The Promise of Inclusionary Housing: A Case Study Putting Denver's Early Implementation Into Context

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Executive Summary

As Colorado seeks to grow its overall supply of housing, in part through a new law promoting density near transit, inclusionary housing is one strategy to capture a portion of increased economic value to maximize immediate affordability outcomes. It can be hard for communities and policymakers to weigh claims by real estate industry critics who say inclusionary housing slows housing development or makes housing more expensive, given the complexity of the housing market and the lack of public access to development financials. This paper uses Denver, Colorado as a case study to explain the ways in which markets evolve to accommodate affordability requirements, and the potential of inclusionary housing to meet housing needs that new, market-priced housing will not meet on its own.

Inclusionary housing, also known as inclusionary zoning, creates a modest, but steady supply of moderately affordable homes without public subsidy. It does so by requiring a percentage of otherwise market-rate multifamily developments to be priced for low- or moderate-income families at rents or sale prices they can afford. At least seven cities across metro Denver have an inclusionary policy. Denver's was adopted in June of 2022, and is called Expanding Housing Affordability, or EHA.

Denver's policy has eight possible compliance pathways which require 8 to 15 percent of homes to be affordable in projects of 10 homes or more. Homes must be affordable to families earning incomes ranging between 60 to 80 percent of area median income, or AMI, for rental, and 80 to 90 percent of AMI for ownership.

According to national standards for evaluating the market impacts of inclusionary housing, it is too early to evaluate Denver's ordinance, which is only beginning implementation. Yet critics cite a drop in multifamily housing permits right after Denver's policy was implemented to argue that inclusionary is halting housing development. A deeper dive examining average permitting over full years and analysis of larger market factors provides a more accurate picture of the multifamily housing pipeline in Denver, and the forces impacting it at this early stage of EHA implementation

Denver saw a 191 percent increase in permitting in the months prior to passage of inclusionary housing policy due to a race among developers to take advantage of a grandfather clause that allowed projects in the approval process to avoid the new affordability requirements. Predictably, permit applications dropped significantly in the months immediately afterward. However, looking over a longer time horizon, permitting across 2022-23 was more comparable to 2020-21. There was an average of 228 permits per year across 2022-23 compared to 263 per year in the 2020-21 period. And even the slightly slower average across 2022-23 was still high compared to historical permitting rates. For example, 2019 saw 211 permits.

Today, nearly 30,000 market-rate apartments are still in Denver's permitting pipeline. That enormous glut of supply is taking up limited land, financing, and construction resources. This supply backlog alone limits the number of new projects that can be built or absorbed by new residents or households, thereby slowing permitting rates independent of affordability requirements. Denver's downward trend in permits is consistent with national trends and housing economist predictions that more housing activity would move from primary markets like Denver -- that had been hot for the last several years -- to secondary markets, until bursts in supply have time to be absorbed

The claim apartment construction is over in Denver is like comparing the grocery bill and calorie intake for Super Bowl Sunday with grocery purchases and calorie intake for the three days after, and then declaring that the family must be starving because of the precipitous drop. Skipping breakfast and eating smaller portions of leftovers for a few days after a once-a-year feast is just a return to normal before you head to the grocery store again for a smaller cart of goods.

Evidence from more than 1,000 inclusionary policies across the nation demonstrates that local markets adjust to accommodate carefully calibrated affordability requirements over time, and still produce new housing. The largest factor that evolves is land prices, a process that takes time but has resulted in permit rates in other cities recovering after initial dips following new policies, all things being equal.

All things are not equal in 2024 Denver compared to 2021. Economists who track and model development costs indicate that the price impacts of just two recent inflationary factors bearing down on development, interest rate increases and construction price escalation, are greater than the cost of complying with inclusionary housing policies. Considering the upcoming glut of supply, and market volatility caused by these inflationary pressures, the continued permitting of new multifamily projects since EHA was adopted, even if slowed, indicates a degree of resiliency in Denver's market.

While permitting has risen in some jurisdictions outside of Denver since EHA's passage, there are market factors influencing that trend. Permits have also risen in Boulder County, which has the majority of the inclusionary policies in the metro area.

Furthermore, a healthy pipeline of more than 40 land parcels has pursued expensive and time-consuming rezoning into districts that allow multifamily housing to be built since EHA passed, paving the way for the next pipeline of these projects in Denver. Planned major redevelopment projects that comprise more than 40,000 new homes across just four mega-sites represent another pool of projects waiting behind the housing currently slogging through permitting.

Though early, the first generation of projects that will deliver affordability results under Denver's recent law is taking shape. The initial pipeline for inclusionary homes among projects subject to mandatory requirements and in permitting at time of print is between 256 to 319 affordable homes, depending on which compliance path is selected. Subsidizing those same homes instead of building them through inclusionary would cost the city at least $6.4 to 8 million, assuming an unrealistic scenario where every project won highly competitive tax credits at more than twice the rate typically awarded within the city of Denver in one year. In reality, building them without tax credits would cost ten times as much.

Some critics also argue that all rents go up to pay for affordable homes. But there is a limit to how much cost developers can pass on through price hikes on other homes. The claim assumes developers are not already charging the most the market is willing to pay, and that renters or buyers are willing and able to pay more. Some of the most recent research examining the cost of much higher inclusionary requirements in Los Angeles – for 30 percent of AMI homes -- modeled price impacts below one percent. When market rents exceed what most working families can afford by many hundreds of dollars, a difference of this scale is not enough to matter for their access to market rate homes. In other words, affordable inclusionary homes have more community value for meeting the needs of households with high rent burden than barely lower market-rate rents that are still too high for most burdened households.

The housing projects most likely to be impacted by the adoption of a new inclusionary policy are those for which land was acquired at pre-inclusionary peak prices and are now attempting to incorporate the inflationary impacts of the market along with new affordability standards. For these projects, modest reductions in the rate of return are another path for making up the costs of inclusionary other than higher rents. Developers must be able to earn a rate of return to pay back investors who make the construction of private housing possible, but there is a range of returns that can attract investment in any market. Inclusionary policies cannot guarantee any or every single project will be able to meet the rate of return sought by a particular investor and therefore be feasible. But decades of implementation elsewhere and modeling in Denver indicate that rates of return sufficient to attract investors will ensure on-going housing development across a market, even if returns are temporarily slightly lower during transitions into new inclusionary policies.

Denver apartment development isn't dead, even as it enters a few tough years from market winds. Setting affordability levels is tricky. It isn't impossible. Even where inclusionary may have temporary or marginal market impacts, those must be weighed against the loss of limited land to help provide guaranteed affordability for 100 years or more if it is built as only expensive, market-rate homes. This is a big opportunity lost in a city where 41 percent of renter households earning 60 to 80 percent of AMI -- more than

11,000 of them -- are paying more than they can afford for rent. This is the income range served by inclusionary housing, but not by new, market-rate apartments.

There are considerable collateral costs to ongoing housing instability among these renters, many of which are borne by our entire community, such as homelessness, workforce shortages and declining school enrollment. Inclusionary homes have greater value than any marginal cost differential in market rents in helping communities serve rent-burdened, lower income households. If Colorado is going to grow up with more density, then modest inclusionary policies are a fair and effective trade-off to capture some of the value increased density brings, and to house more working families faster

Communities considering inclusionary can use economic modeling to help calibrate requirements to avoid undue impact on the housing market. They should consider incentives to help mitigate the costs of compliance, though the value of some typical incentives, like parking reductions and density bonuses, have likely been eroded due to state legislation granting these benefits to all development near transit. Metro Denver counties are encouraged to look to 60 percent of AMI rather than 80 given the drastic rise in the AMI levels in the past several years and the fact many occupations previously earning 80 have now dropped to the 60 percent level or below, such as teachers. It takes several years to evaluate, craft, pass, and then implement new inclusionary policy. Real estate cycles often move faster than policy making, which means work on an inclusionary policy now might help a community capture affordability in the next boom cycle that follows the current volatility and slow down.

Robin Kniech was an at-large Denver City Council member from July 2011 to July 2023. She led and contributed to the passage of policy on a range of equity topics, including affordable housing and inclusionary zoning.

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Introduction

Jane Coddington is 73. She grew up in Colorado. Yet, because she spent her career elsewhere, when Jane returned to live near two of her daughters and two grandkids, she would show up in official statistics as "population growth due to in-migration."

She worked her whole life managing residential properties herself but is now on a fixed income that makes her eligible for deed-restricted affordable housing. She couldn't afford any of the apartments she first looked at, especially in the community where her grandkids lived, Castle Rock. So, like nearly half a million other Colorado families, she lived doubled up with her daughter while looking and applying for housing at a rent she could afford.

After a year and a half of applying and waiting, Jane secured what only one in four low-income renters do nationally, an officially designated affordable apartment. It is in a large, dense mixed income complex with others who have similar incomes, even lower income families with Housing Choice Vouchers (formerly known as Section 8), and those paying market rate. Jane loves the diversity. She has a goal of meeting one new person each month and when she can, cooks for people in the building that are older and struggling. She compares this to her many years living in a single-family home when she only knew one of her neighbors.

Jane thinks her housing is wonderful and more of it is needed for retired older people like her, but also for families with children. For now, she drives a car to get around. She knows the day will come when she can't drive and thinks she'll take the bus then. But there isn't much transit near her. She sees a lot of housing going up near the light rail and thinks it would have been "awesome" to live there. But the apartment she waited a year and half for wasn't one of them.

Across the United States, the policy that produces the most affordable housing in buildings otherwise renting at market rates is inclusionary housing, also called inclusionary zoning. Inclusionary policies require a percentage of homes to be built as affordable within otherwise market rate new, multifamily housing developments. At least seven cities across metro Denver have an inclusionary policy.[1] Denver's was adopted in June of 2022, and is called Expanding Housing Affordability, or EHA.

This paper is the fourth in a series examining the promise of land use reforms to deliver affordability to Colorado. It builds off recommendations made in the third to pair affordability requirements with new requirements to zone for higher density near transit that were signed into law after Colorado's 2024 legislative session. Affordability is especially important near transit, but inclusionary policies can increase the supply of affordable housing in any multifamily building or large-scale development of other housing types, regardless of location.

Inclusionary is a proven strategy to capture some of the increased economic value created when land is zoned for more density, or upzoned, to immediately expand the stock of affordable housing. It also creates mixed-income communities with social and neighborhood benefits like those enjoyed by Jane and her neighbors in their apartment complex.

By leveraging the added value created for private development, inclusionary achieves these outcomes without public subsidy. It is not a replacement for public investment in low- and moderate-income housing, however. The scale of Colorado's -- and the nation's -- housing crisis requires both strategies, and even still it will be challenging to meet the overwhelming need for housing at prices below what it costs to build it. Colorado has a gap of 285,000 homes for very low and extremely low-income households alone.[2] Inclusionary policies build homes for households earning just a bit more but still considered low or moderate-income under federal standards. This allows government resources to focus more public dollars on extremely and very low-income households, some of which also need additional social services paired with affordable rents that wouldn't be available in market-rate buildings.

The policy debate over inclusionary and this paper grapple with the questions of whether and how much inclusionary impacts development of new housing or housing prices, and whether any unintended impacts are worth the benefits which stem from the policy. It focuses on Denver as a case study for exploring some of these questions because public debate is already swirling over the EHA ordinance's impacts.

Experts in evaluating inclusionary housing, like those affiliated with New York University's Furman Center through its Housing Solutions Lab, point out that time must elapse, and a program must be fully implemented before it can be fairly judged.[3] Furthermore,

> *The effects of IZ [inclusionary zoning] on the housing market can only truly be assessed through econometric studies that control for the wide range of factors that may affect the rate of housing production (such as national and regional economic trends, other regulatory changes, and shifts in housing demand, land availability, and labor costs).*[4]

As this paper will demonstrate, Denver's ordinance is not yet fully implemented, due to the long transition period for projects still proceeding under prior rules and the early stages of development for projects that are subject to the requirements. So, any true evaluation is premature.

Yet industry associations and developers opposed to inclusionary housing frequently testify or provide media interviews citing Denver's early permitting following EHA as definitive evidence that inclusionary dramatically impedes the production of housing. Their analysis lacks consideration of the local, regional and national market factors that a rigorous evaluation demands. But it is shaping public understanding and policy debates. Therefore, it is necessary to assess these claims, by looking at all the data available to date in the larger market context, alongside national research on similar, mature policies with years of implementation evidence.

Contrary to the impression given by data from selective and narrow quarterly time periods immediately before and then following passage, permitting for multifamily housing in Denver averaged a somewhat similar rate over the 2022 to 2023 calendar years as it did the two years prior. It just came in uneven bursts.

Evidence suggests Denver's market will continue to evolve and adapt to accommodate inclusionary requirements, but that many other market factors are likely to slow production of multifamily housing in the near term regardless of affordability requirements. Very early indications of the policy's benefits are also starting to emerge, outcomes the city could not afford to replicate through taxpayer funds already stretched thin to meet overwhelming need, including to resolve homelessness.

These facts, along with the loss of affordability on land that would be developed without it for generations to come, outweigh arguments against inclusionary, or suggestions that affordability should be compromised to improve the economics of project that are struggling due to other market factors like interest rates or construction prices.

A quick note on sources: Content drawing directly from a particular source will be cited. But much of the following economic discussion was informed by my two decades of experience watching Denver's market absorb requirements, fees, and prior housing policies we were told it could not. I also considered what I learned working alongside economic consultants with expertise in real estate, who provide economic analysis of real estate development and conduct modeling, known as feasibility analysis, on housing policies in cities across the globe: Rick Jacobus and David Schwartz with Economic Planning Systems, and the team at Root Policy Research. It is also informed by years of research from Grounded Solutions Network and their affiliated project InclusionaryHousing.org.

Inclusionary Housing Basics

Inclusionary policies have created more than 100,000 affordable homes across 1,000+ policies in more than 31 states. As profiled in my last paper on Transit Oriented Communities, or TOCs, at least one state has built an affordability requirement into major land-use reform legislation: California Assembly Bill 2011.

Inclusionary creates a modest, but steady supply of moderately affordable homes. The typical policy requires somewhere between 8 and 20 percent of homes to be affordable, at incomes ranging from 50 to 80 percent of Area Median Income, or AMI for rentals. That would be $45,000 to $72,000 in 2024 for single adults like Jane in Douglas or other metro Denver counties. Occasional policies, like the Los Angeles Transit Oriented Communities Incentive Program have requirements or options to build homes below 30 percent of AMI.[5] Generally, such policies trade fewer units and greater incentives to help projects make up for the additional rental income lost from serving extremely low-income households.

Inclusionary homes priced between 50 to 80 percent of AMI can also serve much lower AMIs when rented by families with housing vouchers that help pay their rent. All inclusionary AMIs are within the hard-to-find maximum rent limits families have to find and lease on the open market to use their vouchers. Discriminating against voucher holders is illegal in Denver and Colorado, so renters can't be refused the opportunity to rent homes built through inclusionary on that basis. And Colorado law also limits the income required to rent a home to 200 percent of the annual cost of rent. This is a good example of how affordable housing production, renter assistance and protections can work together to expand access to housing.

A majority of inclusionary policies provide an option to pay a fee in lieu of building affordable homes on-site within the market rate development. Local governments use the funds generated to leverage tax credits or other public subsidies to build affordable homes elsewhere, often at lower AMIs than they would have gotten through on-site construction. Colorado law requires at least one alternative to building on-site to be offered in local inclusionary policies. Boulder, Colorado keeps its in-lieu fees lower than it would cost a developer to build the affordable homes within their market rate development in order to incentivize paying the fees and to to maximize production of even more deeply affordable homes elsewhere in their community.[6]

In Denver and other cities, larger, high impact developments (over 10 acres or receiving public financing in Denver) may provide lower AMI apartments through site-specific negotiated agreements. Phased projects with multiple buildings and many more homes provide greater opportunity for dedicating land to stand-alone affordable projects that can leverage tax credits to create more, or more deeply affordable homes, than through standard inclusionary in a single building.

Except for such stand-alone affordable projects built through an agreement, inclusionary homes are typically built by developers without any public cash subsidy. They therefore represent a way to grow the pie of affordable homes while public subsidy funds are used for homeownership assistance, deeper affordability and/or resolving homelessness.

When built on site, inclusionary homes also create mixed-income communities with social and community benefits like those experienced by Jane and her neighbors. Promoting this outcome underlies Denver’s and other cities’ decisions to make buyout fees higher to encourage on-site construction.

Denver's Policy

Denver’s EHA policy passed following a 2021 state legislative reform that legalized applying inclusionary housing to rental properties across Colorado. The state law reversed two decades of prohibition stemming from a court decision interpreting inclusionary housing as a form of disallowed rent control, known as the Telluride decision.

Denver requires production of affordable homes in residential projects of more than 10 units, known as Mandatory Affordable Housing, or MAH, projects. Developers have the choice of building the affordable homes or paying fees in lieu of building affordable homes. There are eight options for complying depending on location, housing type (rental vs. for sale), and what regulatory incentives are sought. Denver’s policy generally requires 8 to 15 percent of homes be affordable between 60 to 80 percent of AMI for rental, and 80 to 90 percent of AMI for ownership. More homes are required if providing them at the higher AMIs, fewer if serving lower incomes, because the project will net less rent or a lower sale price.[7] Projects with fewer than 10 homes pay linkage fees on a per square foot basis.

Claims Inclusionary Has Killed Housing Development in Denver

Denver's EHA policy has faced a relentless barrage of media criticism from the real estate industry, with virtually no independent analysis and few opportunities for Denver or other independent parties to comment on the characterization of permitting data. In turn, critical conclusions are repeated by others in the industry and policymakers. See dictionary definition of echo chamber.

The headlines and quotes below illustrate typical claims. They pop up most quarters when apartment vacancy survey data is released, as well as in other coverage of the housing market:

> *"New Apartment Development in Denver Declined 88% Following Implementation of Affordable Housing Ordinance"* [8]

> *" 'The fact that nobody's applying for permits in Denver is a pretty good indication that in three years, the cranes that you're seeing today are going to be gone' "* [9]

> *"` Behind the next supply, new projects have come to a screeching halt'"* [10]

> *"[T]he number of multifamily permits being pursued is falling sharply, especially in Denver, which implemented a new inclusive housing ordinance in July of 2022."* [11]

The origin of these claims is a comparison of permit numbers from the three months leading up to the passage of EHA, which saw an unprecedented but predicted spike in applications of 191 percent, compared to the same three months after EHA took effect. Or, compared to the same quarter a year or two later. The spike was caused by a developer rush to submit projects before the deadline to be grandfathered and exempted from new affordability requirements. Industry critics rarely acknowledge the spike before decrying the "precipitous decline" that followed.[12] They sometimes acknowledge market factors in these same discussions but persist in blaming inclusionary for declining permits.

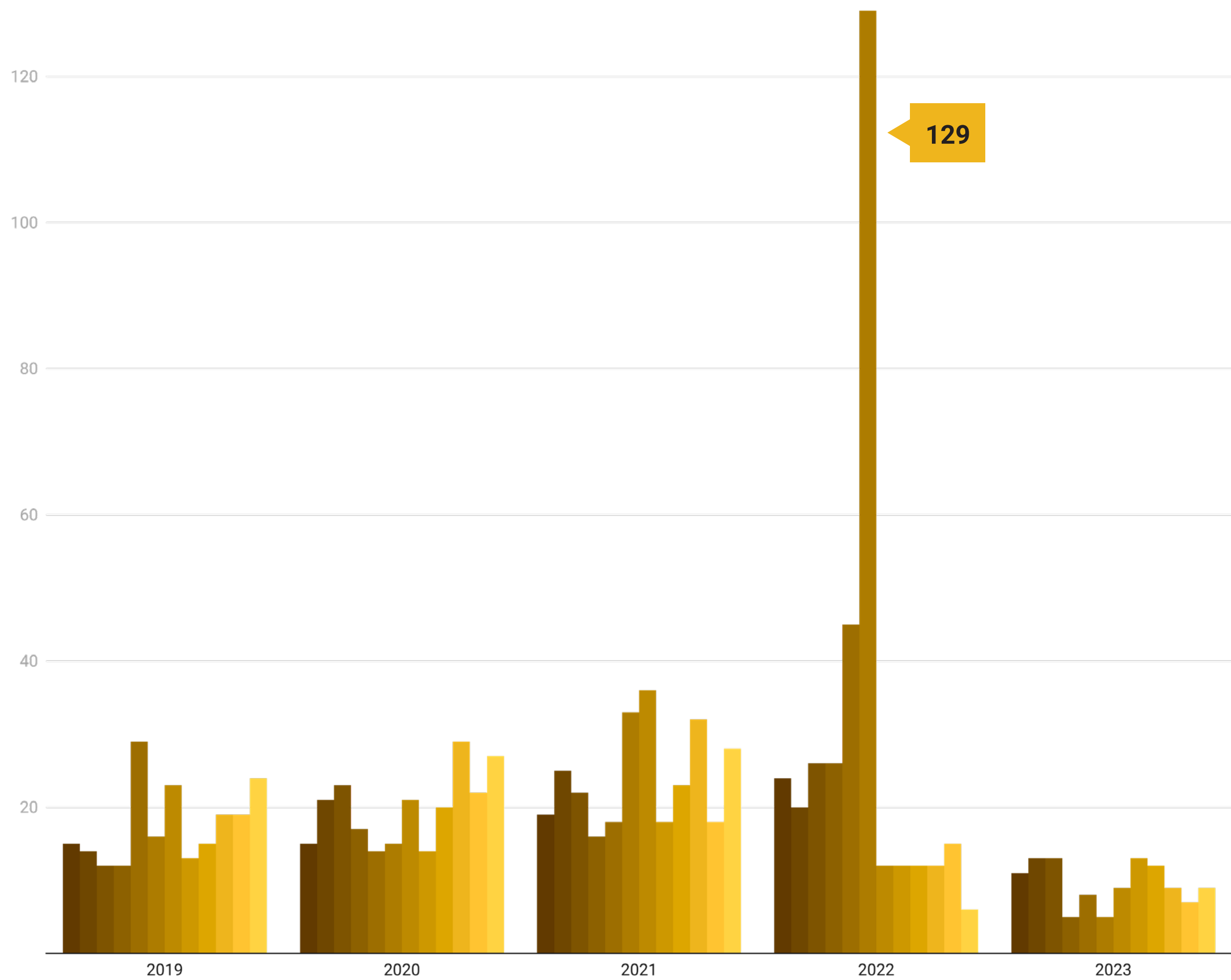
This narrow analysis is like comparing the grocery bill and calorie intake for Super Bowl Sunday with grocery purchases and calorie intake for the three days after, and then declaring that the family must be starving because of the precipitous drop. Skipping breakfast and eating smaller portions of leftovers for a few days is just a return to a new normal before you head to the grocery store again, for a smaller cart of goods until you slim down from overeating.

A deeper dive into years of permitting data before and after the policy and analysis of larger market factors provides a more accurate picture of the multifamily housing pipeline in Denver and the forces impacting it.

Denver's Multifamily Housing Pipeline Before and After EHA

The following image encapsulates the anomaly in permit applications submitted.

Monthly New Concepts Opened with Multi-Family/Residential Proposed Use Types



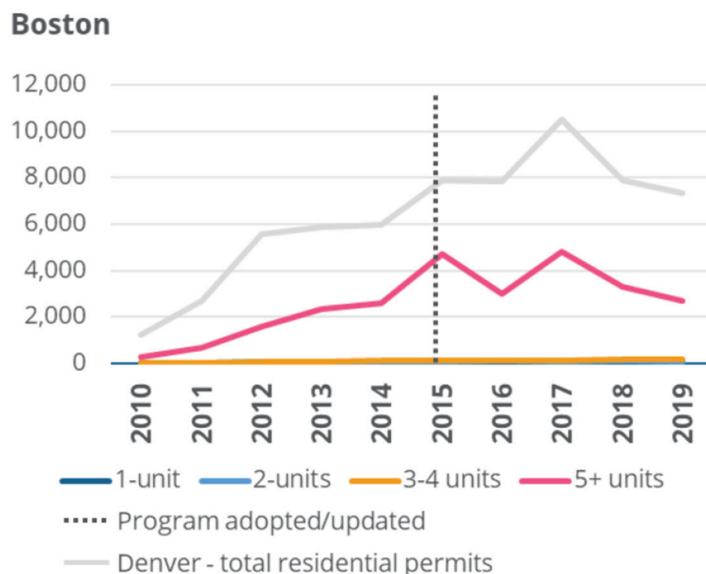
Source: [Denver Community Planning Department]

Why Permits Spiked Before Passage

In the eighteen months leading up to passage of EHA, city staff exhaustively researched the impact similar policies had on permitting in other cities. They documented those findings in a public report, noting that peer cities with similar policies saw rises in applications leading up to passage of long-anticipated changes, in order to take advantage of similar grandfather clauses also common elsewhere. Permits dropped right after the implementation date, then followed by a gradual recovery of permitting over several years.[13] Grandfathering allows projects already in the development review process at the time a new housing policy is adopted to proceed under the old rules, out of fairness for the difficulty of adjusting to new economics after a project is far advanced.

See the pink line in Denver's analysis of permitting in Boston in the graph below as an example of the spike, drop, recovery phenomenon surrounding an increase in inclusionary housing requirements.

Permitting Rate in Boston, MA Before & After Increasing Inclusionary Requirements



Source: Line graph of housing units permits submitted from Denver's EHA Background Report.[14] Dotted vertical line indicates the year of the inclusionary policy change.

Denver's planning and zoning staff was clear in saying we should expect the same spike and then gradual return of permitting rates to occur in Denver, all things being equal. Denver's spike indeed happened, but at a scale much larger than predicted. As detailed below, that spike also came at the tail end of a period of historically low interest rates and frenzied multifamily development in the city. All things are not equal in the housing market in 2024.

Why New Permits Slow After a Spike: Finite Resources

The levelling out of permitting rates that is typical after an inclusionary policy is adopted can be explained by two factors. The first is the finite resources that are required for development, such as:

- Developable land in Denver
- Developer capacity
- Lending capacity
- Construction labor to build the projects

The second factor, described in the next section, is how developers' calculations of what they are able to pay for land to accommodate affordability requirements impact the price of land in an inclusionary market.

The finite resources required for development serve as natural limits on how much development can take place in a given market at one time. A developer can only manage so many projects. Even if they're ambitious, there's only so much available land zoned for multifamily apartments. Lenders don't like risk. If they have a lot of capital tied up in pending projects, they're going to hesitate to commit to many more in the exact same market until they see that demand can keep up and ensure they're not left holding the bag on vacant units. We also have a construction labor shortage in Colorado, so trying to simultaneously build more projects when builder firms are spread thin will either be challenging or cost a premium, pulling them away from someone else's project.[15]

One recent study, cited by critics for its estimate of housing production "lost" due to an inclusionary requirement in Los Angeles, acknowledges their hypothetical model doesn't account for these very real constraints that would limit development even in the absence of affordability requirements. Failure to consider real life market limitations undermines the reliability of models estimating how much housing would be produced "in the absence of inclusionary."[16]

It takes a while for pending projects to get through permitting, to be built and then purchased or leased. As they do, the players will again have capacity to acquire new land, secure new financing and undertake additional projects, depending on overall market conditions. Denver's permitting has been especially bogged down due to the spike in pre-EHA projects, extending the timeline for development resources to free up for other projects, just as market forces are slowing multifamily demand and potential in the city on their own. Development is tough, but this confluence of factors and its impacts are unrelated to the affordability requirements in the new ordinance itself.

How Local Markets Adjust to Inclusionary Requirements: Land Price Adjustments

There is a cost to building affordable housing alongside market rate units, and affordability advocates like me should never deny that. But projects and markets adjust to accommodate the costs of well-calibrated requirements over time. It isn't the case that all costs remain equal forever and affordability is just added on top as a new cost, as implied by industry critiques.

Policies like Denver's include valuable density bonuses, parking reductions or other regulatory perks to help offset costs. Although most policies require affordable homes to be equivalent in size and access to amenities, Denver and others allow use of less expensive interior finishes which can provide small savings. Moderating land prices, either lowering them or slowing the rate of increase, is the largest market factor that adjusts to accommodate affordability requirements in the long run.[17]

Land is finite but prices for it are not fixed; they are elastic to a point. If developers can't afford to buy land at the prices that existed pre-policy, sellers of land seeking to cash out will be forced to moderate their prices to sell. When they do, inclusionary homes become more feasible to incorporate into project financials. There is a limit, however, to how much sellers are willing to moderate prices. This is one reason why inclusionary requirements can't be unlimited but must be carefully calibrated not to exceed the tipping point where sellers refuse to sell at the prices developers can afford to pay and still build feasible projects. In acknowledgment of the time it takes for new developer expectations to impact land prices, policies including Denver's often provide long notice periods of forthcoming requirements and grandfather clauses to give more of the market time to adjust.

No policy can be written to accommodate the financial demands of every parcel of land or project pro forma (the spreadsheet of financial calculations for a development project). The goal of inclusionary is to ensure that affordability requirements are such that they allow development to continue across the entire, evolving market. As described below, rezonings being pursued post-EHA are evidence of a pool of developers finding and investing in land they believe will be feasible alongside affordability requirements.

Rezonings being pursued post-EHA are evidence of a pool of developers finding and investing in land they believe will be feasible alongside affordability requirements.

The Impact of Market Forces on Permit Rates

Even after the grandfathered bubble of projects work their way through permitting and construction, and development resources and land prices begin to adjust, permits may or may not return to pre-policy levels if all things in the market aren't equal to the conditions that existed previously. If market forces that exist after the adoption of a new inclusionary policy coincide with the time at which permits would have begun to tick up again, then those market factors need to be evaluated as causal factors in any drop in permitting. For example, every city with or without inclusionary policies saw a precipitous decline in permitting during the Great Recession. Inclusionary policies weren't to blame for lending constrictions or the drop in demand implicit in that slowdown.

The downward trend in multifamily construction permitting in 2024 is happening nationally in markets like Denver and is largely due to market forces.

Inflationary pressures have both made projects more expensive and impacted the buying power of potential residents compared to the environment that existed prior to EHA passage in 2022.[18] Economists analyzing proprietary development costs and pro formas have shared that the incremental additional costs of higher interest rates and higher construction pricing total more than the cost of complying with inclusionary housing.

According to Freddie Mac, the national multifamily market "saw performance slow in 2023 brought on by the uncertainty in the economy along with a high level of new supply...[r]ent growth saw meager gains, while occupancy rates continued their downward trend."[19] Their outlook for 2024 was that growth would be "muted" and will "feel slow especially in comparison with the pandemic boom years and even the years leading up to it."[20] Breaking down local markets, they predicted secondary and tertiary markets (read suburban or smaller or less expensive cities) would outperform previously hot markets that saw high rent growth during 2021-22 and are now seeing high levels of new supply.[21]

Denver is exactly this kind of "previously hot" market. As described by the industry itself and illustrated in the tables below, Denver faces a glut of new apartment projects coming online all at once in the coming months.[22] Bursts in supply slow absorption of those homes by new renters or buyers who have more choices. Housing demand is also slowing because of a drop in population followed by slower growth in both Denver and Colorado compared to pre-pandemic record highs.[23]

Where market phenomena like these converge, as they are right now in Denver, housing permitting rates will drop, or increase more slowly than they might have, regardless of inclusionary policies. Casually attributing the cause to inclusionary policy, or any

government policy for that matter, as a sole or primary driver of apartment production slowdowns obscures the significant influence market forces have on housing production.

Denver Multifamily Permit Rates

Once again, it is too early to draw conclusions about EHA's long term impact on the market because the transition to full implementation is still under way. But any discussion of recent permit rates should look at the fullest picture available. The table below reflects permitting in the full calendar years prior to and since EHA. The table shows uneven spurts and lulls in permitting, as explained above. Critics often highlight comparisons between the month or quarter before and after EHA passed. Or they sometimes lament the drop from 288 permits in 2021, the year before EHA, to 114 permits in 2023, skipping over 2022 altogether. Yet, if you average the number of Denver permits over calendar years, a more nuanced picture emerges. The average number of permits across the two years including and following passage does not differ as drastically from the year prior to passage: an average of 228 permits per year across 2022-23 compared to 263 across 2020-21.

Number of Residential Building Permits in Denver

Month	2020	2021	2022	2023
January	15	19	24	11
February	21	25	20	13
March	23	22	26	13
April	17	16	26	5
May	14	18	45	8
June	15	33	129 (191% increase)	5
July	21	36	12	9
August	14	18	12	13
September	20	23	12	12
October	29	32	12	9
November	22	18	15	7
December	27	28	6	9
Total	**238**	**288**	**342**	**114**

Source: Denver Community Planning and Development[24]

Even slowing permit rates are still high historically. Denver is the largest driver of new multifamily housing permitting in the metro area, often half or more of total permits regionally. According to the U.S. Department of Housing and Urban Development, HUD, even though "[r]ental permitting in metro Denver decreased 20 percent to 16,450 units during the 12 months ending August 2023 [it] still was stronger than it was in any year from 2010 through 2020."[25]

There's one more data point worth exploring for insight into the future of multifamily housing in an era of affordability requirements: zoning applications. Having control of land zoned to allow the construction of multifamily housing is the very first step in the process to develop it, before applying for permits. Between July 2022 and February 2024, developers applied for and were granted 40 land rezonings into zoning classifications that would allow multiunit apartment buildings. Some of these may have already resulted in a site development plan reflected in the permit pipeline above. Others with flexible zoning may choose not to build residential despite the zoning entitlement. But given the large cost and time involved in rezoning, this continued investment by landowners or developers, with full knowledge of affordability requirements, represents the seeds of the next generation of multifamily housing lining up behind the bubble that exists today.

Furthermore, large-scale redevelopment sites often generate a significant quantity of new homes in Denver. A number of such sites are still investing heavily in planning or just entering their first phases of more sophisticated planning, representing an additional pipeline of forty thousand planned homes by full buildout. Most are accommodating 15-20 percent affordability through site-specific plans, with the remaining housing at market rate:

- The River Mile (no permits yet, estimated 8,000 homes)
- Fox Park near I-25 and I-70 (one permit pending, estimated 2,989 homes remaining)
- Broadway Station site of the former Gates Rubber Factory (one permit pending, estimated 2,453 remaining homes planned)
- Ball Arena (rezoned 2024, estimated 6,729 homes)
- Burnham Yard next to I-25 in Central Denver (very early visioning and planning)

As of March 2024, Denver's total estimated multifamily housing pipeline in some stage of permitting, inclusive of pre- and post-EHA and affordable and market rate projects, represented 38,627 new homes. According to the Apartment Association, an additional 18,700 units were under construction at the time of writing.[26] That brings the total pipeline to an eye-popping 57,327 possible new homes on the horizon.

The table below represents Denver's entire pending housing pipeline in the permitting phase.

Denver Multifamily Housing Pipeline

Permit data by project type and timing (pre- and post- EHA passage in 2022)
Including projects subject to Mandatory Affordable Housing (MAH) requirements
March 2024

	Projects in Pipeline	**Market Rate Homes in Pipeline**	**Market Rate Units Subject to Affordability Requirements**	**Affordable Homes in Pipeline**	**Estimated Additional Affordable Housing Outcomes due to MAH Requirements on Market Rate**[27]
Pre-EHA Residential Projects Still Pending Final Permit (all types)	164[28]				N/A
100% Affordable Project Homes				280	
Market rate Project Homes		26,336	N/A – Grandfathered, linkage fee only		
Pre-EHA Market-rate Projects Opting to Provide Affordable & Accessing Incentives	10				
EHA Applicable Residential Projects in Concept Review	53				
100% Affordable Projects				1,029	
Large Development with Affordability Agreements[29]				697	
Market rate Projects where MAH is required			2,216[30]		"If 8% built at 60% of AMI=178 If 10% averaging 70% of AMI or 60% in high cost area = 222"

Post-EHA residential projects in Site Development Plan Review	30				
100% Affordable Projects				832	
Large Development with Affordability Agreements		1,059			
Market-Rate Projects			970[31]	"If 8% built at 60% of AMI= 78 If 10% averaging 70% of AMI or 60% in high cost area = 97"	
Total Potential Affordability Due to Policy Requirements				256 to 319	
City Dollars Required to Build Same Number of Units Assuming $25,000/Unit Subsidy in Tax Credit Projects[32]				$6.4 million to $8 million	
Affordable Projects Accessing Development Incentives (I.E. Additional Height or Floor Ratio)[33]	14				

Source: Data on permit pipeline from Denver Community Planning and Development as of 3/5/24, Author Calculation of Estimated Affordable Potential & Equivalent Value in City Subsidized Tax Credit Projects

At writing, nearly 30,000 market-rate apartments were represented in Denver's permit pipeline. That includes 164 multifamily projects from the pre-EHA spike still working their way through Denver's backlogged permitting system. This is an enormous glut of supply taking up the finite resources described above, and about to compete for renters.
It is no wonder that new permits would slow down until these projects are built and absorbed by new residents.

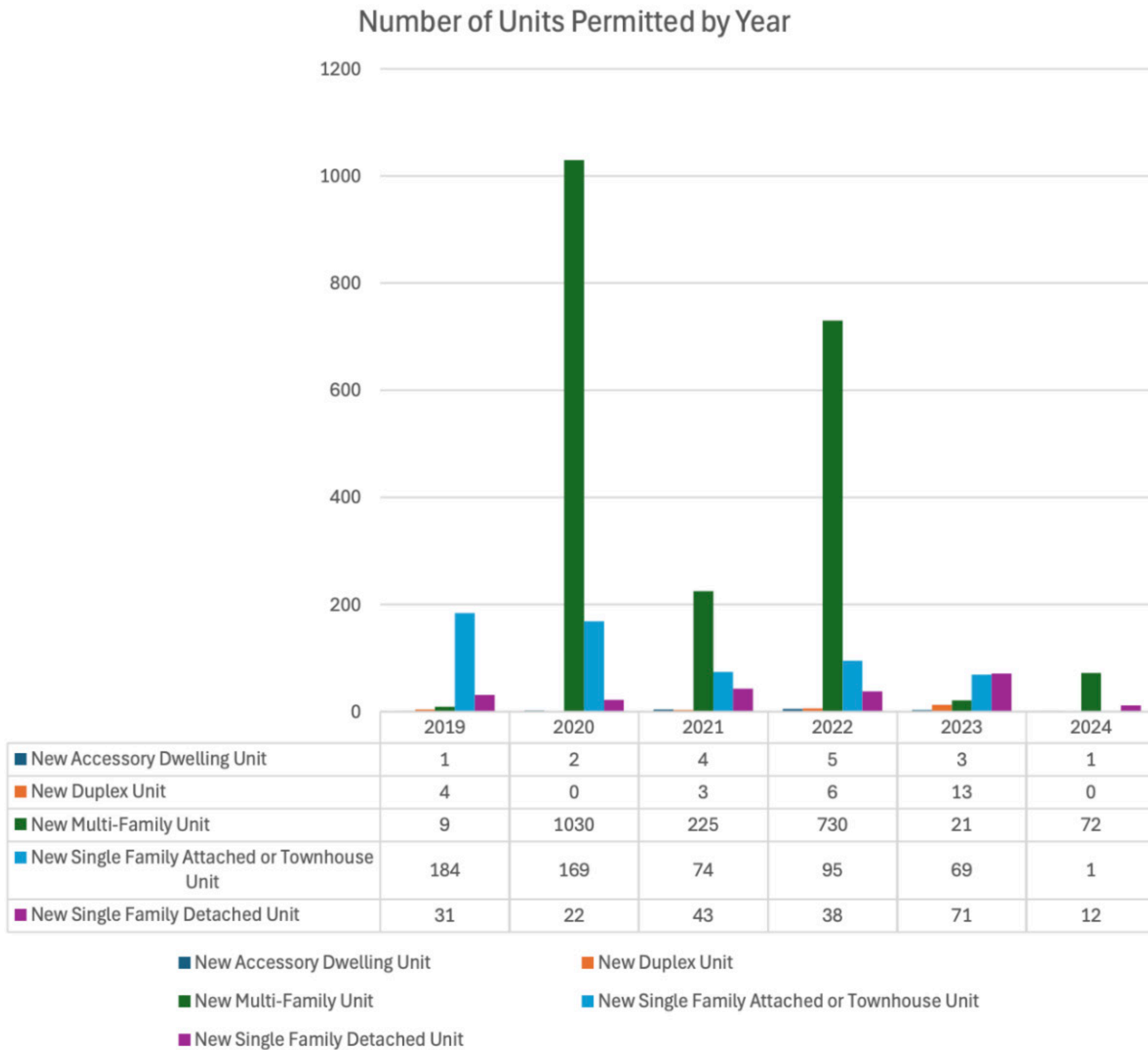
Given that larger market forces were already factors in 2023, with inclusionary requirements attached, the sustained rate of permitting in Denver that year and in early 2024 is noteworthy rather than indication of a crisis.

Comparison to Neighboring Markets

Industry critics of inclusionary housing also like to cite comparisons between post-EHA permitting in Denver and select surrounding jurisdictions to make the case the policy has slowed development in Denver. Like the before and after comparisons, these often look only at single quarters without the rounded-out perspective of examining full years of permitting activity and do not control for the market variables that impact real estate decisions and outcomes. When considering both of these factors, the picture is more nuanced.

For example, in Lakewood, Colorado, a jurisdiction without an inclusionary housing policy, there were reports that permitting dropped in the months leading up to Denver's deadline while developers focused their efforts in Denver instead. Then, after Denver permits were submitted, developers returned to pursuing of Lakewood permits. This is borne out by the data below that clearly demonstrates a significant drop in permitting in 2021 (a year where permits rose in Denver), followed by a spike the following year. Permits in Lakewood then plummeted in 2023, rather than continuing to rise. This 2023 drop is consistent with the overall downward trend in multifamily permitting both following a spike and due to the inflationary pressures described throughout this paper. In short, it mirrors the drop in Denver despite the absence of inclusionary policy there. This disproves the notion that inclusionary policy was the only or primary causal factor in multifamily permitting rates.

Permitting Rates in Lakewood, Colorado 2019 - 2024



	2019	2020	2021	2022	2023	2024
New Accessory Dwelling Unit	1	2	4	5	3	1
New Duplex Unit	4	0	3	6	13	0
New Multi-Family Unit	9	1030	225	730	21	72
New Single Family Attached or Townhouse Unit	184	169	74	95	69	1
New Single Family Detached Unit	31	22	43	38	71	12

Source: Lakewood Planning Department via City Council (2024 represents partial year data).

In another example disproving the industry hypothesis, data provided at one industry event (not available online) illustrated permits rising in Boulder county in the second quarter of 2022 and then rising again in the fourth quarter of 2023, compared to the first quarter of 2021. This despite the fact all the major communities in Boulder County have inclusionary policies. The largest, City of Boulder, requires the most of any policy in the metro area, 25 percent affordability or fee-in-lieu. Again, if real estate decision-making were solely or primarily driven by absence of inclusionary policy, then permits should not be increasing in Boulder.

It is also important to note that the inclusionary ordinances in the urban communities that drive permitting in Boulder County are not new: City of Boulder (2000, increased in 2018), Lafayette (2012, as part of a growth limit so a different type), Longmont (2018), and Superior (2020). Most are in the later stages of their markets adjusting to requirements as described above. Thus, rising permitting there actually demonstrates how mature inclusionary policies are compatible with sustaining market development.

In terms of other non-inclusionary communities where permits rose in 2022 or 2023, many market factors impact locational decisions and analysis must control for all these variables before concluding absence of inclusionary policy is the cause. These variables include the scarcity of land parcels in Denver following Denver's spike, and the importance for both developers and lenders of spreading risk from a market known to have an oncoming glut of supply. While rent increases are moderating in Denver, nine other metro markets are seeing larger month over month growth in rents than Denver, and twelve are seeing stronger year over year rent growth, another potential variable attracting new construction to these markets over the city. Inclusionary requirements could be influencing some developer activity outside of Denver, but so too could the slow-down in city permit processing times as a result of the spike still going through city reviews.

It is inappropriate to attribute cause to only one variable when many are correlated with permitting trends in Denver vs. surrounding jurisdictions. As mentioned above, the rise in permitting in "secondary and tertiary" markets outside Denver is wholly consistent with Freddie Mac's prediction for similar markets nationally for 2024. It is neither unexpected nor unique to Denver or EHA that suburban permits might be rising in the wake of the oncoming glut in the city.

What Affordability Outcomes are Emerging in Denver

Because of grandfathering and the long lead time it takes for project planning, getting through Denver's backlogged permitting system, and then to construct housing, no new multifamily projects with mandatory affordable homes had yet opened for occupancy at the time of this report. But affordability commitments are beginning to take shape as a percentage of the thousands of market rate homes newly working their way through permitting under the new rules. As of April 2024, more than 3,100 new multifamily homes are in concept review or have filed site development plans, knowing they will be subject to affordability requirements. This pipeline could conservatively represent 256-319 affordable homes, depending which MAH compliance path is chosen.

Though not the focus of this paper, Denver's permit pipeline also includes 2,141

affordable homes pending in 100 percent affordable projects relying on public subsidy. Industry critics often suggest Denver or Colorado should use public subsidy instead of inclusionary to produce affordability. Denver is already investing over $78 million annually into construction and preservation of affordable housing.[34] The potential inclusionary pipeline of 256 to 319 additional affordable homes would represent 12 to 15 percent more affordable housing than Denver is building through subsidy alone at the time of writing.

Subsidizing those same homes instead of building them through inclusionary would cost the city at least $6.4-8 million, assuming the city won twice as many competitive state or federal tax credits than it has historically to pair with its average $25,000 per home city subsidy. Given how competitive these tax credits are and the need across Colorado for this state-wide resource, a doubling of allocation to Denver is an unrealistic expectation. In which case, it would cost $60-80 million for Denver to build this much affordability in the absence of tax credits.

The table below illustrates the status of commitments to affordability from the market rate pipeline as of April 2024. Twenty-eight multifamily projects have signed or pending affordable commitments, and six other large redevelopments are in negotiation. Remaining projects will need to finalize their affordability intentions before receiving final building permits to begin construction.

	Number of Projects	**Actual Number of Affordable Homes (where known)**
AHPs Signed/Recorded/ Pending signature[35]	12	132
Fee-In-Lieu	0	
Projects pending AHP finalization	16	TBD
Pending High Impact Development Compliance Plans	6	TBD

Source: Denver HOST as of 4/23/24

In addition to the outcomes from mandatory requirements, 24 fully affordable and market projects which could have bypassed affordability have voluntarily opted into EHA to receive incentives, growing the outcome of city investments and the number of affordable homes being built.

Inclusionary Impacts on Housing Prices

The final criticism levied at inclusionary in Denver, and generally, is that it increases the cost of market rate housing. There is a lack of consensus in the economics literature over whether and how much inclusionary housing impacts the price of other homes in the same project or the wider market. Studies first disagree on whether, or how much prices rise in projects or markets after inclusionary. Secondly, there is debate over how much of any change can be attributed to inclusionary policy itself versus other factors.

Before digging into the research on costs, let's explore what limits developers from passing the entire cost of affordability on to renters or buyers of other homes. Coloradans know all too well right now that in a free market, developers will charge the most they can for a home. If they could afford to charge much more, they'd already be charging it. Housing buyers have limits above which they'll pass on new housing. Owners also can't charge more than their competitors, or their units won't rent or sell. So, there's a limit to how much cost can be passed on through price hikes on other homes.

Ideally, research evaluating the impacts of a single factor on outcomes, like an inclusionary policy's impacts on housing prices, would begin with two cities that are identical in every way except the factor being studied: having/not having an inclusionary policy. The city with an inclusionary policy would be the "treatment" group, and an identical city without inclusionary would be the control group. Researchers could then compare different housing price outcomes between them and attribute any differences to the policy.

Grounded Solutions Network reviewed economic literature on inclusionary several years ago, noting the methodological difficulty of finding equivalent control cities and isolating the cause of any price differences just to inclusionary. No two markets are the same, and inclusionary is often adopted in the hottest markets with unique amenities, whether human-made like thriving business districts with jobs and arts and culture, or natural like mountains or views. Amenities like these result in different migration rates, housing demand, and premiums housing purchasers are willing to pay. Because inclusionary policies are often adopted in the most expensive cities, researchers are often left to compare development rates to communities that may differ considerably in size, these amenities, and costs. Isolating price change outcomes that can be attributed only to inclusionary policy itself versus other differences between cities is extraordinarily difficult.[36]

Sometimes it is easier to prove a negative or opposite of a theory. A court decision in 2009 resulted in the weakening or elimination of inclusionary policies in a number of California jurisdictions. Grounded Solutions commissioned a study of the impacts of those decisions in 2015 and found no evidence that housing prices decreased as a result of lower costs for complying with inclusionary. Because this study was a before/after of housing prices in the same city before and after the rolling back of inclusionary, it did not suffer from the methodological challenge of differences between cities. In addition to seeing no reduction in market rate housing prices under lower inclusionary requirements, those cities saw a 2 to 3 percent increase in the cost of renting low-cost housing following the loss or weaking of inclusionary.[37]

Where studies have attributed price differences to inclusionary despite of these methodological challenges, the differentials have been very small. The aforementioned Los Angeles study was conducted by the Terner Center. It modeled various inclusionary requirements for building 30 percent of AMI rental into market rate housing in exchange for additional density and other incentives near transit. Thirty percent represents a much lower AMI level than Colorado inclusionary policies typically require, therefore costing projects much more in lost rents than a typical 50 to 80 percent of AMI unit (Colorado's mountain resort communities policies may go as high as 120 percent or more). The Terner study assumed a 4 percent rent increase annually across the board (an assumption that has been questioned by critics), and its model found price impacts ranging from .3 percent for a 5 percent inclusionary requirement up to .9 percent when 25 percent was required.[38]

Importantly, the Terner study acknowledges that it did not actually analyze whether or how much this change in rents actually impacted renters' ability to afford new housing, or the relative value of slightly lower rents at the top of the rent scale compared to the value of more inclusionary units renting at low prices. These trade-offs are exactly what policy makers must consider when facing a shortfall of hundreds of thousands of homes for service workers, entry-level health care employees, and teachers.

In Denver, it is not uncommon to find new one-bedroom apartments renting in the low- to mid- $2,000s. The maximum average rent allowed under the EHA program for a one-bedroom inclusionary apartment is $1,629.[39] A market rent of just $2,000 is more than 19 percent higher than three out of five workers in the region can afford according to an interim housing needs assessment from the Denver Regional Council of Governments, or DRCOG.[40] A rent difference of less than one 1 percent, or less than $20, has no potential to bring these new apartments within reach of the vast majority of struggling renters. Only the inclusionary homes have the potential to reach lower-income renters, and are ensured to remain affordable for the long -term regardless of market demand.

A reminder that Terner modeled hypothetical rent impacts from inclusionary requirements to build 30 percent of AMI housing. It didn't measure actual rental price impacts. Older studies of actual rent impacts have found none, only slight increases during periods of regional housing appreciation,[41] or two to three percent increases ($60) in the worst- case scenarios.[42] The Housing Solutions lab cautions that no study capturing the effect of inclusionary in one market at one moment in time can be used to "predict what will happen elsewhere or in the future."[43] Even worst-case scenario costs can only be passed on if higher earning renters are willing and able to pay the higher rents. Denver-specific market analysis by HUD describes the rental market as "soft" with vacancy rates rising.[44] The most recent estimate for Denver was 6.9 percent vacancy in April of 2024.[45] With an additional glut of supply coming on top of this vacancy, it is simply going to be tough to pass more costs on to renters with more choices.[46]

Rates of Return During Market Transition

There is one more place a subset of projects are likely to look to cover the costs of affordability. Projects that bought land at peak prices before the new housing policy was contemplated, but did not get their projects financed or permitted before the cut off, and are now facing higher interest rates and construction costs are the most likely to be pinched or struggling with maintaining feasibility while also building required affordability. For projects in this category, slightly lower rates of return are one place developers can look to cover the costs of affordability.

Feasibility analysis by Denver before adopting EHA found that affordability at current land prices would result in slightly lower rates of return, but that returns were still within a range to attract investors.[47] Feasibility analysis is a point-in-time modeling exercise. Actual projects and investors are unique, and markets are always changing, as described above. Thus, one cannot point to feasibility analysis from 2021 to argue that any particular project still in the development process in 2024 is necessarily going to pencil out as financially feasible. But the analysis does illustrate the small percentage of project cost that complying with inclusionary represents in an overall project budget, that the impact on rate of return is modest at the AMIs and percentages required in Denver's policy, and that profits can be made in a range of project types.

Frustrated Coloradans may jump up here and suggest requiring even more affordable housing from developers, profits be damned. However, new housing is only possible when someone lends money to build it. Private investors want a profit in exchange for their money and risk. The kind of 401k or pension funds many regular Coloradans are invested in are examples of these "investors." Everyone expects their retirement fund to grow. So, if a developer can't earn enough profit to pay investors back, there won't be

any housing built, market rate or affordable. This is the case in down real estate markets even in the absence of affordable requirements.

No feasibility study or careful balancing of requirements can guarantee outcomes for every single unique project, and there is a period of adjustment following any market change, including affordability requirements. But that is different than declaring that residential development, writ large, is unable to adapt to requirements. As described above, land prices moderate in markets with predictable inclusionary requirements, allowing developers to accommodate affordability and earn rates of return necessary to attract investors. There is a persisting pipeline of new multifamily projects and new zonings demonstrating Denver's long-term market resilience, even as the industry faces the same tailwinds also slowing multifamily development in similar markets elsewhere.

Should Affordability be Repealed or Relaxed to Compensate for Larger Market Costs?

It is acknowledged that even marginal costs of building a percentage of homes to rent or sell to low- or moderate-income families instead of wealthy ones will be harder to accommodate as other market costs are eating up more of a project budget. The policy question is whether affordability should be sacrificed to compensate for these costs, either temporarily for existing policies or by foregoing a policy altogether for communities without one today? There are several arguments against sacrificing affordability.

For existing policies, predictability is important to all players in a housing market. Land prices will only moderate if inclusionary is expected as the long-term policy of a community. As the cautionary tale of California cities that repealed or reduced inclusionary requirements illustrates in the discussion above, relaxing policies results in a loss of affordability for lower-income families without realizing reductions in market rents.

Bypassing affordability might help some projects get built a little easier or faster in the near-term. But it comes at the cost of shrinking the pool of land available to serve residents like Jane that the market will never reach on its own. Once a parcel of land is built as high-cost housing, it is lost as an opportunity for affordability for generations, 100 years or more.

Trading long-term affordability for marginal, short- term market-rate supply boosts incurs collateral costs of housing instability that are borne by our entire community:

- Homelessness costs Denver $40,000 per person experiencing homelessness in shelter and emergency service costs.[48]
- Housing instability among families with children results in classroom and learning disruptions for kids, and loss of per pupil funding for public schools when families move away, reducing educational opportunity for all students in a community when schools close.
- Workforce shortages drive up costs and impact employers' ability to operate, impacting both businesses and consumers, who will face higher priced goods and services.

Building in some guaranteed, long-term affordability at the outset of new development has value in meeting urgent needs that outweighs the potential of any incremental slow down that results in a wait for the portion of high cost, market rate homes delayed as real estate cycles fluctuate over time.

Considerations for Inclusionary Policies Looking Forward

Having stated the case for inclusionary as a key strategy to pair with Colorado's growth, there are several considerations policymakers and advocates may want to contemplate going forward. The prior paper in this series provided a menu of approaches cities could consider to achieve mixed-income housing with affordability through new density near transit. However, the Housing Solutions Lab provides this nugget for cities to consider:

> *In the largest empirical study of IZ [inclusionary zone] to date, [the authors] provide further evidence that design matters: making IZ policies mandatory, applying them to the entire jurisdiction, and requiring that affordable units be targeted across multiple income groups is associated with higher rates of affordable unit production.*[49]

Other Options for Mitigating Multifamily Costs

The best opportunity to provide more economic benefit to Denver or other jurisdictions' projects to help them weather the storm without reducing affordability requirements is speeding permitting. In Denver, that means perfecting the Denver Planning Department's Affordable Housing Review Team (AHRT), which helps troubleshoot issues that projects may have with city compliance, and is supposed to speed their

permitting. In its early implementation, the project is only prioritizing projects with 100% affordability. The intention was to serve any EHA project that chooses an enhanced compliance pathway (i.e. builds more units.)

Expediting those projects building more EHA affordable homes – or even expanding eligibility to any project building units at 60 percent of AMI – could help reduce carrying costs for EHA developers and speed the delivery of housing most needed in the community. The city is still working through the backlogged projects from 2022's pre-EHA spike, and AHRT is only a little over a year old, so the capacity to broaden the AHRT team to a wide swath of EHA projects isn't imminent. But striving toward this accelerated pathway for EHA projects as soon as possible could help project feasibility.

Both the city and state legislators have been asked to look to peer cities that provide proportionate property tax relief to inclusionary projects in the hope of replicating that model. Examples include Washington D.C., Provincetown, MA, Portland, and Seattle.

Colorado's public housing authorities are exempt from property tax, and state law allows them to extend their exemption to outside affordable housing partners through Special Limited Partnerships. Due to Colorado's state-governed property tax valuation system, extending these partnerships or a similar exemption to inclusionary projects with mostly market-rate housing could require state legislation. In the interests of promoting affordability and the additional benefit of mixed-income communities, proportionate property tax relief for inclusionary projects is a path worth exploring. Any such inclusionary housing property tax relief should be controlled by local governments that rely on property taxes to service all residents, and in some cases to fund affordable housing directly, not by legally independent housing authorities.

However, it should be noted that communities offering property tax relief typically use it to increase the affordability outcomes projects can deliver. Minimums in Seattle range from 20 percent of homes at 60 percent of AMI to 30 percent of units at 70 percent of AMI, much higher than Denver's current policy.[50]

Why Communities Shouldn't Wait: What Inclusionary Would Have Produced in Denver

Inclusionary housing is a long-term, future-oriented strategy to expand affordable housing. Just as the spike and then fall in permits was predicted, so too did we explain at the time of passage that results would take several years to emerge. This was true both due to the large number of grandfathered projects and because it takes years for newly covered development processes to proceed from concept to finished products after policies take effect.

Outcomes might have been different if Denver hadn't been preempted from requiring affordability in all new apartments built during our last extended housing boom. Denver went through a city wide rezoning process in 2010 that added much of the density we have today along major transit and other mixed-use corridors. It resulted in zoning quite similar to the transit-oriented community or TOC zoning recently passed by the Colorado legislature, which should help ensure that more communities beyond Denver similarly contribute their share of new housing growth to meet the overall statewide need.

From 2010 to 2019 alone, 34,000 new apartments were built in Denver.[51] Of those, 7,187 were affordable due to public subsidy or voluntary agreements with developers of large catalytic projects involving some form of public land or financing.[52] If 10 percent of the remaining 26,813 had been built as affordable, Denver would have 2,681 more deed-restricted affordable apartments for families in need today. If built at the highest AMI allowed under Denver's policy, those units would wipe out all the need for 1,785 renters earning 80 percent of AMI who are severely rent burdened today, as well as about 10 percent of the need among those who are moderately burdened.[53] More than a decade of inclusionary homes would have made a smaller dent, but met more severe need, if they were built at 60 percent of AMI. Gradual but steady supplies of affordable housing can add up to a big impact over time.

Denver's losses are a cautionary tale of the opportunity cost of failing to require affordability before the next market rate housing boom cycle in newly up-zoned communities. Even if smaller communities will only see a fraction of the housing Denver built, they also have proportionately smaller populations in need. It takes most communities several years to craft, get stakeholder input, and pass an inclusionary policy. Starting now would likely mean a new policy would take effect just as development picks up in the next up-cycle that follows the slowdown taking place now.

The Case for Lowering AMI Levels in Metro Denver Inclusionary Policies

As of 2024, the income limit for a household of two at 80 percent of AMI in the Denver-Aurora-Lakewood region is $82,150.[54] This AMI scale, produced by the U.S.Department of Housing and Urban Development, or HUD, is used to set prices for affordable housing. That number has skyrocketed since 2021 when Denver's lengthy EHA legislative adoption process began. Since then, the median income for all families has risen by $25,000 to an eye popping $130,400 in 2024. The median has been pulled up by income growth among wealthier households in the region, eroding the value of 80 percent of AMI housing to meet workforcehousing needs that level once served.

"Sixty is the new eighty" when it comes to comparing the types of occupations that used to be represented at 80 percent of AMI but are now represented at 60 percent. For example, the starting salary for teachers in Denver at $54,000 places teachers around 60 percent of AMI in 2024 for a single household. That same $54,000 salary would have put a single teacher squarely at 80 percent of AMI in 2021, the year Colorado legalized local inclusionary housing policies.

As discussed in the first paper in this series covering ADUs, Denver does have renters who are burdened and paying too much of their income for housing below 80 percent of AMI. Just over 11,000 of these Denver renters are burdened, with just under 1,800 of them severely burdened, meaning they pay more than half their income on rent.[55] But severe housing burden begins to rise dramatically below 60 percent of AMI. DRCOG's needs assessment finds that more than 60 percent of all housing demand in the region is below 60 percent of AMI, where it is projected to remain for more than a decade.[56]

AMI had already been trending higher and faster in the early 2020s at the time EHA was adopted, which is why as a lead proponent I advocated the inclusion of 60 percent of AMI compliance pathways. Given the acceleration at which the AMI scale has risen, outpacing the income growth and housing buying power of the lowest income Denverites and Coloradans, inclusionary policies along Denver's Front Range would better serve more of the workers with the greatest need if they focus on building 60 or even 50 percent of AMI rentals.

These AMI levels will deliver lower rents to project developers than 80 percent of AMI, meaning accepting fewer units to ensure projects pencil out financially and still get built. But just as with incomes, the rents allowed under each AMI level have also risen, so the rents that used to be allowed for 80 percent of AMI are now comparable to those allowed for families earning 60 percent, which helps feasibility.

Analysis of workforce AMI levels and housing burden in non-metro Denver markets was beyond the scope of this paper, but would be a key component in crafting or updating policies in other regions of Colorado.

Regardless of AMI level, the national trend is toward longer, permanent affordability to avoid the cliff effect of losing affordable homes to expiration.

Adapting Policy to the Loss of Voluntary Zoning or Parking Incentives Near Transit

In 2024, we saw successful passage of a package of land use reform bills impacting urban areas of Colorado, beyond the TOC legislation mentioned previously. As documented in this series, these bills are likely to result in increased housing supply over time, and benefits to some moderate- and low-income Coloradans, directly and

through paired affordability measures. Yet, there is one unintended consequence of legislation upping density and removing parking minimums from areas near transit in the 2024 legislature. Communities like Fort Collins with voluntary affordable housing programs will lose the ability to incentivize affordability in these areas in exchange for these incentives, because some zoning increases and all parking reductions will be provided to everyone. The loss of zoning and parking as incentives for affordability near transit makes a strong case for converting voluntary policies to mandatory requirements to capture the economic value zoning reform represents.

Denver, too, uses incentives like these in exchange for larger affordability set asides, a voluntary option within an otherwise mandatory policy. Adaptation will be trickier for those who use these incentives within existing mandatory policies.

For either type of policy, it may be that the 40 unit/acre threshold required by the TOC law is low enough at 3-5 stories to still allow for density bonuses up to 8 or 12 stories in exchange for affordability/more affordability. In future years, the legislature could amend the TOC formula to provide credit for such incentive zoning. There may simply be no replacement for the loss of parking reductions as an incentive.

Conclusion

It is too early to evaluate the market outcomes of Denver's inclusionary policy, but any analysis conducted must consider the entire market context. Denver's market is typical of those nationally predicted to experience a slowdown in multifamily construction due to a glut of forthcoming supply, softening of rents from that greater competition, higher vacancy rates, and volatile inflationary impacts on costs as compared to the last decade. The 38,000 units in Denver's permitting pipeline also limits capacity for conceiving and proposing new projects in the near-term until these projects are completed and successfully sold or rented. Inclusionary affordable housing requirements are not the primary underlying cause of slowing construction, and no critic of inclusionary has even attempted to isolate inclusionary outcomes from these effects.

If Colorado is going to grow up with more density, then modest inclusionary policies are a fair and effective trade-off to house more working families faster.

Setting affordability levels is tricky. But it isn't impossible. Denver and other cities that calibrate their requirements to ensure reasonable rates of return can still be earned for a critical mass of projects continue to see a pipeline of future multifamily housing. Land values adjust over time to accommodate affordability requirements.

No project is guaranteed to make financial sense in a market with constantly changing factors. However, any marginal impact on development rates or housing costs uniquely

attributable to inclusionary housing is outweighed by the significant need and value of affordable housing created for AMIs that simply will not be built by the market absent inclusionary. Land lost to high income housing limits the remaining supply of land available to meet the affordable housing crisis for generations.

We regularly accept up-front marginal costs to meet communal expectations: Seat belts, airbags and anti-lock brakes make cars more expensive. Safety inspections, energy efficiency requirements, and flood mitigation also cost housing more, but we impose them to keep residents and neighbors safe and to mitigate climate impacts that cost us all.

The need for affordable housing is as critical of a challenge with similar externalities borne by our entire community. Solving the housing crisis requires taking a long view. Affordability shouldn't be sacrificed due to temporary market volatility. Colorado and/or local governments have the opportunity to leverage a small portion of the value in the coming decades of more dense development to house more struggling Coloradans. We should seize it.

Appendix

Denver Inclusionary Housing Compliance Options for Residential Developments

High Market = Downtown Denver & Cherry Creek (in 2024)

Enhanced = Choosing greater density in exchange for more affordability

High Market Area Build On Site Options	Typical Market Area Build On Site Options
High Market Area Baseline – Option 1 10% of dwelling units at 60% AMI rental or 80% AMI ownership	Typical Market Area Baseline – Option 1 8% of dwelling units at 60% AMI rental or 80% AMI ownership
High Market Area Baseline – Option 2 15% of dwelling units averaging 70% AMI rental or 90% AMI ownership	Typical Market Area Baseline – Option 2 12% of dwelling units averaging 70% AMI rental or 90% AMI ownership
High Market Area Enhanced – Option 1 12% of dwelling units at 60% AMI rental or 80% AMI ownership	Typical Market Area Enhanced – Option 1 10% of dwelling units at 60% AMI rental or 80% AMI ownership
High Market Area Enhanced – Option 2 18% of dwelling units averaging 70% AMI rental or 90% AMI ownership	Typical Market Area Enhanced – Option 2 15% of dwelling units averaging 70% AMI rental or 90% AMI ownership

Source: Denver Department of Housing Stability, Affordable Housing Plan for Compliance with Mandatory Affordable Housing (MAH), 2024

Endnotes

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23 Denver County grew by 2.4 percent annually between 2011-2019. Then we lost population in 2020-2021. From 2022 to 2023 population again began to grow but only by 0.3 percent. See USA Facts, Denver County, reporting on US Census data. Accessed at: https://usafacts.org/data/topics/people-society/population-and-demographics/our-changing-population/state/colorado/county/denver-county/.

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27 There are eight possible scenarios to satisfy affordability requirements, depending on whether the building is in a neighborhood designated as Standard or High Market (primarily downtown Denver), and whether the project is opting into voluntary incentives, which trigger higher affordability requirements up to 15-18%. The scenarios also vary based on whether the project is for rent or sale homes. The estimates provided in this table assume rental homes and conservatively assume the most common/lowest requirements will be selected.

28 This figure is an estimate based on 219 market-rate projects of all types still pending. Based on the ratio of commercial to residential in the last report CPD ran separating project types, 75% of this most recent total are assumed to involve residential.

29 Large Developments that entered into affordability agreements prior to EHA that will continue to be built out post-EHA include Fox Park, Broadway Park, Loretto Heights, Denargo Market, and Central Park (multiple projects).

30 An additional 74 units are in projects falling below the 10 unit threshold for mandatory on-site affordable housing, and will be required to pay the linkage fee only.

31 An additional 37 units are in projects falling below the 10 unit threshold for mandatory on-site affordable housing, and will be required to pay the linkage fee only.

32 HOST 2024 Budget Presentation, subsidy average is $15,000 to 35,000 per unit. In reality, Denver would not be able to support the construction of this many units through Low Income Housing Tax Credits even if it had the budget capacity to provide gap financing, which it does not. Because such credits are highly competitive and only 2-5 Denver projects are awarded credits in any given year, without which 10 times more subsidy would be required.

33 Parking reductions are also an option, but affordable housing projects are only required to build 0.25 parking spaces per unit, so further reductions are less likely to be sought from 100% affordable projects.

34 Denver Department of Housing Stability (HOST) 2024 Budget Presentation to City Council.

35 Totals include projects subject to mandatory provisions of EHA and those that voluntarily opted into EHA in order to take advantage of EHA incentives or to strengthen their case for rezoning. Affordable Housing Plans (AHPs) are signed during the Site Development Plan (SDP) review process, but they are not recorded until after the SDP has been approved.

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