

Law & Accounting

Denver's affordable housing mandate is here: What to know

Denver has an affordable housing crisis. According to Community Planning and Development and the Department of Housing Stability, one in three households in Denver struggles with housing costs and 46,000 are paying more than half of their incomes toward housing. In April, Fox31 reported that Anytime Estimate, an online real estate calculator, ranked Denver seventh among the top 50 metro areas in the U.S. for average home sale prices between 2000 and 2022. The average home sales price is only higher in Boston, Seattle, San Diego, Los Angeles, San Francisco and San Jose, California.

In response to growing concerns about housing affordability in our city, Denver City Council is actively pursuing its Expanding Housing Affordability Proposal. Introduced in October, the latest version of the EHA is heading to a City Council hearing and vote on June 6. If passed as it is written right now, here is what residential and commercial real estate professionals need to know:

■ **Mandatory inclusionary housing.** For residential developments of 10 units or more, the EHA mandates that a percentage of all units be designated as affordable housing and remain that way for a period of 99 years.

The EHA includes two options



Shaye Maetzold Anderson
Associate, Real Estate Practice, Polsinelli

for on-site build options for developers to choose from, covering both rental housing and ownership housing. Affordable units designated under the inclusionary housing scheme must be designated at 60% to 90% of the area median income, depending on the option selected. On-site, income-restricted build options must be of equivalent value, quality, size and number of bedrooms to any market-rate units in the development.

The inclusionary housing mandate applies to both rental and ownership projects, with increased requirements for high-cost markets, defined as areas with the highest land values in the city. Mixed-use projects are subject to both the inclusionary housing requirement and linkage fee. The linkage fee applies to the commercial portion of the development, and the inclusionary housing requirements apply to the residential portions.

Projects already subject to an affordable housing plan or other affordable housing obliga-

tion, residential developments built by charitable or religious organizations, and high-impact developments subject to alternative standards are exempt from mandatory inclusionary housing requirements.

In accordance with state law, the EHA includes a "choice of options," creating multiple alternatives to the on-site inclusionary housing requirements. The two options are a fee-in-lieu, calculated for each affordable unit that would otherwise be required, and negotiated alternatives for high-impact developments or discretionary agreements. Like other components of the EHA, the fee-in-lieu varies for rental units and ownership units, with increased fees in high-cost markets. The percentage of income-restricted units to be designated also varies by market area, with high-cost markets requiring 10% of total dwelling units to be used in the fee calculation, and typical markets requiring 8% of total dwelling units.

In addition to the fee-in-lieu, the EHA permits negotiated alternatives. For instance, any applicant seeking a negotiated alternative has the burden of demonstrating that the alternative provides a better outcome than the mandatory requirements. Factors of a negotiated alternative may include the dedication of land for the provi-

sion of affordable housing, providing fewer income-restricted units but increasing the depth of affordability or increasing the number of bedrooms, or providing off-site income restricted units within the same neighborhood or quarter-mile radius.

■ **Gradual linkage fee increases.** The EHA will increase existing linkage fees for all new commercial, industrial and residential developments of nine units or fewer, as well as any additions to existing development of those units. The fee will increase gradually over four years, with the first increase slated for July 1, and the final increase on July 1, 2025.

The scope of proposed linkage fee increases varies by use, with final linkage fees ranging from \$2.50 to \$9 per square foot by July 1, 2025. The EHA includes proposed linkage fees for new residential developments of nine units or less that are otherwise exempt from mandatory inclusionary housing requirements, depending on the size of each unit.

There are exceptions. Projects that currently are exempt from existing linkage fees will remain exempt under the EHA. The EHA extends exemptions to include any gross floor area of structures containing an education use under Article 11 of the Denver Zoning Code, and resi-

dential developments of 10 or more units, which are subject to mandatory inclusionary housing requirements.

■ **Incentives.** To encourage developers to build on-site affordable units rather than paying the fee-in-lieu, the EHA includes additional incentives such as permit fee reductions of \$6,500 or \$10,000 (depending on market area), reduced minimum vehicle parking requirements near transit stations, and a linkage fee exemption for street-level commercial, sales, services and repair uses in mixed-use developments.

■ **Conclusion.** This policy certainly will have an impact on the real estate industry. This policy has been expected for many months, and the uncertainty around its details has caused some consternation prior to introduction. Some additional details will need to be further developed as part of the rule-making process after the EHA is adopted. Some have argued that this will make Denver more accessible. Others have argued the direct opposite. There most certainly will be questions around its implementation, and many expect a flood of site development plan applications in advance of the June 30 deadline. Time will tell. ▲

smetzoldanderson@polsinelli.com

Assisting clients with the
**ACQUISITION,
FINANCING,
DEVELOPMENT,
LEASING,
& DISPOSITION**
of all types of
REAL PROPERTY

DAVIS
GRAHAM &
STUBBS
dgslaw.com

Catherine Hance
303.892.7375
catherine.hance@dgslaw.com

SVC

SENN VISCIANO CANGES P.C.

OUR REAL ESTATE GROUP

Serving the Commercial Real Estate Community

- ⊙ LEASING
- ⊙ REAL ESTATE DEVELOPMENT
- ⊙ REAL ESTATE ACQUISITION
- ⊙ ENVIRONMENTAL
- ⊙ PRIVATE EQUITY
- ⊙ COMMERCIAL LENDING, WORKOUTS AND FORECLOSURE
- ⊙ REAL ESTATE AND COMMERCIAL LITIGATION
- ⊙ CONSTRUCTION CONTRACTS AND LITIGATION
- ⊙ CORPORATE

Our clients rely on our experienced team of lawyers to guide them through all of their legal needs, from significant business decisions to the most complex global deals and litigation. Our breadth and depth of practice enable us to handle the most complex matters and solve our clients' problems seamlessly.

1700 Lincoln Street, Suite 4300 | Denver, Colorado 80203
Phone 303-298-1122 | Fax 303-296-9101

www.SennLaw.com

