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## Denver Proposing New Development Fee to Pay for Affordable Housing

Despite some concerns that the real estate market is slowing down, the city's data indicates that the real estate and job market in Denver continue to expand, creating an acknowledged gap between wages and housing costs. Denver's administration is proposing to address the need for affordable housing by creating a permanent affordable housing fund beginning in 2017, paid for by a new development fee based on square footage and a property tax increase of up to 1 mill.

Developers with new construction planned on or after Jan. 1, 2017, should expect that these fees will be applicable to their project and should factor it into their underwriting. This is true regardless of product type, as the fees will be applicable to all new construction. Additionally, the property tax increase will likely be applicable for the 2017 tax year, although it would not be payable until 2018.

The amount of the development fee has not yet been finalized. The fee is anticipated to apply to both commercial and residential development. Denver City Councilwoman Kniech indicated that she anticipates the fee is likely to be between \$1 and \$7 per square foot, depending on the type of development, although the results of a study presented to Denver City Council on June 8, 2016, provide legal justification for much higher amounts.

### History Leading Up to Proposal

- July 2013 – Denver Mayor Hancock introduced the [3x5 Challenge](#), a housing initiative to create, rehabilitate and preserve at least 3,000 affordable housing units in Denver over five years.
- October 2014 – Mayor Hancock introduced [Housing Denver](#), a five-year plan to guide Denver's housing policies and resource allocation for affordable housing.
- February 2015 – Denver launched a \$10 million revolving loan fund for affordable housing with assistance from the Colorado Housing Finance Authority and appropriated \$8 million from Denver's general fund for affordable housing.
- [2015 Housing Report](#) summarizes Denver's work to date.
- May 2016 – Denver's Office of Economic Development released a [Gentrification Study](#) related to mitigating involuntary displacement.

### Permanent Affordable Housing Fund

As announced in Mayor Hancock's second inaugural speech in July 2015, Denver plans to raise \$150 million to create a permanent affordable housing fund to establish a long-term solution. The affordable housing fund is expected to address both for rent and for sale housing, and may include transitional housing projects for the homeless. The fund is anticipated to be managed by a group of appointed experts and community stakeholders and meet monthly in publicly noticed and open meetings.

### Studies to Determine Development Fee

As required by Colorado statute, Denver undertook a development linkage study to determine whether, and what amount of, a fee could be charged per square foot for new construction. The logic is that the

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people who fill new jobs that come with new commercial and residential development will need somewhere to live.

Denver has also undertaken a feasibility study to determine what fee level is appropriate on development to reasonably meet affordable housing demand without significantly impacting the Denver real estate market.

The results of these studies were presented to the Denver City Council Safety and Well-being Committee on June 8, 2016. The linkage study's findings establish the legal justification for fees ranging from \$9.60 per square foot for a new single-family home to \$119.26 per square foot for a new retail development, although Councilwoman Robin Kniech indicated at the meeting that the actual fee to be proposed will be much lower. While the study is not yet finalized and public, here is the [link to the PowerPoint](#) summarizing the study.

Denver also studied other cities for best practices on affordable housing. Here is the [link to the chart](#) summarizing this analysis.

This development fee will likely replace Denver's current inclusionary housing ordinance (for sale residential projects of 30 units or more must include at least 10% income-restricted units or pay into a fund for housing), although details on that process remain to be determined. The [2015 Interim Report on Denver's Inclusionary Housing Ordinance](#) may serve to substantiate this change.

### Property Tax Increase

Up to a 1 mill property tax increase is also likely to be imposed based upon authorization from Denver voters in 2012, which has not previously been utilized. The value of a full 1 mill increase is approximately \$24/year for a \$300,000 residential home, and \$290/per year for every \$1 million in commercial property value.

### Next Steps

Denver held a public meeting in April 2016, and will schedule a second public meeting in July 2016 once a final development fee and property tax mill amount are proposed for discussion.

Denver City Council is anticipated to vote on the development fee in late summer or fall 2016. If approved, the development fees would likely take effect as of Jan. 1, 2017, and would be paid at the time of the building permit.

The amount of the development fee and precisely how the funds will be used or allocated remains to be determined by the mayor and Denver City Council. We will continue to monitor these efforts and provide updates as appropriate.

Please contact Carolynne White ([cwhite@bhfs.com](mailto:cwhite@bhfs.com), 303.223.1197) or Caitlin Quander ([cquander@bhfs.com](mailto:cquander@bhfs.com), 303.223.1233) to get an expanded analysis of this proposed development fee in

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relation to a specific project or matter, or if you'd like assistance with preparing comments on the fee for the mayor or Denver City Council.

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*This document is intended to provide you with general information regarding Denver's proposed new development fee to pay for affordable housing. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorney listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.*