assumed for the calculation of the affordable housing linkage fee, then the Applicant/Developer shall (a) be allowed to seek a refund of the difference between the fee paid, and the fee due based on the now known use category or (b) be assessed additional housing linkage fees based on the difference between the fee paid, and the fee due based on the now known use category. This applies to the first tenant of the space; future tenant changes that may change the use category of the space may not seek a refund of the affordable housing linkage fees paid.

## **V. REFUNDS UNDER THE HOUSING LINKAGE FEE**

A refund of the affordable housing linkage fee (in whole or in part) may be requested in the following scenarios:

- A. Housing linkage fees are not due and owing under the Housing Fund Ordinance and these rules and regulations;
- B. The Applicant/Developer is seeking a reduction in the gross floor area of the permitted project;
- C. The Applicant/Developer is seeking a change in the use of the permitted structure such that the use falls within a different use classification;
- D. The Applicant/Developer's building permits for the project are lapsed or are relinquished without the project being built; and
- E. The building permit is canceled by the Applicant/Developer or CPD due to 60 days of no work performed at the site, 60 days of no inspections called for the site, or a request from the Applicant/Developer to cancel the permit.

Refund requests for the affordable housing linkage fee must be made in writing to the Executive Director of CPD. The written request for a refund must contain the following information:

- A. Permit number on which the fee was assessed
- B. Proof of payment via a receipt, canceled check or a copy of paid document
- C. Reason for the refund request
- D. Amount to be refunded

The refund request will be reviewed and if a refund is found to be due, will be processed according to CPD's Finance/Accounting Policy for refunds, in cooperation with OED. If a refund is granted, fees will be returned to the contractor or entity that paid for the fees in the manner in which they were paid. The Applicant/Developer will have to work with the entity that will receive the refund of the affordable housing linkage fee in order to have their funds returned.

## **VI. APPEALS PROCESS UNDER HOUSING LINKAGE FEE**

An appeal of the affordable housing linkage fee (in whole or in part) may be requested in the following scenarios:

1. Applicability of the linkage fee as outlined in the Housing Fund Ordinance or these rules and regulations, including but not limited to:
  - I. A request for an exception from the fee is denied by the Executive Director of CPD, the Executive Director of OED or other City departments or agencies as appropriate; or
2. Calculation of the linkage fee by CPD staff, including but not limited to:
  - i. Determination of the use classification; or
  - ii. Determination of the gross floor area for assessing the housing linkage fee.

### **A. Initiating an Appeal**

Any Applicant/Developer aggrieved by a decision of CPD in regard to the applicability or calculation of linkage fees (“Decision”) may appeal the decision in the manner set forth below.

1. An appeal is initiated by filing a Petition for Review of a Decision (“Petition”). The Petition, together with a nonrefundable filing fee, must be filed within fifteen (15) days from the date of the Decision. The Petition may either 1) be mailed to the Executive Director at Community Planning and Development, 201 West Colfax Avenue, Dept. 205, Denver, Colorado 80202 ATTN: Appeal; or 2) hand-delivered to the Executive Director of CPD at the address above.
2. An appeal processing fee of one hundred dollars (\$100.00) must be delivered with the Petition. If the Petition is mailed to the Executive Director of CPD, a check for the required amount must be sent by mail and made out to the Manager of Finance. If the Petition is hand-delivered, cash or check will be accepted at the cashier on the second floor of the Wellington E. Webb Municipal Building at 201 West Colfax Avenue. The Petition will not be processed if the required fee is not tendered or if a check is returned for insufficient funds.
3. Timely filing of the Petition and payment of the filing fee are jurisdictional prerequisites to an appeal.

### **B. Petition for Review**

1. **Content.** All petitions, briefs, and other papers must be written or typed, and if any of these papers are illegible, the Executive Director of CPD may refuse to accept the

filing. No particular form of Petition is required, provided the information set forth below is included:

- i. Applicant/Developer's name, mailing address, and telephone number.
  - ii. If Applicant/Developer has legal representation, the name, mailing address, and telephone number of that representative.
  - iii. The Housing Fund Ordinance provision(s) at issue; the dollar amount in controversy; and the time during which the matter at issue accrued or occurred.
  - iv. A copy of the decision under appeal.
  - v. The reason(s) Applicant/Developer believes the decision is factually or legally contrary to the ordinances of the city, or the policies and regulations of the department.
  - vi. A statement of the relief requested (i.e., outcome desired).
  - vii. If appropriate, any exhibits supporting Applicant/Developer's position.
  - viii. The signature of the Applicant/Developer or Applicant/Developer's legal representative.
2. **Sufficiency.** If a legible Petition is timely filed with the filing fee and substantially complies with Rule II.A, the hearing clerk shall accept the Petition. If the Petition is illegible or does not substantially comply with Rule II.A, the hearing clerk may refuse to accept the filing, but must provide written notice to the Applicant/Developer describing the deficiency.

**C. Parties; Representation; and Service of Documents**

1. **Parties.** The parties to a hearing are the Applicant/Developer (the person or entity, to whom the appealed decision was issued) and CPD, or other City departments or agencies as appropriate, on behalf of the City.
2. **Representation.** A natural person may represent himself or herself or be represented by an attorney admitted to practice in any of the United States. If the Applicant/Developer is not a natural person or sole proprietor, it must be represented by an attorney admitted to practice in any of the United States unless the Executive Director of CPD allows a shareholder, member, partner, board member, or officer to represent the business entity. In this case, the representative of the business entity must submit a properly executed power of attorney at or before the hearing.
3. **Service of Documents.** Upon filing any document with the Executive Director of CPD, the party filing the document shall provide a copy of all documents filed to the other.



**D. Responsibilities of the Executive Director of CPD and Hearing Officer**

1. **Determination of Each Appeal.** The Executive Director of CPD shall conduct a hearing on each accepted Petition, including those submitted for determination based on written argument and written statement of facts.
2. **Assignment of Hearing Officer.** The Executive Director of CPD, at its sole discretion, may delegate the conduct of the hearing or the review of a matter submitted for determination based on written argument and written statement of facts to a Hearing Officer.
3. **Necessary and Incidental Duties and Functions.** The Executive Director of CPD shall perform the duties and functions necessary and incidental to determining the matter, hearing all evidence, examining all documents, ruling on evidentiary questions, and generally conducting a quasi-judicial proceeding in conformance with the D.R.M.C., these Rules, and other applicable rules and regulations.
4. **Subpoenas.** Upon request by any party, the Executive Director of CPD may issue a subpoena. The party requesting the subpoena shall serve it upon the person whose attendance is required and provide notice to all other parties and interested persons in accordance with Rule 45 of the Colorado Rules of Civil Procedure. All costs related to the subpoena, including witness and mileage fees, must be paid by the requesting party in accordance with Rule 45.
5. **Hearing Date**
  - i. Generally, hearings will be scheduled in the order petitions are filed, but may be scheduled out of order as the hearing clerk finds appropriate. If requested, the hearing clerk may grant each party one rescheduling request. At the request of either party, the Executive Director of CPD may grant continuances for good cause shown.
  - ii. No later than ten (10) days before the hearing, the hearing clerk shall provide written notice of the date, time and place of all hearings to the parties. Written notice must be sent to the Applicant/Developer via certified mail at the address specified in the Petition and to the Executive Director of CPD.
6. **Ex Parte Communications.** All oral and written communications between any party with the Executive Director of CPD or the Hearing Officer that are not on the record, concern the subject matter of the appeal, and are made without the other party present or copied on written correspondence are prohibited.

**E. The Hearing**

The following rules apply to all hearings on petitions for review of decision of CPD in regard to the applicability or calculation of linkage fees. The Executive Director of CPD,

as that term is used in these rules and regulations, includes an appointed Hearing Officer.

1. **CPD Response.** CPD may file a response to the Petition and provide other information to the Executive Director of CPD that it believes will assist the Executive Director of CPD to decide the matter. The response is due within 14 days of CPD's receipt of the Petition.
2. **Applicant/Developer's Appearance/Failure to Appear.** Any Applicant/Developer who fails to appear at a scheduled hearing waives the right to a hearing and adjudication of issues related to the hearing, provided that notice of the hearing was mailed in the time and manner set forth in Rule 4.E.2. Failure to appear at a hearing that is noticed in accordance with those requirements, may result in dismissal of the Petition and affirmation of the decision.
3. **Prehearing Statement.** At the request of the Executive Director CPD or upon a motion from a party, the Executive Director of CPD may require the parties to file a prehearing statement. The purpose of a prehearing statement is to define the issues to be presented; identify the witnesses and exhibits to be presented, the time required for the hearing; and, disclose generally the nature of the testimony to be presented to allow a fair hearing of the issues. The prehearing statement must be filed at least five (5) business days before the hearing date, or as otherwise ordered by the Executive Director of CPD. The prehearing statement must present the issues raised by the Petition, agreed and disputed facts, copies of exhibits not included with the Petition, names of witnesses with a brief statement summarizing their testimony, and if either party expects that more than 15 minutes will be needed to present their case, a request for a specific amount of time. Applicant/Developer's exhibits must be numbered and CPD's exhibits must be lettered. If a prehearing statement is required and a party fails to list witnesses or to provide copies of exhibits to the prejudice of the other party or the Executive Director of CPD's consideration of the issues, the Executive Director of CPD may disallow testimony by unlisted witnesses and may refuse to admit unlisted exhibits into evidence, except for purposes of rebuttal.
4. **Order of proceedings.** The order of proceedings will be:
  - i. Docket call by the Executive Director of CPD.
  - ii. Administration of Oath.
  - iii. Opening statement by a representative of CPD, unless waived or reserved until the opening of CPD's case.
  - iv. Opening statement by Applicant/Developer, unless waived.

- v. Presentation of testimony and other evidence by Applicant/Developer, allowing cross-examination by CPD (exhibits shall be lettered for identification).
  - vi. Presentation of testimony and other evidence by CPD with cross-examination by Applicant/Developer (exhibits shall be numbered for identification).
  - vii. Rebuttal testimony and evidence, if any.
  - viii. Sur-rebuttal testimony and evidence, if the Executive Director of CPD chooses.
  - ix. Argument, if is desired by the Executive Director of CPD:
    - b. Closing argument by Applicant/Developer summarizing the evidence, legal basis and argument in support of its position. If the Applicant/Developer chooses not to present a closing argument, none shall be allowed by CPD.
    - c. Closing argument by CPD summarizing the evidence, legal basis and argument in support of its position.
  - x. Instead of or in addition to argument, the Executive Director of CPD may request the submission of written briefs.
5. **Testimony under Oath.** ALL ORAL TESTIMONY MUST BE GIVEN UNDER OATH ADMINISTERED BY THE EXECUTIVE DIRECTOR of CPD OR THE HEARING OFFICER IN SUBSTANTIALLY THE FOLLOWING FORM: "DO YOU SOLEMNLY SWEAR OR AFFIRM THAT THE TESTIMONY YOU ARE ABOUT TO GIVE IS THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH?" WITH A REQUIRED AFFIRMATIVE RESPONSE.
6. **Rules of Procedure and Rules of Evidence.** The hearings shall be conducted generally in accordance with these Rules regardless of whether it conforms to common law or statutory rules of procedure or rules of evidence. While judicial rules of evidence are not applicable, the Executive Director of CPD shall have the authority to determine admissibility of evidence and testimony based on relevance and probative value in light of the issues at hand. The Executive Director of CPD may use the experience, technical competence, and specialized knowledge the Executive Director of CPD may have in the evaluation of evidence presented.
7. **Burden of Proof.**
- i. Decisions of the calculation or applicability of linkage fees by CPD are presumed to be correct.
  - ii. The Applicant/Developer has the burden of persuasion and must prove by a preponderance of the evidence (presented at the hearing or submitted by

written brief and supporting material) that the decision is factually or legally contrary to the applicable ordinances, rules and regulations.

- iii. For procedural efficiency, the order of proceedings may be altered to require CPD to present its case in support of the decision first. The burden of persuasion, however, remains with the Applicant/Developer to show the correctness of its position by a preponderance of the evidence.
8. **Recordings and Transcripts.** All hearings must be recorded or transcribed. A copy of the recording or transcript of a recording will be provided at the expense of the party who requests it.

**F. Presentation of Case at Hearing**

1. **Time Allowed.** The Applicant/Developer and CPD will each have fifteen minutes to present their respective cases (opening statement, presentation of evidence, rebuttal evidence, and closing statement) to the Executive Director of CPD unless one of the parties has requested more time to present its case. Cross-examination time is not included in the fifteen-minute time limit. A request for additional time must be made in the prehearing statement, if one is required. Otherwise, the request must be made in writing at least seven days before the hearing. In determining whether and how much additional time to allow, the Executive Director OF CPD shall consider the complexity of the case, the needs of due process, and fairness to the parties. This Rule is intended to afford a full and fair hearing of each Petition in an orderly and expeditious manner that will allow for prompt hearing of Petitions.
2. **Copies.** Copies made by printers and by duplicating and facsimile machines may be admitted into evidence or substituted in evidence in place of original documents.
3. **Electronic Documents.** An electronic document, a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature may be admitted into evidence or substituted in evidence in place of original documents.

**G. Submission on Written Briefs**

An Applicant/Developer may choose to submit the case on written briefs, supporting data, affidavits, or stipulated facts rather than through oral testimony at a hearing. If the Applicant/Developer chooses to submit a case on written briefs:

- A. He or she must provide written notice of this election to the Executive Director at least seven (7) days before the hearing;
- B. CPD is limited to submitting its position in writing.
- C. The Executive Director of CPD shall establish a briefing schedule and provide written notice of it to the parties.

## **H. Recommended Decision**

1. **Timing.** If a Hearing Officer conducts the hearing, the Hearing Officer shall make a written Recommended Decision, which must be sent to Applicant/Developer by certified mail, and provided to CPD within 30 days of the date of the hearing.
2. **Outcome.**
  1. If Applicant/Developer did not carry its burden of persuasion, the Hearing Officer may uphold the decision.
  2. If Applicant/Developer carried its burden of persuasion, the Hearing Officer may overturn the decision and determine that an exception to the linkage fee applies to the Applicant/Developer for his or her specific development, or that a determined amount of linkage fees does or does not apply to the Applicant/Developer for his or her specific development.
3. **Effect.** Unless a party timely requests the Executive Director to review a Hearing Officer's Recommended Decision in accordance with Rule 1 the Recommended Decision becomes the Decision of the Executive Director of CPD on the date it is served upon Applicant/Developer by personal service, or if served via U.S. Postal Service, ten days after it is sent certified mail. If a refund of linkage fees is due to the Applicant/Developer as a result of the Recommended Decision, CPD will process the necessary paperwork to issue a refund to the Applicant/Developer, once the period has passed for a Petition for Executive Director of CPD Review to be requested per Section IX.

## **I. Petition for Executive Director of CPD Review of Recommended Decision**

1. Any party may file a Petition for Executive Director of CPD review of the Hearing Officer's Recommended Decision. The Petition must be filed with the Executive Director of CPD within ten (10) days of mailing of the decision. For the purpose of this filing requirement, for a Petition sent via first class mail, postage prepaid, or via overnight delivery service, the date of filing will be the date postmarked or delivered to the City, respectively.
2. No particular form of Petition for Executive Director of CPD Review of the Hearing Officer's Recommended Decision is required, provided that the following information is set forth in writing:
  - i. The case number;
  - ii. A summary of the party's objections to the Hearing Officer's findings of fact, conclusions of law, and Recommended Decision;
  - iii. A statement of the relief requested;

- iv. The name, address and telephone number of the party seeking Executive Director of CPD review of the Recommended Decision, and the name, address and telephone number of that party's legal representative, if any, authorized to present them in the matter; and,
  - v. The signature of the party seeking Executive Director review of the Recommended Decision or of that party's legal representative.
3. The Executive Director of CPD is not bound by a Hearing Officer's Recommended Decision; the Executive Director of CPD's review of Recommended Decision, however, is limited to the administrative record established at the underlying hearing before the Hearing Officer.
  4. The administrative record includes all filings and documents provided to the Hearing Officer before and during the hearing. If the matter was submitted for determination on written briefs, the administrative record includes the Recommended Decision, filings and documents submitted. An index of the administrative record shall be provided to the parties at the time the record is provided to the Executive Director of CPD.

**J. Final Decision; Compliance**

1. When the Executive Director of CPD issues a decision either after a hearing or determining an appeal in the first instance, or after the Executive Director of CPD reviews a Recommended Decision, he or she shall consult with the Executive Director of the Office of Economic Development.
2. When the Executive Director of CPD issues a decision either after hearing or determining an appeal in the first instance or after the Executive Director reviews a Recommended Decision, its decision becomes the Final Decision that is subject to review under Rule 106(a)(4), C.R.C.P.
3. If a Petition for Executive Director of CPD Review of Recommended Decision is not filed within ten (10) days, the Recommended Decision becomes the Executive Director's Final Decision.
4. All Final Decisions must be complied with.

**SECTION 3: BUILD ALTERNATIVE UNDER THE LINKAGE FEE**

**I. BUILD ALTERNATIVE PLAN (BAP) REQUIREMENTS AND PROCEDURES**

- A. All Applicants/Developers electing to build or causing to be built Build Alternative Units shall submit a Build Alternative Plan (BAP) to OED. An updated BAP form will be available on OED's website. After completing the form, the Applicant must submit a signed BAP to the Executive Director of OED for approval. The Executive Director of

OED will determine if the BAP satisfies the requirements of the build alternative as outlined in the Housing Funds Ordinance and these rules and regulations. Upon review of the BAP, the Executive Director of OED shall provide written notice of approval or denial of the plan within ten (10) business days.

- B. Applicants/Developers who intend to satisfy the requirements of the linkage fee by providing Build Alternative Units, must submit documentation to CPD at the time of formal site development plan application of their intent to provide Build Alternative Units. CPD will provide a copy of this intent to OED.
- C. A BAP must be submitted to, approved and recorded by OED prior to site development plan approval by the Development Review Committee OED and/or the Applicant/Developer shall submit a copy of the approved BAP to CPD.
- D. Build Alternative Units shall be of an equivalent value, quality, and size to those which would otherwise have been constructed on-site. Developments that do not contain a residential use and are electing to provide Build Alternative Units in lieu of payment of the housing linkage fee, shall provide Build Alternative Units in a mix of bedroom types.
- E. Build Alternative Units provided within a market rate development shall be reasonably distributed among other residential units within the development and shall not be concentrated to a specific area within the site. Residents of Build Alternative Units shall have full access to all amenities or services available to residents of market rate units. The exterior design of Build Alternative Units shall be indistinguishable from other units in the development in terms of quality of finishes and general appearance and the interior design of units will be functionally equivalent of other units in the development;
- F. Approved BAPs shall include a provision that states any structure containing Build Alternative Rental Units shall be considered a Local Preservation Project for purposes of required tenant and City notice provisions and rights of first refusal as required in DRMC Sec. 27-49, and any adopted rules and regulations administering or implementing this section. When an Applicant/Developer, however, voluntarily provides Perpetual Affordability for Build Alternative Rental Units in a structure, then the Applicant/Developer or any subsequent owner need not comply with the requirements of DRMC Sec. 27-49, but must instead comply with the following: (1) notice of an actual sale to its tenants and to the City; and (2) notice to the City and tenants at least one year and no more than fifteen months prior to the expiration of the existing affordability restrictions. The Perpetual Affordability must be provided in a covenant that is approved by OED.
- G. BAPs shall include a legal description of the property where Build Alternative Units will be provided and a legal description of the property that will be exempt from the linkage fee

through provision of Build Alternative Units as required by the Housing Fund Ordinance and these rules and regulations.

H. Applicants/Developers must provide proof of property ownership.

**II. REVIEW OF BUILD ALTERNATIVE PLAN (BAP)**

OED staff shall review the developer’s BAP for compliance with all the applicable provisions of the Housing Fund Ordinance and these rules and regulations. Such review shall include, but is not limited to, verification of the following elements:

**A. Number of Affordable Units**

All Applicant/Developers must demonstrate in the BAP that the number of Build Alternative For-Sale Units or Build Alternative Rental Units provided in the proposed development is equal to at least the number of units required by the Housing Fund Ordinance in the following formula (for purposes of calculation, “gross square feet” shall mean “Gross Floor Area” as defined in the Housing Fund Ordinance:

<b>Development Type</b>	<b>Build Alternative Units Required</b>
Multi-Unit Dwellings	$(\text{Gross square feet of structure}/1000) \times 0.0168 =$ number of units
Structures containing any primary industrial, manufacturing and wholesale uses or primary agricultural uses	$(\text{Gross square feet of structure}/1000) \times 0.0054 =$ number of units
Structures containing any primary commercial sales, services and repair uses or any primary civic, public and institutional uses	$(\text{Gross square feet of structure}/1000) \times 0.0228 =$ number of units
Development consisting of 50 or more single-unit dwellings or two-unit dwellings	Number of affordable housing units shall equal two percent (2%) of the total number of housing units in the development

In calculating the number of Build Alternative Units to be created, rounding shall be used such that five-tenths (.5) or greater shall result in requiring that a whole unit shall be produced. For example, a proposed residential development with a floor area of one hundred thousand (100,000) gross square feet excluding parking would have a unit calculation of  $(100,000 / 1,000) \times 0.0168$  units = 1.68 units, which would require two (2) whole units to be Build Alternative Units. A proposed residential development with a floor area of eighty thousand (80,000) gross square feet excluding parking would have a unit calculation of



(80,000 / 1,000) x 0.0168 units = 1.34 units, which would require one (1) whole unit to be a Build Alternative Unit. The following table shows examples for calculating the number of Build Alternative Units required based on the gross square footage of the proposed development excluding parking.

<b>Sample Calculations for Number of MPDUs Required for Build Alternative</b>			
<b>Land Use Type</b>	<b>Total Proposed Gross Square Footage Excluding Parking</b>	<b>Build Alternative Formula</b>	<b>Number of Build Alternative Units Required</b>
Multi-Unit Dwellings	100,000 gross square feet	$(100,000 / 1,000) \times 0.0168 \text{ units} = 1.68 \text{ units}$	2 Build Alternative Units
Structures containing any primary industrial, manufacturing and wholesale uses or primary agricultural uses	200,000 gross square feet	$(200,000 / 1,000) \times 0.0054 \text{ units} = 1.08 \text{ units}$	1 Build Alternative Units
Structures containing any primary commercial sales, services and repair uses or any primary civic, public and institutional uses	100,000 gross square feet	$(100,000 / 1,000) \times 0.0228 \text{ units} = 2.28 \text{ units}$	2 Build Alternative Units
Mixed-Use developments containing multi-unit dwellings and any primary commercial sales, services and repair uses or primary civic, public or institutional uses	100,000 gross square feet of multi-unit dwellings  AND  100,000 gross square feet of commercial sales	$(100,000 / 1,000) \times 0.0168 \text{ units} = 1.68 \text{ units}$  AND  $(100,000 / 1,000) \times 0.0228 \text{ units} = 2.28 \text{ units}$	4 Build Alternative Units

**B. Pricing Limits**

Applicants/developers electing to build affordable housing units in lieu of payment of the linkage fee shall price Build Alternative Units so they will be affordable to households earning at or below 80% of AMI published by HUD and adjusted for household size.

**C. Unit Mix**

Single-family dwelling unit developments and multi-family dwelling unit developments electing to build affordable housing units in lieu of payment of the linkage fee shall provide Build Alternative Units in a mix of bedroom types at the same ratio as market rate developments in the development. In developments which contain a mix of single-family dwelling units and multi-family dwelling units, Build Alternative Units shall be provided in the same ratio to market rate units as between the single family and the multi-family units.

Single-family dwelling unit and multi-family dwelling unit developments shall provide Build Alternative Units according to their tenure type. For example, a for-sale single-family dwelling unit or multi-family dwelling unit development electing to provide Build Alternative Units shall provide Build Alternative For-Sale Units according to the formula outlined in the Housing Fund Ordinance and these rules and regulations. A rental single-family dwelling unit or multi-family dwelling unit development electing to provide Build Alternative Units shall provide Build Alternative Rental Units according to the formula outlined in the Housing Fund Ordinance and these rules and regulations. In developments which contain a mix of for-sale and rental dwelling units, Build Alternative For-Sale Units and Build Alternative Rental Units shall be provided in the same ratio to market rate units as between the single family and the multi-family units.

Developers of a structure that does not contain a residential use electing to provide Build Alternative Units in lieu of payment of the housing linkage fee shall elect whether to provide Build Alternative For-Sale Units or Build Alternative Rental Units. Mixed-use developments electing to provide Build Alternative Units in lieu of payment of the housing linkage fee shall provide Build Alternative Units according to the tenure type of the residential use. For example, a mixed-use development containing multi-family rental dwelling units and a commercial sales use electing to provide Build Alternative Units for both uses shall provide Build Alternative Rental Units according to the formula outlined in the Housing Fund Ordinance and these rules and regulations for each use.

**D. Size Requirements**

The size of affordable units shall be regulated in accordance with relevant provisions of the City and County of Denver's building code as may be amended from time to time.

**E. Accessibility Requirements**

The Applicant/Developer shall provide Build Alternative Units that are also considered accessible dwelling units under Appendix R of the Denver Building and Fire Code, as may be amended from time to time, in the same ratio as accessible dwelling units to market rate units in the project.

**III. ALTERNATIVE METHODS OF BUILD ALTERNATIVE SELECTION**

The Applicant/Developer may elect to provide off-site Build Alternative Units in lieu of payment of the linkage fee within one-quarter (1/4) mile of the property subject to the linkage fee. Applicants/Developers electing to build Off-Site Build Alternative Units within one-quarter (1/4) mile of the property subject to the linkage fee shall submit an alternative BAP to build replacement Build Alternative Units as approved by the Executive Director of OED.

**IV. REQUIREMENTS FOR APPROVING OFF-SITE BUILD ALTERNATIVE UNITS**

In determining whether proposed replacement units are of an equivalent value, quality, and size to those which would otherwise have been constructed on-site, OED will rely on the justification and information provided on the Applicant/Developer's BAP.

**A. Off-site Build Alternative Units Built by a Third Party Developer**

If the Applicant/Developer is not building the off-site Build Alternative Units, the Applicant/Developer may partner with a third party developer as the off-site replacement developer. The City shall require a three-party escrow account agreement for deposit by the Applicant/Developer of the linkage payment to the third party. As part of the escrow agreement, the Executive Director of OED shall sign for the release of draws by the third party based on agreed upon construction milestones. The costs of these individual escrow agreements shall be paid through the linkage fee payment amount, not by the City. The linkage fee payment amount provided to the offsite replacement developer by the Applicant/Developer to build Off-Site Build Alternative Units shall be equal to the cost of the linkage fee on the original development subject to the fee. The execution of the escrow agreement and payment of the amount equal to the linkage fee shall be paid prior to issuance of building permit for the original development subject to the BAP. The off-site project escrow agreements shall be entered into for each project and shall follow all City

standard contracting processes.

No interest shall be paid to the Applicant/Developer. If replacement units are not constructed within twenty-four (24) months from date of building permit issuance, all funds may be released from the escrow to the City, upon the City's request.

The Executive Director of OED may reject for any reason a proposal for off-site Build Alternative Units. In the event that the Executive Director denies the Applicant/Developer's proposal to build off-site Build Alternative Units and no other Build Alternative Plan is approved for the project, the Applicant/Developer will be required to pay the housing linkage fee as outlined in the Housing Funds Ordinance and these rules and regulations. If the proposed off-site BAP is acceptable to the City, the Applicant or property owner shall sign and record an off-site BAP in substantially the same form as provided by OED. The BAP must be in a form acceptable to OED and the City Attorney.

**B. Required Construction Timing**

All Build Alternative Units must be constructed so that they are marketed concurrently with or prior to the market rate units. A request for an alternative to the requirement that Build Alternative Units be constructed so as to ensure that they are marketed concurrently with or prior to the market rate units, the Applicant/Developer must provide a written statement and documentation demonstrating that the proposed alternative scheduling provides affordable housing benefits to the City, in addition to those benefits otherwise allowed by the Housing Fund Ordinance and these rules and regulations.

In the event the Build Alternative Units are being created by a third party developer and are not marketed concurrently with, or, prior to, the market rate units, the City may release Temporary Certificates of Occupancy or Certificates of Occupancy for the Applicant/Developer's project upon OED confirmation that deposit has been made of all amounts required for approved Build Alternative Units into an escrow account for a third party off-site development partner as set forth in these rules and regulations.

**Temporary Certificates of Occupancy or Certificates of Occupancy will not be issued for the original development subject to the BAP under any circumstance, unless the developer has fulfilled their obligations under an approved off-site BAP where units are created by a third party developer and are marketed concurrently, or prior, to the market rate units as outlined in these rules and regulations, except as specifically allowed by OED in subsection B above.**

## **SECTION 4: VERIFICATION, ELIGIBILITY AND REQUIRED DOCUMENTATION FOR BUILD ALTERNATIVE RENTAL UNITS**

### **I. MAXIMUM ALLOWABLE RENTS**

OED will post a table showing maximum allowable rents for Build Alternative Rental Units each year on its website. The maximum allowable rents are calculated based upon a presumed household applying no more than thirty percent (30%) of its monthly gross income from all sources to a rental payment. To determine the maximum allowable rental payment that may be charged for Build Alternative Rental Units, the Low Income Housing Tax Credit (LIHTC) rent by AMI threshold published by HUD or Colorado Housing and Finance Authority (CHFA) and adjusted for household size, will be used. Furthermore, the maximum rent shall deduct utility allowance costs which are published periodically by HUD or the CHFA. The current rental rates will be available on OED's website.

### **II. ELIGIBLE HOUSEHOLD**

A household entering into a lease contract for a Build Alternative Rental Unit must earn at or below 80% AMI, depending on household size, to be eligible for tenancy in a Build Alternative Rental Unit as required by the Housing Fund Ordinance and these rules and regulations. Households entering into a lease contract to rent a Build Alternative Rental Unit must be income eligible based on their income at the time the lease is executed and prior to any execution of a lease renewal.

To make the determination of affordability the Applicant/Developer or its property management partner will calculate the monthly rent and utilities of the Build Alternative Rental Unit and make sure that the payment shall not exceed 30% (or if determined appropriate by the Executive Director of OED, a percentage currently published by HUD or CHFA) of that household's income.

### **III. INCOME VERIFICATION OF PROSPECTIVE RENTERS OF BUILD ALTERNATIVE UNITS**

Documentation that demonstrates a household's income must be provided to the Applicant/Developer or its property management partner for each prospective resident of a Build Alternative Rental Unit. It is the responsibility of the Applicant/owner or its property management partner to assure that a household or individual is income eligible under the requirements of the Housing Fund Ordinance and these rules and regulations

before executing a lease contract.

#### **IV. REPORTING**

Compliance must be demonstrated by Applicant/Developer or its property management partner by submitting semi-annual reports to OED on the Build Alternative Rental Units, tenants and their income verifications. OED will provide the Applicant/Developer or its property management partner a compliance report template that includes, but is not limited to, the following information:

- Specific unit numbers for Build Alternative Rental Units
- Number of bedrooms for each Build Alternative Rental Unit
- Status of each Build Alternative Rental Unit – Occupied or Vacant
- Tenant name for each Build Alternative Rental Unit
- Lease term for each Tenant in a Build Alternative Rental Unit including start and end date
- Number of occupants within each Build Alternative Rental Unit
- Total income for each household living in a Build Alternative Rental Unit
- Amount charged in rent for each Build Alternative Rental Unit
- Any additional fees charged by the Applicant/Developer or property manager for each household in a Build Alternative Rental Unit

The compliance report must be accompanied by income verification documentation of each Build Alternative Rental Unit tenant and any other documentation as requested by OED. The compliance report, and all associated documentation, must be submitted to OED semi-annually on January 10<sup>th</sup> and June 10<sup>th</sup> of each year the Covenant is in effect. Additionally, it is the Applicant/Developers responsibility to immediately notify OED in the event a replacement or new property management company is engaged or contracted to oversee the property and/or income verification process.

#### **V. CONFIDENTIALITY OF APPLICATION OF ELIGIBLE HOUSEHOLDS**

Applicant/Developer or its property management partner will treat the financial information contained in such application as confidential commercial and financial data. Compliance reports and all accompanying documentation, submitted to OED is subject to the Colorado Open Records Act; OED shall not release such information except as required by law.

#### **VI. OCCUPANCY REQUIREMENT**

Renters in Build Alternative Rental Unit apartment buildings are required to occupy the Build Alternative Rental Units as their primary residence and shall not be permitted to sublease the unit,

including but not limited to short term rentals as defined by Article III, Chapter 33 of the D.R.M.C. A primary residence shall mean the home or place in which one's habitation is fixed and to which one, whenever he or she is absent, has a present intention of returning after a departure or absence therefrom, regardless of the duration of the absence.

## **VII. NOTICE REQUIREMENTS ON DEVELOPMENTS INCLUDING BUILD ALTERNATIVE RENTAL UNITS**

Except as allowed below, an Applicant/Developer or subsequent owner of a building containing Build Alternative Rental Units must comply with the tenant and City notice provisions and rights of first refusal for Local Preservation Projects required in DRMC Sec. 27-49, and any adopted rules and regulations administering or implementing this section.

When an Applicant/Developer voluntarily provides Perpetual Affordability for Build Alternative Rental Units in a structure, then the Applicant/Developer or any subsequent owner need not comply with the requirements of DRMC Sec. 27-49, but must instead comply with the following: (1) notice of an actual sale to its tenants and to the City; and (2) notice to the City and tenants at least one year prior and no more than fifteen months prior to the expiration of the existing affordability restrictions. The Perpetual Affordability must be provided in a covenant that is approved by OED.

## **VIII. REQUIRED DOCUMENTS AND COVENANTS**

### **A. Good Faith Marketing and Selection of Eligible Households**

During initial leasing or continued leasing of Build Alternative Rental Units, Applicants/Developers must make a good faith effort to market to eligible households. Elements of a good faith marketing effort shall include the following:

1. Listing income restricted units on [coloradohousingsearch.com](http://coloradohousingsearch.com);
2. Showing the Build Alternative Rental Unit to potential renters at a variety of times throughout the week, including on weekends;
3. Build Alternative Rental Unit is advertised as "affordable" or "income restricted" in public marketing of the Build Alternative Rental Unit;
4. Displaying a for rent sign prominently at the Build Alternative Rental Unit;
5. Timely response to all inquiries about the Build Alternative Rental Unit; and
6. Fair consideration of all income eligible renters.

### **B. Covenant Requirements**

In the case of a rental development, prior to the issuance of the building permit for the development and the offering for rent of any Build Alternative Rental Unit, the owner shall

record a covenant running with the land in favor of OED. Restrictive covenants are intended to secure the affordability of designated units must be in a form acceptable to the Executive Director of OED and the City Attorney. OED shall provide a form of covenant, which will incorporate all of the requirements of the Housing Funds Ordinance and these Rules and Regulations, including that for sixty (60) years from the date of issuance of the building permit for the Build Alternative Rental Unit, no such unit may be rented for an amount which exceeds the limits set by OED and the units must be rented to an income eligible tenant. The form shall also provide that penalties will apply for any violation of the Covenant, Housing Funds Ordinance or these Rules and Regulations and shall attach the owner's compliance report form. In particular, Build Alternative Rental Unit covenants shall include the following statements that:

1. The provisions of this article shall run with the land for the entire covenant period;
2. The covenants shall bind the owners of the Build Alternative Rental Unit property, and all other parties with an interest in title to the Build Alternative Rental Unit property during the covenant period. These covenants shall be senior to all instruments securing permanent financing;
3. To be eligible to lease a Build Alternative Rental Unit a tenant must earn no more than eighty percent (80%) of AMI, depending on household size;
4. During the covenant period, every renter of a Build Alternative Rental Unit shall occupy the Build Alternative Rental Unit as the renter's primary residence during the renter's tenancy. During the covenant period, the landlord shall require each renter to verify before taking occupancy that the renter will occupy the Build Alternative Rental Unit as the renter's primary residence during the renter's tenancy. The Executive Director of OED shall require landlords to evict renters who do not occupy the Build Alternative Rental Unit as their primary residence and to lease to an eligible household.
5. Limitations will be set forth as to rental rates including language which specifies that during the covenant period, no Build Alternative Rental Unit may be leased for more than the maximum rental rate as calculated by this section. Any tenant association fees shall be included in the determination of affordability. Maximum rental rates for Build Alternative Rental Units shall be determined by the Executive Director of OED, including factors such as the number of bedrooms and AMI. OED shall make available tables which show maximum rental rates on the OED website;
6. The Executive Director of OED shall be authorized to accept enforcement powers on behalf of the City;
7. A copy of each verification of eligibility shall be promptly furnished to OED and maintained on file by OED;



8. A compliance report shall be provided to OED by the landlord during the initial leasing on a quarterly basis, and upon full leasing of the units, the landlord shall provide compliance reports on a semi-annual basis;
9. Rental restrictions of Build Alternative Rental Units shall be to eligible households; every rental Build Alternative Rental Unit provided under this section shall be offered solely to eligible households for rent to be used for the renter's own primary residence; the Build Alternative Rental Units shall be offered to the eligible households by the landlord through a fair and equitable system the landlord shall use reasonable, good-faith efforts to enter into leases with eligible households and in marketing to eligible households; and landlord shall not lease any unit without first verifying eligibility of the renter; and
10. Any transfers of the apartment buildings shall require a Memorandum of Acceptance of the Covenant in order to transfer the building to a new owner.

## **SECTION 5: VERIFICATION, ELIGIBILITY AND REQUIRED DOCUMENTATION FOR BUILD ALTERNATIVE FOR-SALE UNITS**

### **I. ELIGIBLE HOUSEHOLD**

A household entering into a purchase for a Build Alternative For-Sale Unit must hold a valid verification of eligibility from OED or a partner under the build alternative for the housing linkage fee before closing on the purchase. Any household or individual whose annual income meets the minimum income limits and is no more than the maximum income limits published periodically by OED as adjusted for household size, may be deemed eligible to purchase a Build Alternative For-Sale Unit. Applications and requested documentation must be provided in order to obtain verification. It is the responsibility of the Applicant for the verification to demonstrate that a household or individual is eligible under the requirements of the Housing Fund Ordinance and these rules and regulations prior to scheduling a closing on a purchase. Closings for Build Alternative For-Sale Units cannot be scheduled until buyers have been income verified by OED or a partner under the build alternative for the housing linkage fee.

Households entering into a contract to purchase a Build Alternative For-Sale Unit must be income eligible based on their income at the time the purchase contract is signed. The foregoing does not indicate income verification has been completed by OED or a partner under the build alternative for the housing linkage fee prior to contracting. Additionally, to be eligible to purchase the unit, the buyer must, prior to or simultaneously with obtaining verification of eligibility, provide evidence of course completion from an OED approved home ownership counseling agency and

complete a brief orientation on the housing linkage fee conducted by OED staff. OED staff may conduct the orientation in person, by phone, or electronically.

Income eligible households seeking to purchase a Build Alternative For-Sale Unit must secure financing through:

- A. a legally recognized financial lending institution authorized to conduct business in Colorado;
- B. a governmental agency; or
- C. a combination thereof.

If purchase of a Build Alternative For-Sale Unit is not facilitated through one or more lenders meeting the criteria, or the Executive Director of OED has not otherwise granted permission in writing, the income verification will be null and void.

Income eligible households may purchase the unit via a cash funded purchase. In a cash funded purchase, any and all liens or deeds filed against the property in exchange for the cash portion of the purchase shall be subordinate to the covenant placed on the unit pursuant to the requirements of these rules and regulations. Such liens or deeds will not qualify the holder as a holder of a first deed of trust, nor a purchase money first lien holder, nor under the covenant, nor under the City's Housing Funds Ordinance Administrative Rules and Regulations. Such covenant shall not be released in cases of foreclosure on cash funded Build Alternative For-Sale Units. Additionally, eligible households must still meet the income requirements as set forth by OED. To ensure that qualified households have an opportunity to purchase Build Alternative For-Sale Units, OED may adopt supplemental policies and procedures to limit the circumstances where cash purchases will be allowed, the size of assets that a qualified household may hold, and other policies as appropriate. A list of supplemental policies and procedures will be available on OED's website and may be updated from time to time as appropriate.

## **II. DETERMINATION OF ASSET LIMITATIONS FOR INCOME ELIGIBLE HOUSEHOLDS**

Approved forms for income verification shall be available on OED's website. An asset is a cash or non-cash item that can be converted to cash. Annual income generated from the following assets shall be included as part of a household's annual income for purposes of determining income eligibility:

- A. Interest
- B. Dividends

- C. Profit from royalties or real estate; and
- D. Payment from an estate or trust fund

This list is not exclusive and other forms of income may be included and considered.

### **III. INCOME AND EDUCATION VERIFICATION OF PROSPECTIVE PURCHASERS OF BUILD ALTERNATIVE FOR-SALE UNITS**

Prospective purchasers of Build Alternative For-Sale Units shall be required to submit to OED or a partner all documentation necessary to make the income determination and to verify that the prospective purchaser's income qualifies them to purchase a particular Build Alternative For-Sale Unit, including but not limited to those listed on the Income Verification Forms, which shall be available on OED's website and may be updated from time to time as appropriate. Prospective purchasers of Build Alternative For-Sale Units shall be required to submit to OED all documentation necessary to provide evidence of course completion from an OED approved home ownership counseling agency. Verification shall not be provided until both income and education components have been met.

### **IV. CONFIDENTIALITY OF APPLICATION OF ELIGIBLE HOUSEHOLDS**

OED or a partner will treat the financial information contained in such application as confidential commercial and financial data under the Colorado Open Records Act and shall not release such information except as required by law. OED or a partner shall place verified households on a list of eligibility if requested by the household applying for verification.

### **V. DETERMINATION OF ELIGIBILITY**

OED or a partner must have made its determination before a closing can occur for the purchase of a Build Alternative For-Sale Unit. OED or a shall provide a written confirmation to the potential buyer evidencing that OED or a partner has received a fully complete application. OED or a partner will make its determination within ten (10) business days after receipt of the fully completed application. The determination shall be evidenced either by (A) the issuance of a written approval, signed by OED or a partner, stating that the purchaser is a verified eligible household, the amount of the purchase price and that the purchase price does not exceed an amount affordable to a household earning less than 80% of the Area Median Income (AMI) for Denver; or (B) delivering a notice to selling owner and purchaser that an approval cannot be issued and stating the reason(s) therefor. Failure by OED or a partner to make its determination and deliver the approval or the notice by the end of ten (10) business days after receipt of a completed application will be deemed an approval of the purchaser and the purchase price.

**VI. MAXIMUM SALES PRICE FOR BUILD ALTERNATIVE FOR-SALE UNITS**

OED will provide tables which show maximum purchase price annually. To determine the maximum allowable sales price that may be charged for a Build Alternative For-Sale Unit OED or a partner will use normal underwriting standards. Maximum affordable price will be based on 30% of an eligible household's gross household income. The following assumptions regarding number of bedrooms, household size and AMI shall be used:

- A. A maximum down payment of 5.0%
- B. Current Year 80% AMI thresholds adjusted for household size published by HUD
- C. Prior six-month average rate of interest based on the Fannie Mae Yield on 30-year mortgage commitments (price at par) plus one-half point (0.5%) spread.
- D. 30-year mortgage term
- E. Maximum sales price shall include any homeowner fees as calculated by OED.

The current sales prices are available from OED on the agency's website.

**VII. REQUIREMENTS FOR INITIAL OFFERING OF BUILD ALTERNATIVE FOR-SALE UNITS**

Applicants/Developers of Build Alternative For-Sale Units designated for sale to eligible households shall provide written notice to OED or a partner thirty (30) days prior to the proposed offering and must have received approval of the written notice from OED before entering into any Build Alternative For-Sale Units contract for sale. OED or a partner shall notify the Applicant /Developer within ten (10) business days of the receipt of the notice, indicating whether the notice is adequate or whether it is materially deficient. If the notice is deemed to be deficient, the initial offering cannot proceed until the deficiency has been cured and approved by OED or a partner. The Applicant/Developer may proceed with the initial offering if OED or a partner has not made a determination within ten (10) business days of receipt of such notice. Offerings must be made in accordance with the following standards:

- A. The notice shall contain the following:
  - 1. Date on which marketing to eligible households is to commence;
  - 2. Number and pricing of Build Alternative For-Sale Units offered;
  - 3. Floor plans, including bedroom mix and unit size of each Build Alternative For-Sale Unit type, and layout showing dispersal of the units within the building;
  - 4. Description of amenities offered;
  - 5. Anticipated date of availability of each Build Alternative For-Sale Unit;
  - 6. Vicinity map of the development;
  - 7. Copy of the approved development, subdivision or site plan, as appropriate; and

8. Other information or documents required by the Executive Director of OED

In addition to the above, the notice for Build Alternative For-Sale Units that are marketed for sale shall contain the following items:

1. Availability of mortgage financing to eligible households, if known;
2. A market appraisal of each Build Alternative For-Sale Unit performed by a certified general residential appraiser or a desk appraisal if the unit is being sold prior to construction. The appraisal should be conducted without consideration of the restrictive covenant.

**VIII. CLOSING REQUIREMENTS FOR APPROVED PURCHASER OF BUILD ALTERNATIVE FOR-SALE UNITS**

In order to complete the purchase of a Build Alternative For-Sale Unit, a buyer must be income-verified by OED or a partner. Upon closing, the purchase contract, the memorandum of acceptance, the appraisal (if necessary), the warranty deed and a copy of the HUD-1 Settlement Sheet or alternative documentation in a form acceptable to OED which conveys similar, verifiable information, and any other documentation deemed necessary by OED, shall be filed with OED to verify the sale of the Build Alternative For-Sale Unit. An Applicant shall not sell any unit without first obtaining a verification of eligibility issued by OED or a partner from the buyer. A copy of each verification shall be furnished by OED and maintained on file by OED.

**IX. NOTICE OF APPROVAL TO PURCHASE A BUILD ALTERNATIVE FOR-SALE UNIT**

Within ten (10) business days of the receipt of a fully completed eligibility application, and prior to closing, OED or a partner shall issue a signed written notice to:

- A. Approve the sale of the Build Alternative For-Sale Unit; or
- B. Inform the seller and purchaser that an approval cannot be issued, and stating the reasons for non-approval.

**X. OCCUPANCY REQUIREMENT**

Purchasers of Build Alternative For-Sale Units are required to occupy the purchased Build Alternative For-Sale Unit within thirty (30) days of closing on the unit. Owners of Build Alternative For-Sale Units are required to occupy those units as their primary residence. A primary residence shall mean the home or place in which one's habitation is fixed and to which one, whenever he or she is absent, has a present intention of returning after a departure or absence therefrom, regardless of the duration of the absence. In determining what is a primary residence,

the following circumstances relating to the owner shall be taken into account: business pursuits; employment; income sources; residence for income or other tax purposes; age; marital status; residence of parents, spouse and children, if any; location of personal or real property; billing addresses; and motor vehicle registration.

## **XI. OCCUPANCY EXCEPTION**

At the sole discretion of the Executive Director of OED, a temporary occupancy exception for owners of Build Alternative For-Sale Units may be allowed. The occupancy exception would allow such owner(s) of a Build Alternative For-Sale Unit to lease the Build Alternative For-Sale Unit for no more than six months in duration for a total of no more than a two-year period. The exception may be granted upon adequate evidence demonstrating the necessity to allow limited, temporary rental of the Build Alternative For-Sale Unit including, but not limited to, the following:

- A. Job or military transfer more than sixty (60) miles from Denver City and County limits;
- B. Divorce resulting in an inability to pay the mortgage;
- C. Change in household size;
- D. Job loss as a result of firing or layoff;
- E. Major illness within the household resulting in financial hardship;
- F. Relocation to obtain medical care outside the Denver metropolitan area; and
- G. Inability to sell after 120 days of active good faith marketing of property, with the Director to determine, in the Director's sole discretion, that the Director's marketing standard has been met.

OED may require a statement of intent to return to residency of the property. Additional information about the occupancy exception can be found on OED's website.

In order to obtain an occupancy exception, the owner must submit an application for an occupancy exception to the OED, including the amount paid by the owner in total principal interest payments on the owner's current mortgage, plus real estate taxes, homeowner insurance premiums if separate from mortgage, condominium fees, and reasonable expenses for management and reasonable maintenance of the unit but excluding any profit on the part of the owner beyond the demonstrated costs of maintaining the home. OED will use the information provided to determine the maximum rent that can be charged for the unit and will provide written approval of the occupancy exception. After receiving written approval of the occupancy exception, the owner must execute a Rental Contract and provide a copy of the executed contract to OED.

The owner shall provide income tax returns and bank statements from the period of time for which

the unit was rented to demonstrate income earned during any rental period as verification of meeting this obligation.

Under no circumstances shall a Build Alternative For-Sale Unit be used as a short-term rental as defined by Article III, Chapter 33 of the D.R.M.C.

**XII. NOTIFICATION REQUIREMENTS FOR RESALE OF BUILD ALTERNATIVE FOR-SALE UNIT**

Owners of Build Alternative For-Sale Units designated for resale to eligible households shall submit to OED a completed request for "maximum resale price" as provided on OED's website.

**XIII. DOCUMENTATION REQUIRED TO APPROVE PURCHASERS ON RESALE OF BUILD ALTERNATIVE FOR-SALE UNITS**

Prior to purchasing a Build Alternative For-Sale Unit, a prospective buyer shall be required to submit to OED a completed Eligibility Application Form with required attachments in order to verify that the prospective purchaser's income qualifies them to purchase a particular Build Alternative For-Sale Unit and that the purchase price will be affordable to a household earning at or below 80% of the Area Median Income (AMI) for Denver. All required documentation submitted to verify household income shall be kept confidential and is not subject to public disclosure except as required by law.

**XIV. GOOD FAITH MARKETING AND SELECTION OF ELIGIBLE HOUSEHOLDS**

During initial offering or resale of Build Alternative For-Sale Units, sellers must make a good faith effort to market to eligible households. Elements of a good faith marketing effort shall include the following:

1. Entering into a contractual agreement with a real estate agent;
2. Listing all properties in the MLS and coloradohousingsearch.com;
3. Hosting at least two open houses and/or informational sessions for prospective buyers, one of which will be on a weekend;
4. Showing the Build Alternative For-Sale Unit to potential buyers at times other than the open house;
5. Placement of at least two advertisements during separate weeks in a local newspaper of general circulation, listing on agent's website and/or accessible internet video tour of unit;
6. Build Alternative For-Sale Unit is advertised "affordable", "income restricted", or "income Build Alternative For-Sale Unit" in public marketing of the Build

Alternative For-Sale Unit and in any optional fields available for such information in the MLS and including price and income requirements;

7. Displaying a for sale sign prominently at the Build Alternative For-Sale Unit;
8. Timely response to all inquiries about the Build Alternative For-Sale Unit; and
9. Fair consideration of all purchase offers from income eligible buyers.

The seller shall maintain a marketing log that shows the advertisements and other information that is disseminated about the project and keep a list of prospective buyers who have expressed interest in an advertised Build Alternative For-Sale Unit, including any information provided by such prospective buyers concerning their income, place of work, current residence and household size. The Executive Director of OED, in the Executive Director's sole discretion, may require equivalent or additional marketing efforts. The City, upon request, shall have a right to review such log and written materials to ensure that a fair marketing effort was implemented.

Upon the expiration of the marketing period, if only one contract is received, the Applicant/Developer or seller may accept that offer. If more than one contract has been received, the developer/seller shall utilize a fair selection process to select among the prospective purchasers. Consideration of the following factors is consistent with a fair selection process:

1. Preference may be given to a household that holds a current income verification;
2. Preference may be given to households that can document that at least one member of the household currently works or resides in Denver;
3. Preference may be given to households who are first-time homebuyers;
4. Preference may be given to households that can document that they have lived or worked in the City for a minimum of five years; and/or

A developer or seller may choose to follow the City's selection process model in lieu- of developing his or her own fair selection process.

## **XV. FINAL SALE FOR BUILD ALTERNATIVE FOR-SALE UNITS**

Any owner planning the first sale of a Build Alternative For-Sale Unit within ten (10) years after the end of the covenant period shall provide 30 days notice to OED of the proposed offering and the date on which the owner is ready to offer the property for sale. The notice shall contain statements asserting that the property is offered at fair market value with no extraordinary terms of sale, and that it is offered as a single property for sale. In addition, the notice shall set forth the following:

- A. Pricing of Build Alternative For-Sale Unit offered;



- B. Numbers of bedrooms and unit size by square feet of Build Alternative For-Sale Unit; and
- C. Description of amenities offered.

Within 30 days of the receipt of such notice, OED shall provide written notice to the owner of the City or its designee intent to purchase and maintain the property as affordable housing, and shall close within 60 days of the notice of intent to purchase. If there is no intent to purchase, the owner may proceed to sell the Build Alternative For-Sale Unit according to the terms of the covenant.

If an Applicant/developer voluntarily provides Perpetual Affordability for Build Alternative For-Sale units in a structure, the City or its designee's right to purchase as outlined in these rules and regulations continues to apply.

## **XVI. REQUIRED DOCUMENTS AND COVENANTS**

### **A. Covenants**

1. OED shall provide a form of covenant that will be updated and available on OED's website. Covenants must be completed by Applicants/Developers and recorded by OED at the time condominium declarations are recorded for Build Alternative For-Sale Units in multifamily developments, and no later than 60 days prior to closing on a Build Alternative For-Sale Unit. Final, complete, and signed covenants shall be delivered to OED and one original will be recorded by OED no later than the recordation of the final subdivision plat or, in the case of a condominium development, recorded no later than with the condominium declaration. Recording fees are to be paid by the Applicant/Developer, but recording shall be performed by OED. No final certificate for occupancy for any unit in the development shall be issued until an approved covenant signed by the Executive Director of OED has been recorded by OED at the Applicant/Developer's expense and then only after all other requirements necessary for the issuance of the certificate for occupancy are satisfied.
2. Build Alternative For-Sale Unit covenants shall include the following statements that:
  - i. The provisions of the Housing Funds Ordinance shall apply to the property and run with the land for the entire covenant period;
  - ii. The covenants shall encumber the property and bind the owners of the Build Alternative For-Sale Units, and all other parties with an interest in title to the Build Alternative For-Sale Units on the property during the covenant period and run with the land for the entire covenant period;
  - iii. These covenants shall be senior to all instruments securing permanent financing;

- iv. Contain provisions which govern the first resale within ten (10) years after the end of the covenant period (“Final Build Alternative For-Sale Unit Sale”);
- v. Eligibility will be defined such that to be eligible to purchase a Build Alternative For-Sale Unit, households must be earning no more than the eligible level of AMI as defined by these rules;
- vi. The home must be used as a primary residence and the penalties for violation include the following provisions:
  - a. During the covenant period, every buyer of a Build Alternative For-Sale Unit shall occupy the Build Alternative For-Sale Unit as the buyer’s primary residence during the buyer’s ownership, unless an occupancy exception has been granted by OED. During the covenant period, each buyer shall verify before taking occupancy that the buyer will occupy the Build Alternative For-Sale Unit as the buyer’s primary residence during the buyer’s ownership. The Executive Director of OED shall require an owner who has not received an approved exemption and does not occupy the Build Alternative For-Sale Unit as the buyer’s primary residence to offer the Build Alternative For-Sale Unit for resale to an eligible household under the resale provisions of these rules and regulations. The Executive Director of OED may also require that all rents gained in violation of the occupancy requirement be paid to the City.
  - b. If a Build Alternative For-Sale Unit owner dies, at least one person taking title by will or by operation of law, whether eligible or not, either shall occupy the Build Alternative For-Sale Unit as his, her, or their primary residence during the covenant period, or shall sell the Build Alternative For-Sale Unit according to the terms of the Covenant. In no event shall the death of a Build Alternative For-Sale Unit owner affect the operation of the covenant or this article;
- vii. A notice of resale during the covenant period exists, which requires that ten (10) days before an offering for resale of any Build Alternative For-Sale Unit, the owner shall notify OED in writing of the proposed offering and the date on which the owner will be ready to begin the marketing to eligible households. OED shall notify the selling owner as to the maximum resale price and eligibility limitations;

- viii. The resale price and terms must be affordable to a household earning at or below 80% of the Area Median Income (AMI) in Denver. Except for foreclosure proceedings against the eligible household, any Build Alternative For-Sale Unit constructed or offered for sale under the terms of this article may be resold only as provided herein during the covenant period.
- ix. The resale requirements during the covenant period are as follows:
- a. A resale Build Alternative For-Sale Unit may be offered to eligible households only after OED has provided the maximum resale price, and OED has been notified by the owner as required in these rules and regulations and the ten (10) business day period thereafter has expired.
  - b. When the resale Build Alternative Unit is offered to eligible households, the following conditions apply and must be reflected in all marketing materials reflect:
    - a. the purchase price shall not exceed the maximum sales price;
    - b. the purchaser must be verified by OED as an eligible household as defined by these rules and regulations;
    - c. the selling owner's obligations under the purchase contract are expressly contingent upon the verification that the purchaser is an eligible household that the purchase price does not exceed the maximum sales price as evidenced by issuance of the verification; and
    - d. all earnest money must be returned in the event that the contingencies above are not met.
  - c. Within five (5) days after contract acceptance (defined as the date of last execution of the contract by the purchaser or the selling owner), the purchaser shall complete and submit an application form to OED requesting a determination that the purchaser is an eligible household and that the purchase price does not exceed the maximum sales price.
- x. Upon the transfer of the Build Alternative For-Sale Unit, a memorandum of acceptance shall be recorded in the Clerk and Recorder of the City and County of Denver, along with the deed for the Build Alternative For-Sale Unit.

- xi. The Executive Director of OED may waive the restrictions on the resale prices for Build Alternative For-Sale Units if the Executive Director of OED finds that the restrictions conflict with regulations of federal or state housing programs and thus prevent eligible households from buying dwelling units under the City and County of Denver's affordable housing program. Any waiver shall be in writing, shall reference the recorded covenant, and shall be recorded in the records of the Clerk and Recorder for the City and County of Denver, Colorado;
- xii. In the event of notice of default or notice of foreclosure by the first lien holder (including assigns of the first lien holder), the owner shall send a copy of said notice to OED within seven (7) days of receipt;
- xiii. The Executive Director of OED shall be authorized to accept and exercise enforcement powers on behalf of the City; and
- xiv. A covenant title of: "Notice of Voidable Title Transfer and Master Covenant for the Occupancy and Resale of For-Sale Units."

Upon the request of the current homeowner, the existing covenant may be replaced by an amended and restated covenant that has been updated or revised since the date of the existing covenant. The request must be made in writing to OED and is subject to the approval of OED, in its sole discretion. The amended and restated covenant must be signed by the current homeowner and by the Executive Director of OED and must be recorded with the Clerk and Recorder of the City and County of Denver to be valid. OED will record the amended Covenant.

## **SECTION 6: COMPLIANCE WITH BUILD ALTERNATIVE REQUIREMENTS**

### **I. COMPLIANCE**

Purchasers or renters of Build Alternative For-Sale Units or Build Alternative Rental Units shall occupy the units as their principal place of residence, except in the event the Executive Director of OED or its designee has provided an effective occupancy exception.

In all cases, the compliance of an Applicant/Developer, seller, owner, or renter of a Build Alternative Unit will be determined in accordance with its obligations under the terms of the Housing Fund Ordinance, these rules and regulations, covenants, and any deed restrictions.

## **II. VIOLATIONS AND PENALTIES**

- A. It shall be a violation of the Housing Fund Ordinance and these rules and regulations for an Applicant/Developer or owner to sell a Build Alternative For-Sale Unit to an individual or household who has not been income-verified by OED or a partner.
- B. It shall be a violation of the Housing Fund Ordinance and these rules and regulations for an Applicant/Developer or owner to rent a Build Alternative Rental Unit to an individual or household earning more than 80% of AMI for Denver
- C. In the event a renter fails to occupy a unit for a period in excess of sixty (60) days, the unit will cease to be counted as a Build Alternative Unit. The landlord/owner shall immediately designate the next available unit as a Build Alternative Rental Unit to be leased under the terms of the existing covenant for the Build Alternative Rental Units and the landlord to be deemed in compliance.
- D. During the term of the covenant of Build Alternative For-Sale Units, no second mortgage, re-finance mortgage, or equity mortgage greater than the then current restricted Maximum Resale Price shall be legal. Failure to abide by that restriction may subject owner to criminal and civil fraud penalties. The provisions of these rules and regulations hereunder do not in any way limit the types of claims or damages which may be sought against the owner by any injured mortgage, banking, or financial institution. Remedies sought by the City against the owner are not limited by the actions which may be taken by any injured mortgage, banking, or financial institution.
- E. Owners or renters of Build Alternative Units who fail to submit requested documentation, executed affidavits or certifications as required shall be subject to penalties under the covenant or otherwise provided by law.
- F. Owners and renters of Build Alternative Units who execute a required affidavit or certification knowing the statements contained therein to be false shall be subject to penalties under the covenant or otherwise provided by law.
- G. Renters of individual Build Alternative Rental Units who execute an affidavit or certification knowing the statements contained therein to be false may be subject to lease termination and eviction procedures.
- H. Owners of individual Build Alternative For-Sale Units who do not continue to occupy their respective unit as their domicile without receiving an occupancy grant of exception from OED may be subject to legal action or proceeding under the covenant, including, but not limited to, that OED may require such owner to turn over rents received in violation of this provision and to either sell the unit to someone who meets the eligibility requirements established by the Housing Funds Ordinance or to occupy such affordable dwelling unit as a domicile.

- I. Any owner that fails to comply with the notice requirements of Sec. 4 VII may be subject to applicable penalties in the City and County of Denver Preservation of Affordable Housing Ordinance Administrative Rules and Regulations.

In order to ensure compliance with the letter and spirit of the Housing Fund Ordinance and these rules and regulations, OED shall:

- A. Maintain a list of all Build Alternative Units constructed, sold or built as an affordable rental project during the period the Housing Fund Ordinance is in effect.
- B. Periodically confirm occupancy and ownership for Build Alternative Units.
- C. Visit the Build Alternative Unit, from time to time if necessary to determine compliance.

## **SECTION 7: HOUSING INVESTMENT GUIDELINES**

### **I. ELIGIBLE APPLICANTS FOR HOUSING FUNDS**

The Housing Fund Ordinance has been structured to ensure that many different types of organizations are eligible to receive financing. Eligible applicants include governmental subdivisions, community development corporations, local housing authorities, community-based or neighborhood based non-profit housing organizations, other non-profit organizations, and for-profit entities.

In order to be considered eligible for financing, applicants must be current on all payments to the City and in good standing with the Office of Economic Development on all current or previous housing investments and in good standing with the Colorado Secretary of State. In addition, borrowers receiving Housing Fund Ordinance investments into acquisition, development or preservation of affordable housing units must be single purpose entities except for projects sponsored by public housing authorities in which case the sponsoring authority may be the borrower.

### **II. ELIGIBLE PROJECTS AND ACTIVITIES**

The Housing Fund Ordinance revenue is intended to primarily support the acquisition, production or preservation of affordable housing units as well as programs that help residents access or maintain existing affordable housing. The following list of eligible programs and activities is meant to be illustrative, but not exhaustive, of possible types of housing investments through the Housing Fund Ordinance.

- A. Acquisition of land for housing construction;
- B. Acquisition of existing housing or buildings for conversion to housing;

- C. Rehabilitation and major repairs of existing affordable rental and for-sale housing projects;
- D. Production of new affordable rental and for-sale housing units;
- E. Down payment and closing cost assistance for first-time homebuyers;
- F. Rental assistance for tenants;
- G. Rental assistance to landlords in exchange for income restricted rents; and
- H. Supportive services such as case management when those services are connected with a unit of permanent supportive housing.

Housing Fund Ordinance revenue is not intended to support administrative expenses of organizations overseeing housing programs except in limited circumstances as approved by the Executive Director of OED. In addition, Housing Fund Ordinance revenue shall not be used to support production, preservation or rehabilitation of transitional housing, temporary shelter or group homes.

### **III. FUNDING PROCESS AND REQUIREMENTS**

The Housing Fund Ordinance is an essential resource for addressing the need for affordable housing in Denver. In selecting projects and programs for funding, preference will be given to projects and programs that align with adopted priorities for housing investments as outlined in the 3-5 Year Comprehensive Housing Plan and Annual Action Plan or any other future replacement Plans. OED shall include a list of housing investment priorities consistent with the adopted 3-5 Year Comprehensive Plan on its website and in housing application materials.

In addition to the requirements outlined in the Housing Fund Ordinance and these rules and regulations, OED shall maintain a list of policies and procedures to outline additional requirements for investment of housing funds as appropriate, which may include but is not limited to standard investment terms, application requirements, funding approval processes and contract requirements. A copy of the list of policies and procedures shall be available on OED's website and may be updated from time to time.






RULES AND REGULATIONS ADOPTED PURSUANT TO ARTICLE IV OF CHAPTER  
2 AND SECTION 12-18 OF THE CITY AND COUNTY OF DENVER REVISED  
MUNICIPAL CODE

PUBLIC HEARING HELD ON AUGUST 29, 2019

APPROVED FOR LEGALITY



KRISTIN M. BRONSON, CITY ATTORNEY,  
CITY AND COUNTY OF DENVER

12/18/19

DATE

APPROVED AND ADOPTED

DATE: 12/18/19



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