

February 14, 2018

Denver City Council Approves Zoning Amendments Permitting Construction Up to 16 Stories in RiNo

On Monday, Feb. 12, the Denver City Council voted 11-1 to approve changes to the Denver Zoning Code and Municipal Code with the intent of implementing the 38th & Blake Station Area Plan Amendments—and allowing property owners to build structures up to 16 stories tall around the 38th & Blake Light Rail Station. The public hearing on the ordinances and City Council questioning went late into the evening, with supporters and opponents discussing the impacts of increased density, reduced parking requirements, gentrification, displacement and whether the new legislation was overreaching or underperforming in nature.

Executive Summary

Below is a summary of key changes to both the Denver Zoning Code (“Zoning Code”) and Denver Revised Municipal Code (“DMRC”) implemented by City Council on Monday evening:

- The River North Design Overlay (DO-7) District establishes enhanced design review criteria for all structures located within the boundaries of the district. Features include elimination of the minimum parking requirement within one-half mile of the 38th & Blake Station, increased requirements for screening/mitigating structured parking and designation of the Platte River for treatment as a “primary” street.
- The 38th & Blake Station Area Overlay (IO-1) District permits property owners to exceed the base height permitting by the underlying zone district as long as the property owners satisfy affordable housing and community benefits requirements.
- City Council also approved creation of the Incentive Fee Fund, which is intended to allow the City of Denver (“City”) to fund various types of affordable and low-income housing, and revised the DMRC to permit developers to construct buildings in the IO-1 overlay at heights in excess of the base zoning—between eight and 16 stories—as long as they build a certain amount of affordable units in the 38th & Blake Station area or, in the case of non-residential buildings, provide community benefits commensurate with the costs to build those additional units.
- The amount of affordable units required for those portions of any building constructed above the base height permitted by the underlying zone district is four times what is required under the City’s current affordable housing linkage fee provisions, which were passed in fall 2016 (“Linkage Fee Ordinance”).
- Unlike the Linkage Fee Ordinance, residential developers in the IO-1 overlay are not permitted to pay a fee in lieu of building units. If residential developers elect to satisfy their build requirement on other property within an IO-1 overlay district, they must provide affordable units of similar tender to those developed on their site. In other words, a market rate for-sale project must build (either on- or off-site) affordable for-sale units, and a market rate for-rent project must build (either on- or off-site) affordable for-rent units.
- Another critical difference from the Linkage Fee Ordinance is the fact that developers of non-residential projects within the IO-1 district can build up to the incentive heights by paying the fee required under the Linkage Fee Ordinance and signing a “Community Benefits Agreement,” which is intended to provide community serving uses to the 38th & Blake Station area.

38th & Blake Station Area Plan Amendments

When the University of Colorado A Line opened in April 2016, it connected the 38th & Blake Station to both Denver Union Station and Denver International Airport. At that time, the 38th & Blake Station area was located within the jurisdiction of five separate small area plans promulgated by the City of Denver, resulting in inconsistency with respect to building height recommendations for future development. In an effort to capitalize on the potential transit-oriented development opportunities at the new station, the Denver City Council adopted the 38th & Blake Station Area Plan Amendments in September 2016 to refine the existing small area plans to clarify the guidance

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with respect to building heights and “support appropriate and desired growth patterns, including building form standards, and mixed income housing opportunities associated with greater density and height.”

While the 38th & Blake Station Area Plan Amendments provide the vision for increased density and heightened design requirements in River North (“RiNo”), revisions to both the Denver Zoning Code (“Zoning Code”) and Denver Revised Municipal Code (“DRMC”) were required before site development plans and building permits for new structures could be approved for structures that incorporate high-quality design standards and take advantage of increased height allowances. The ordinances adopted on Monday create two new overlay districts under the Zoning Code that cover the area surrounding 38th & Blake Station and offer height incentives allowing developers who provide affordable housing or other community benefits to build higher than the maximum permitted height in the underlying zone district, and implement new design criteria and requirements.

Design Criteria and Requirements – The River North Design Overlay District (DO-7)

One of the amendments to the Zoning Code establishes the River North Design Overlay District and details requirements related to setbacks, parking location and access, build-to requirements, enhanced design elements, and primary building forms. Notably, the DO-7 overlay requires increased street-level activation, increased screening requirements for structured parking, and elimination of minimum parking requirements within one-half mile of the station and new criteria for designation of primary streets.

Any site development plan application submitted to the City prior to Feb. 12, 2018, and approved by the City prior to April 2, 2018, shall not be required to comply with the requirements set forth in the two new overlay districts.

Height Incentive Requirements – The 38th & Blake Station Area Incentive Overlay District (IO-1), Incentive Fee Fund and Incentive Height Requirements

To implement height incentive requirements offered to developers that agree to build affordable housing or offer other community benefits, City Council created the Incentive Overlay District, amended the Denver Zoning Map to include base zoning districts with height limitations measured in stories, and created the incentive fee fund and other incentive height requirements, which such requirements vary depending on the type of uses within a given development.

Incentive Overlay District and Amendment to Denver Zoning Map

In addition to creating the River North Design Overlay District, City Council amended the Zoning Code to establish an Incentive Overlay District, clearly laying the groundwork for replication of the Incentive Overlay in other parts of the City. The first of these incentive overlay districts is the 38th & Blake Station Area Incentive Overlay District (IO-1). Any structure that satisfies the requirements of the newly created and simultaneously approved Article VI of Chapter 27 of the DRMC, discussed below, may exceed the maximum base height permitted by the underlying zone district regulations and build up to the maximum incentive height set forth in Section 9.4.6 of the Zoning Code.

Denver City Council also initiated a map amendment rezoning certain properties within the 38th & Blake Station area to underlying base zoning districts with height limitations defined in stories, rather than in FAR or other metrics, in order to permit more effective administration of the Incentive Height Requirements discussed below.

Incentive Fee Fund and Incentive Height Requirements

To further implement the new incentive height allowances, Denver City Council voted to add a new Article VI to Chapter 27 of the DRMC (“Incentive Fee Ordinance”) creating the Incentive Fee Fund. The Incentive Fee Fund will be used for production/preservation of rental housing and for-sale housing, homebuyer assistance programs, development of housing for homeless persons and support for low-income at-risk persons in danger of losing existing homes, and will be administered by the executive director of the City’s Office of Economic Development (“OED”).

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The Incentive Fee Ordinance allows structures within the Incentive Overlay districts to exceed their base height in exchange for payment of additional fees, construction of additional affordable units or provision of other community serving benefits. The requirements for taking advantage of increased height opportunities under the Incentive Fee Ordinance build upon the existing requirements to either pay linkage fees or build affordable units as required in the Linkage Fee Ordinance.

Any fees required to be paid under the Incentive Fee Ordinance are in addition to, and above and beyond, the fees required to be paid under the Linkage Fee Ordinance. Any project electing to take advantage of increased height allowance under the Incentive Fee Ordinance must pay fees required under the Linkage Fee Ordinance for all stories up to the permitted base height, together with four times that amount for each and every story of the subject structure above and beyond the permitted base height.

Residential and “Mixed-Use Residential” Requirements

Residential and “mixed-use residential structures” (as defined in the Incentive Fee Ordinance) must actually build the number of affordable units required under both the Linkage Fee Ordinance and the Incentive Fee Ordinance. The number of affordable units required under the Incentive Fee Ordinance is determined by multiplying the number of affordable units under the Linkage Fee Ordinance by four. These units may be provided on the subject property or at an off-site subject to the IO-1 overlay. Further, affordable units must be of the same tender—in other words, for-sale multifamily units must build other for-sale multifamily units.

Non-residential and “Mixed-Use Non-Residential” Requirements

Non-residential and “mixed-use non-residential” (as defined in the Incentive Fee Ordinance) developers within the IO-1 overlay are required to comply with one of the following: (1) pay both the fees required under the Linkage Fee Ordinance and Incentive Fee Ordinance; (2) build the required total affordable units required under the Linkage Fee Ordinance and Incentive Fee Ordinance, either at a structure located on other real property subject to the IO-1 overlay or, in a mixed-use non-residential structure located at the subject property; or (3) pay the entire fee due under the Linkage Fee Ordinance and execute a community benefits agreement.

A “community benefits agreement” is an agreement entered into between an applicant and the City, administered by OED, allowing an applicant to provide community serving uses for a portion of the proposed structure in place of payment of the incentive height linkage fees. OED, in consultation with Community Planning and Development, will determine the applicable community serving uses for each community benefits agreement. The community benefit is intended to be commensurate with the cost of providing the affordable units that otherwise would have been required under the Incentive Fee Ordinance. These agreements are intended to include, without limitation, rent-reduction rate, time period, collateral and default remedies such as re-leasing or recapture of any obtained incentive height linkage fee savings. All community benefits agreements must be executed prior to approval of a site development plan or issuance of building permits.

If you have questions about the RiNo Design Overlay District or Incentive Fee Ordinance, please reach out to [Blair Lichtenfels](#), [Bruce James](#) or [Kate Stevenson](#).

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