Rising Interest (and Tempers) Around Inclusionary Housing Ordinances

Rocky Mountain Land Use Institute

University of Denver Law School

March 2015

Panelists

Don Elliott, FAICP

Clarion Associates, Denver

Peter Pollock, FAICP

Lincoln Institute, Boulder

Kirsten Whetstone

Park City Utah Planning

Diane Barrett

Denver Mayor’s Office

Overview

1. Background on the Challenge
2. National Trends in IHOs
3. Park City's Experience
   (and changes along the way)
4. Denver's Experience
   (and changes along the way)

Background

The Challenge

Workforce housing is a structural problem of the U.S. economy

Housing costs continue to rise faster than average wages – as they have for the last 50 years

Background

1960 - 2010

Average renter income spent on housing has risen from 19% to 29%

Who spends more than 30% of income on rent (rent burden)?

- 49% of all renters
- 54% of renters with children
- 80% of low-income (200% of poverty line)

Real need is in attached and MF units

Background

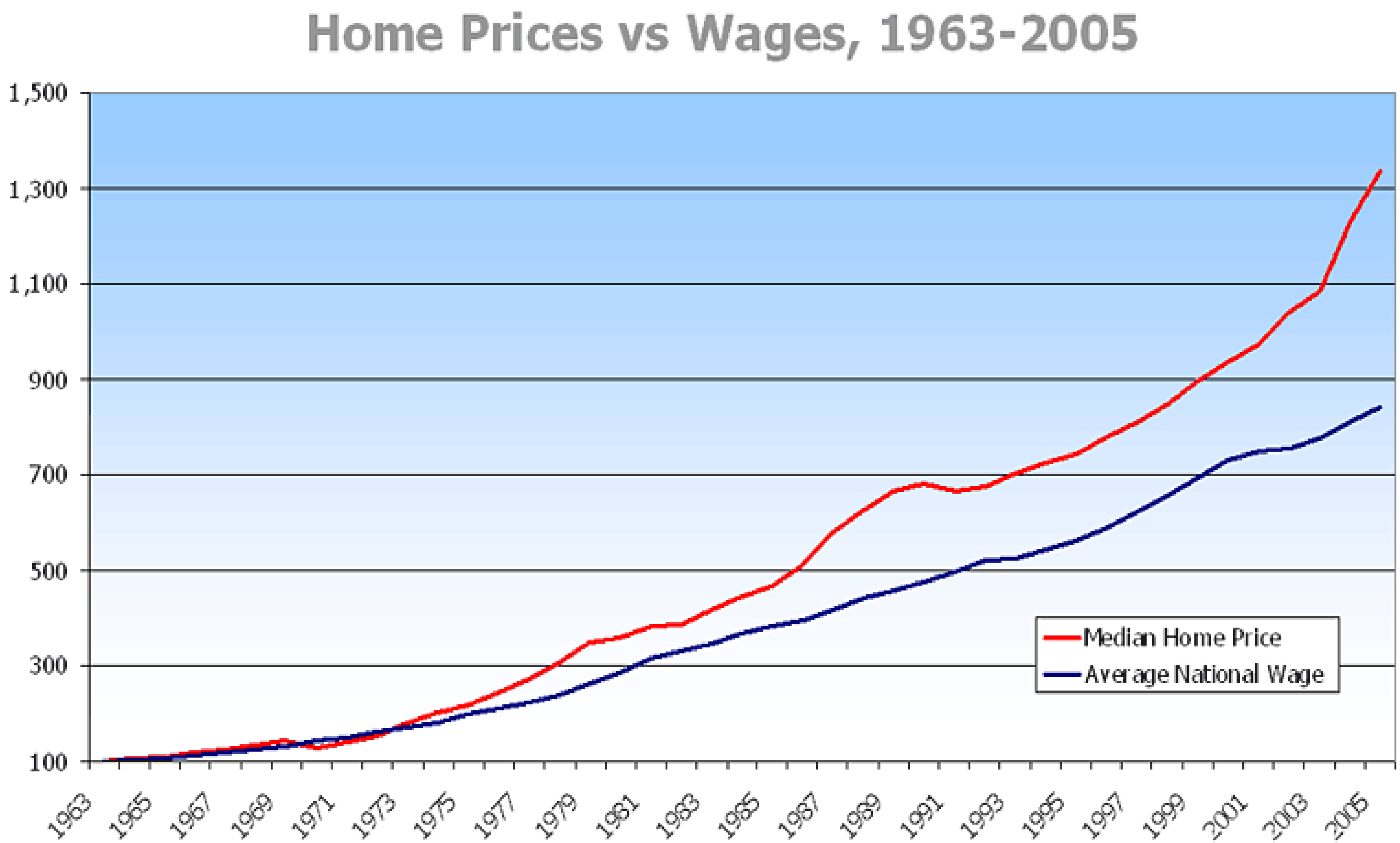
Homeownership is also slipping out of reach

Salt Lake City UT Housing Opportunity Index (% of those earning regional average wage who can afford regional average house)

2004 = 80.8

2014 = 63.8

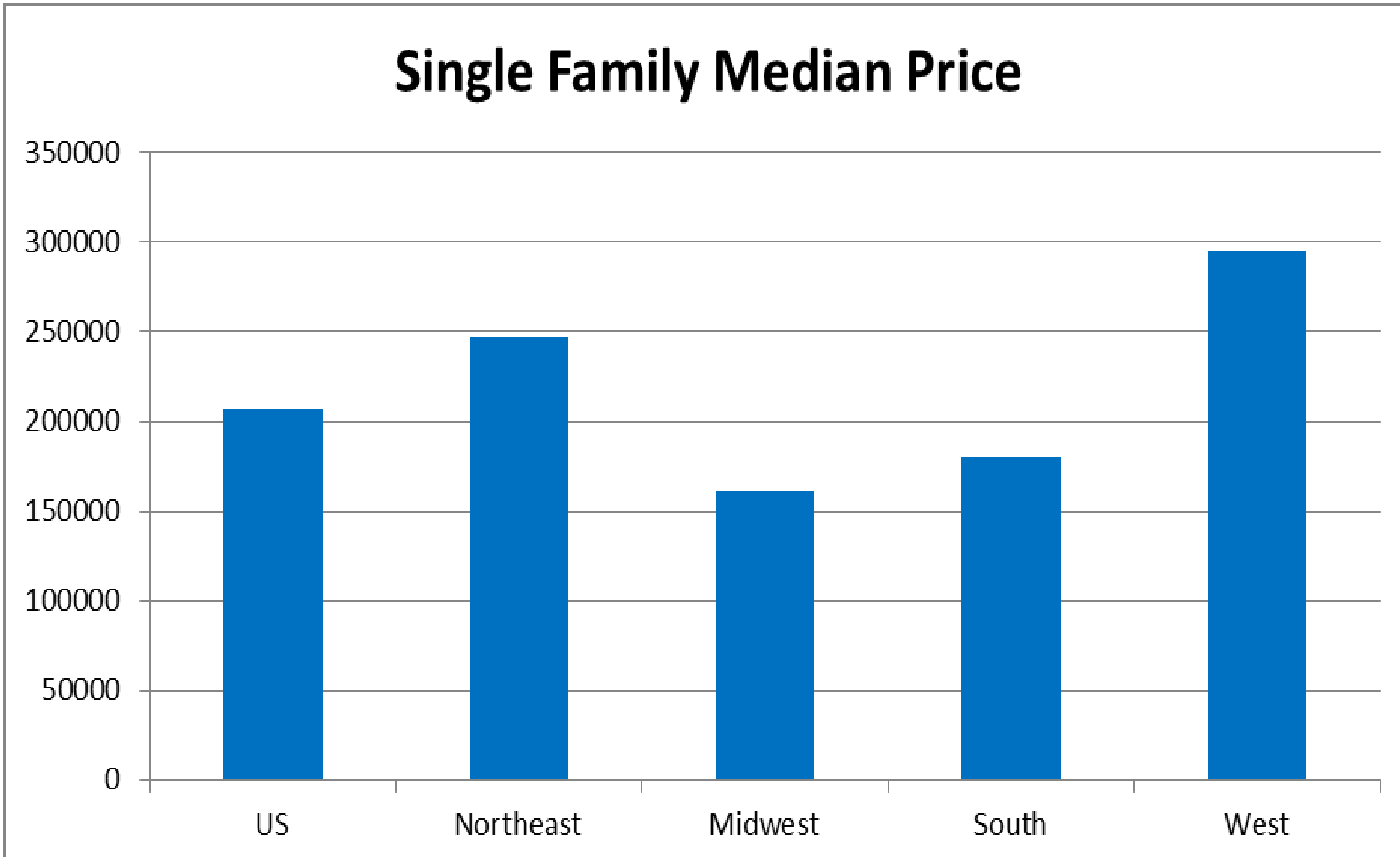
Background



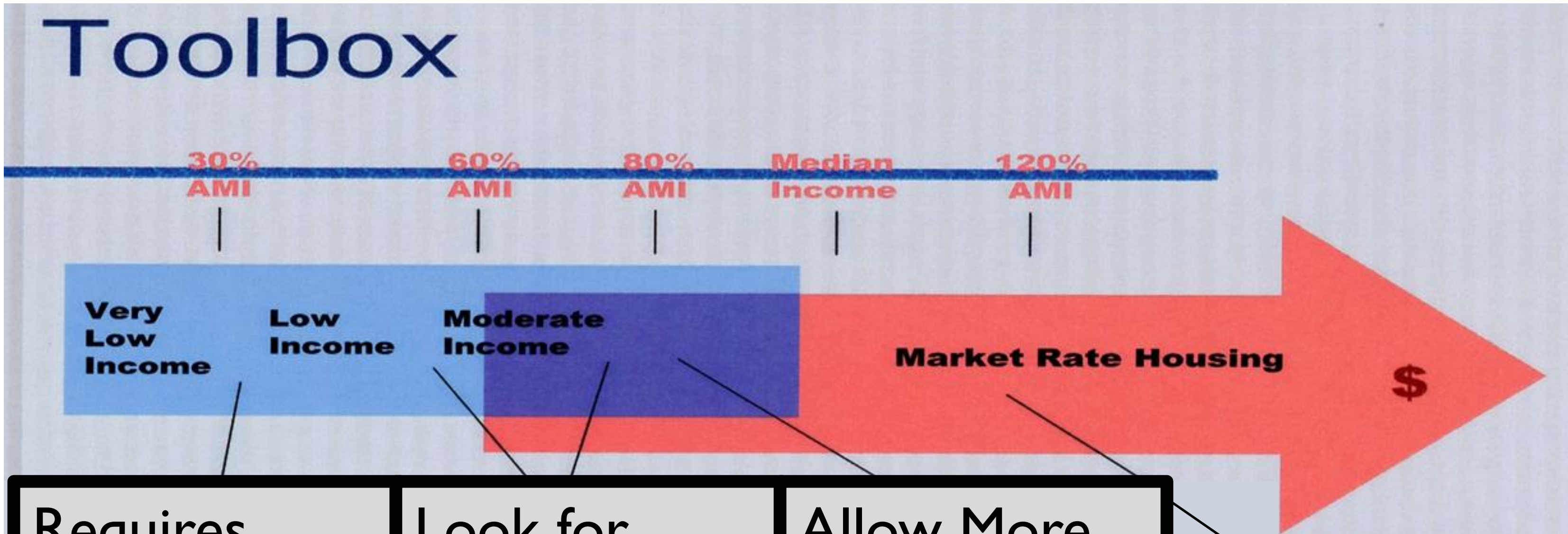
Home Prices vs Wages, 1963-2005
1,500
1,300
1,100
900
700
500
300
100
1963
1965
1967
1969
1971
1973
1975
1977
1979
1981
1983
1985
1987
1989
1991
1993
1995
1997
1999
2001
2003
2005
Median Home Price
Average National Wage

Background

The West is Particularly Stressed



Background



Requires Money Subsidies – Usually Lots of Them	Look for Cross-subsidies and Non-money Incentives	Allow More Creative Designs and Smaller Lots and Units	Driven by High Income Demands – Let it go

IHOs

Background

Two complications in Colorado

1. No rent control allowed, so programs focus on owner-occupied housing

   AND

2. Very strong construction defects liability law has curtailed most (attached) condo construction

   SO

We're getting <u>lots</u> of market priced rental apartment construction

Achieving lasting affordability through inclusionary housing

Western Places – Western Spaces:
Building **Fair** and Resilient Communities
March 12-13, 2015

Peter Pollock, FAICP
Ronald Smith Fellow, Department of Planning and Urban Form
Lincoln Institute of Land Policy

"*Achieving Lasting Affordability through Inclusionary Housing*" by Robert Hickey, Lisa Sturtevant, and Emily Thaden

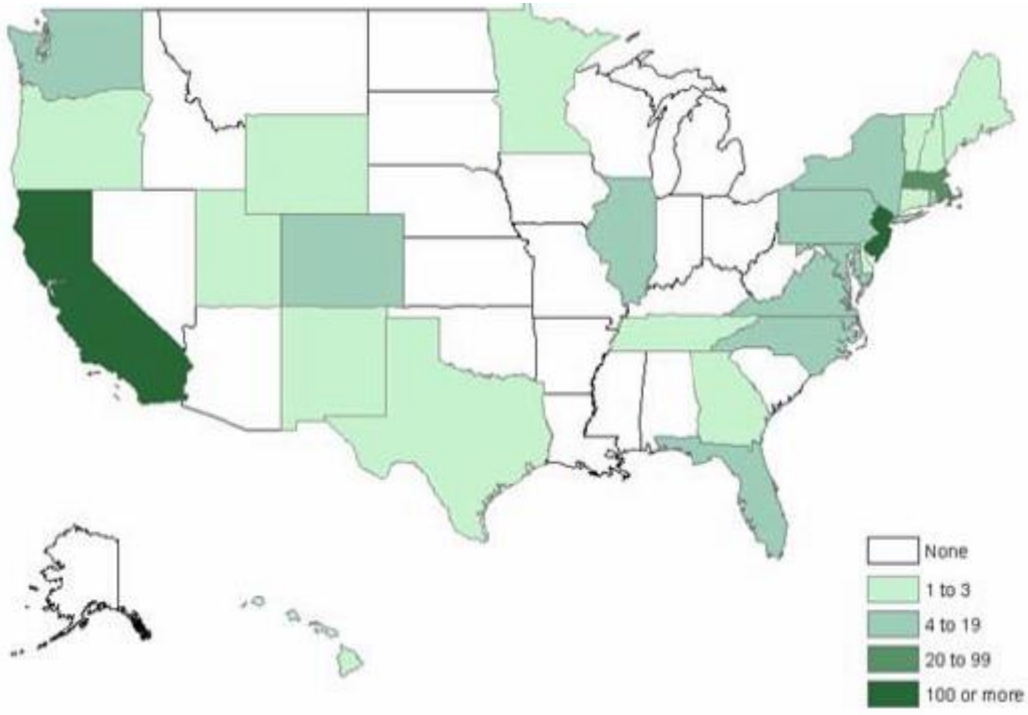
CENTER FOR HOUSING POLICY

NATIONAL COMMUNITY LAND TRUST NETWORK

- 2014 report identifying "successful strategies for facilitating lasting affordability"
- National inventory of nearly 500 local jurisdictions across 27 states and D.C.
- Case study analysis of 20 IH programs

Local land use policies that link approvals for market-rate housing to the creation of affordable homes for low- and moderate-income households.

National Inventory



20 case study jurisdictions

- Davis, CA
- Irvine, CA
- San Francisco, CA
- San Mateo, CA
- Santa Monica, CA
- Boulder, CO
- Denver, CO
- Stamford, CT
- Washington, DC
- Chicago, IL
- Montgomery Co., MD
- Cambridge, MA
- New Jersey jurisdictions
- Chapel Hill, NC
- Davidson, NC
- Santa Fe, NM
- Park City, UT
- Burlington, VT
- Fairfax Co., VA
- Redmond, VA

Long Affordability Periods

- For the 307 programs for which affordability data was available: **84% of homeownership** and **80% of rental programs** require units to **remain affordable for at least 30 years**.
- **1/3** of IH programs **require 99-year or perpetual affordability** for rental and/or for-sale housing.

Strong legal mechanisms

- Why? Illegal sales, improper refinancing, over-encumbrance with second loans, defaults.
- How? Deed covenants, deeds of trust, preemptive right to purchase, the right to cure a foreclosure, the right to purchase a home entering foreclosure, requirements of notice of default or delinquency

Carefully designed resale formulas

- Balance lasting affordability for subsequent owners with promoting wealth-building among homeowners.
- Most popular: tie to growth in area median income (AMI)
- Other approaches: fixed percentage, appraisal-based, mortgage-based resale formulas, as well as hybrids.

Dedicated program stewardship

Homeownership:

- Preparing homeowners for new responsibilities.
- Helping owners avoid delinquencies, foreclosure.
- Monitoring resale and refinancing activities.
- Encouraging investment in property maintenance and repair
- Staying in regular communication.

Dedicated program stewardship

Rental:

- Regular oversight over the leasing and tenant selection process.
- For some, regular review and training of property managers, while others used in-house management of a centralized waiting list and tenant selection process.

Strategic partnerships

- Trade-offs between managing rental-in-house and partnering with property managers and/or other outside organizations. Especially when financial resources and staff capacity is low.
- Such as, community land trusts, for-profit administrative agents, local housing authorities, nonprofit housing developers.

Which type of policy?

- **83% of programs are mandatory**
- **More programs moving to mandatory**
- **State laws may prohibit mandatory rental**

Chapel Hill, NC:

2000-Voluntary affordable housing policy adopted

2010-Mandatory ordinance for inclusionary housing passed

Where does it apply?

- **Offers uniformity and predictability when entire jurisdiction**
- **May vary requirements by place-based factors**

San Francisco, CA: Overall citywide requirement is 12%, but 14.4-17.6% in rezoned areas with strong market potential.

Burlington, VT: Increases 15% affordable requirement to 25% in waterfront district.

Fairfax County, VA: 5% in developments with structured parking and 12.5% in single-family and low-rise multifamily developments.

To whom does it apply?

- **Most apply to residential developers**
- **Linkage fee/impact fees allow commercial developers to contribute**

Seattle, WA: Drafting linkage fee legislation, whereby fees in costly neighborhoods might be $16-22/sq. ft. and $5-7/sq. ft. in least costly neighborhoods.

San Diego, CA:

Category	Current	Jan. 2015	Jan. 2016	Jan. 2017	
Office	$1.06	$1.41	$1.76	$2.12	
Hotel	$0.64	$0.85	$1.06	$1.28	
Retail	$0.64	$0.85	$1.06	$1.28	
Manufacturing		$0.64	$-	$-	$-
Warehouse		$0.64	$-	$-	$-
Research/development	$0.27	$0.80	$0.80	$0.80	
Nonprofit hospitals	$1.06	$-	$-	$-	

Affordable housing fees charged to commercial development in city of **San Diego**, 2014-2017

To what kinds of projects does it apply?

- **Most common trigger is 10+ units**
- **In-lieu fee applying to smaller developments**
- **Some state rent control laws prohibit mandatory rental (e.g. CA, CO, TX, NC, OR, WI).**

WORK-AROUNDS:

Impact fees;

Development agreements;

Require selling units to nonprofit or government exempt from rental control restrictions;

Require units when variance or assistance is requested.

How can developers meet it?

- **On-site preference is typical**
- **In-lieu fees tend to be too low**

On-site: Affordable housing where construction is occurring; mixed-income developments

Off-site: Geographic targets for affordable housing

In-lieu fee/linkage fee: Flexible funding source for community development; funds to support program

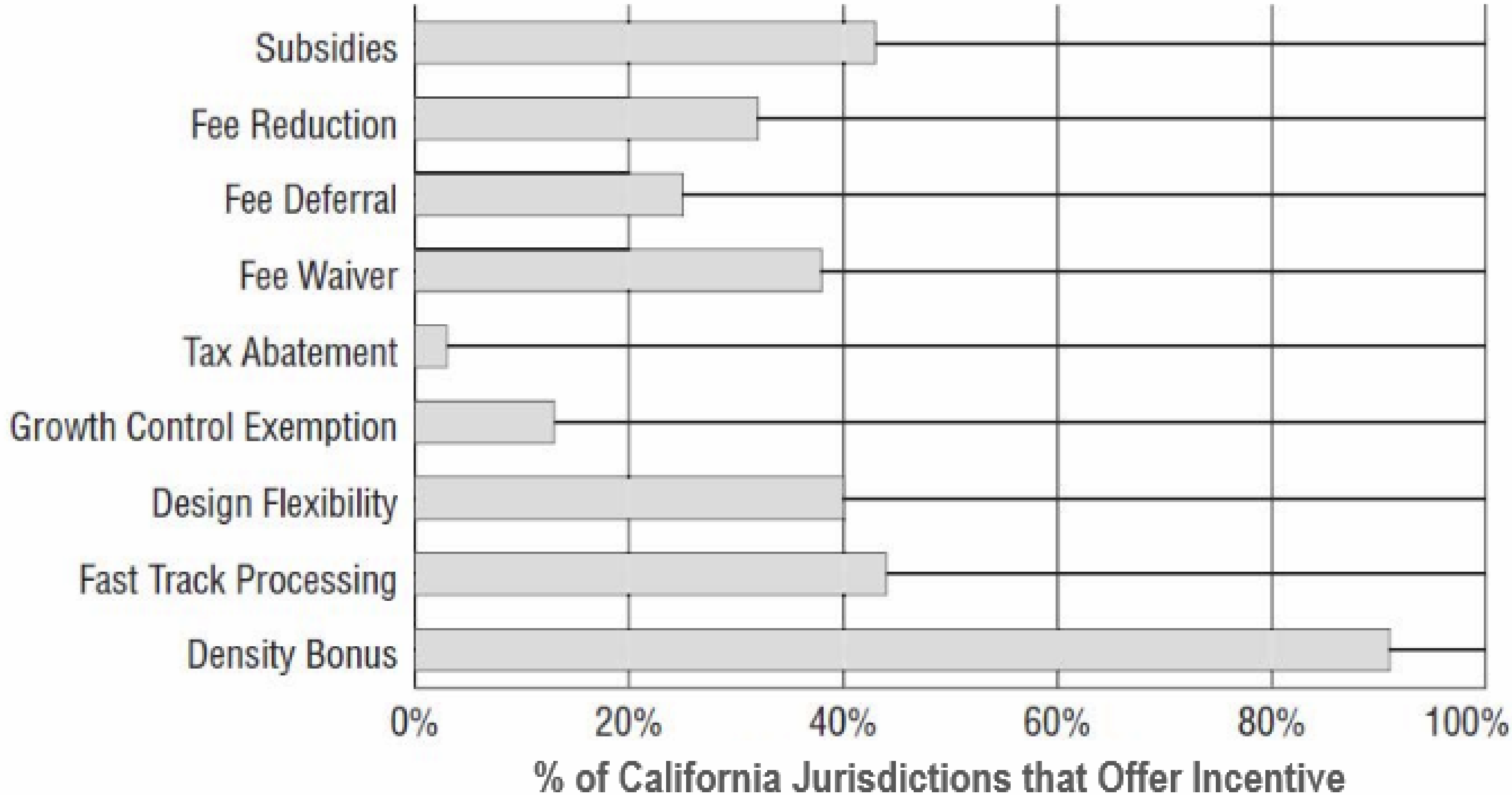
Land dedication: Land acquisition

What are the requirements?

- **15% affordability requirement is average**
- **Affordability is meant to last**

Affordability Length (years)		
	Rental	For-Sale
0 to 14	12%	15%
15 to 29	8%	9%
30 to 49	23%	31%
50 to 98	22%	12%
99 or perpetual	36%	33%
Total	100%	100%

What benefits do developers receive?



Source: NPH, 2004
Inclusionary Housing: The California Experience.

Contact/more information

Peter Pollock, FAICP
Ronald Smith Fellow, Department of Planning and Urban Form
Lincoln Institute of Land Policy
956 Grant Place
Boulder, CO 80302
303-247-0245
ppollock@lincolninst.edu
Website: www.lincolninst.edu

Best Practices Elsewhere

What is Trending Nationally in Inclusionary and Housing Policy?

Flexibility is on the rise:

- Requiring square feet of affordable homes rather than "units"
- Requiring number of bedrooms rather than "units"
- Leveraging IHO requirements with outside partners, other resources (subsidies) etc.
- Experimentation with micro-units/SROs
- Employer-led housing efforts complementing public policy

The Challenge

Current IHO Had Failed To Keep Pace With Changing Economy

1. **Too few units** built in higher cost areas where there is need for affordability because the market is NOT building similarly priced units, with or without restrictions. (Too many developers paying cash instead of building).

2. **Too many units** built in lower cost areas where they are less needed and more likely to compete with similarly priced units without any permanent affordability restriction.

3. Desire to **increase incentives** to better compensate developers, to ensure projects are still economically viable and units get built.

Proposed Solutions

Two overall goals of the proposed revisions:

1. **Build more homes**
   - Why?
     - High-quality affordable housing is out of reach for many moderate income families without programs like the IHO.
     - Under the original IHO it was more cost effective for developers to buyout rather than build the units on-site.
   - How?
     - Make it more attractive to build on site than buy-out
     - Flexibility/offsite site partnership before cash in lieu
2. **Reduce the burden on developers**
   - Why?
     - Reduced financial burden for developers can lead to more affordable homes
   - How?
     - Increase cash incentives
     - Reduce Cash in Lieu Fee
     - Flexibility/offsite potential for cost savings

Trade Offs

A **simple** ordinance is the easiest to understand and administer, but blunt tools don't always provide best results.

VS.

A **perfect** ordinance better calibrates to diversity of factors, anticipates every possibility, but at greater administrative burden.

What is the right balance between **simplicity** and **perfection** in Denver?

Overview of Phase I Changes

1. Home Ownership Counseling

   Prospective home owners are required to provide a certificate of completion from OED-approved homeownership counseling course

2. Improved City notification prior to Foreclosures

   Renamed covenants should prompt bank notice to City of foreclosure filings

3. More flexibility for Renting a Home After a Good Faith Marketing Effort

   Broaden the "hardship" reasons that allow a homeowner to rent to a "necessity" approved by OED Housing Director or Designee

4. Allow Voluntary Sale of Home to an Approved Non-Profit Entity or Housing Authority

   If owner is unable to sell unit to qualified buyer and rental of unit is permitted by applicable rules or agreements, allow sale of home to City-approved 501(c)(3) non-profit, governmental, or quasi-governmental housing authority for use as affordable rental. (**Sale to housing authority already allowed).**

Overview of Phase I Changes Cont.

Continued:

5. Raising the Income Thresholds for Subsequent Buyers (but keeping the same limit on sale price)

    This Resale Option allows homeowners to sell their units to higher income eligible buyers, based on years of actual ownership.

6. Eliminate Restrictions on the Use of the IHO Buyout Funds

    Promote high quality mixed-income housing by eliminating where buyout funds can be redeployed

Phase II: Ordinance Features that Stayed the Same

<u>I. No change to the City-wide Build Requirement</u> (Ord. Sec.105(a))

- Default remains 10% city-wide
- Default is homes affordable to 80% of AMI -- 95% of AMI for "high cost" structures with underground parking and elevators (typically 8-story and above)
- Default length of affordability is 15 years

<u>II. No change to 30-unit Threshold Triggering Ordinance</u> (Ord. Sec.105(a))

- History since 2002 indicated lowering would create small number of additional units

Phase II: Ordinance Features that Stay the Same

III. Provisions for Voluntary Participation to Access Incentives

- For-sale projects of fewer than 30 units
- Rental projects (although more details moved to regulations, allowing for easier updating) (Ord. Sec.114)

IV. Annual Report by OED (Ord. Sec.120)

- Every 12 months
- Similar to the original ordinance, this version has a public hearing and full evaluation of the ordinance built-in – within 5 years of passage of changes
- NEW – Mayor's Housing Advisory Committee to provide oversight (Housing Plan)

Phase II: Ordinance Changes

I. An Enhanced Culture of Flexibility (Ord. Sec.106(b))

- Explicit support for alternative satisfaction, providing developers more options to create units on-site or off-site that may work better for their proforma

- Requirement for OED to provide developers interested in alternative satisfaction assistance in developing proposals to do so

(OED has committed to hire an Independent Advisor to provide technical assistance and support to developers)

II. Variable Cash in Lieu/Incentives by Neighborhood Zones (Ord. Sec.106 and Sec.107); Regs.

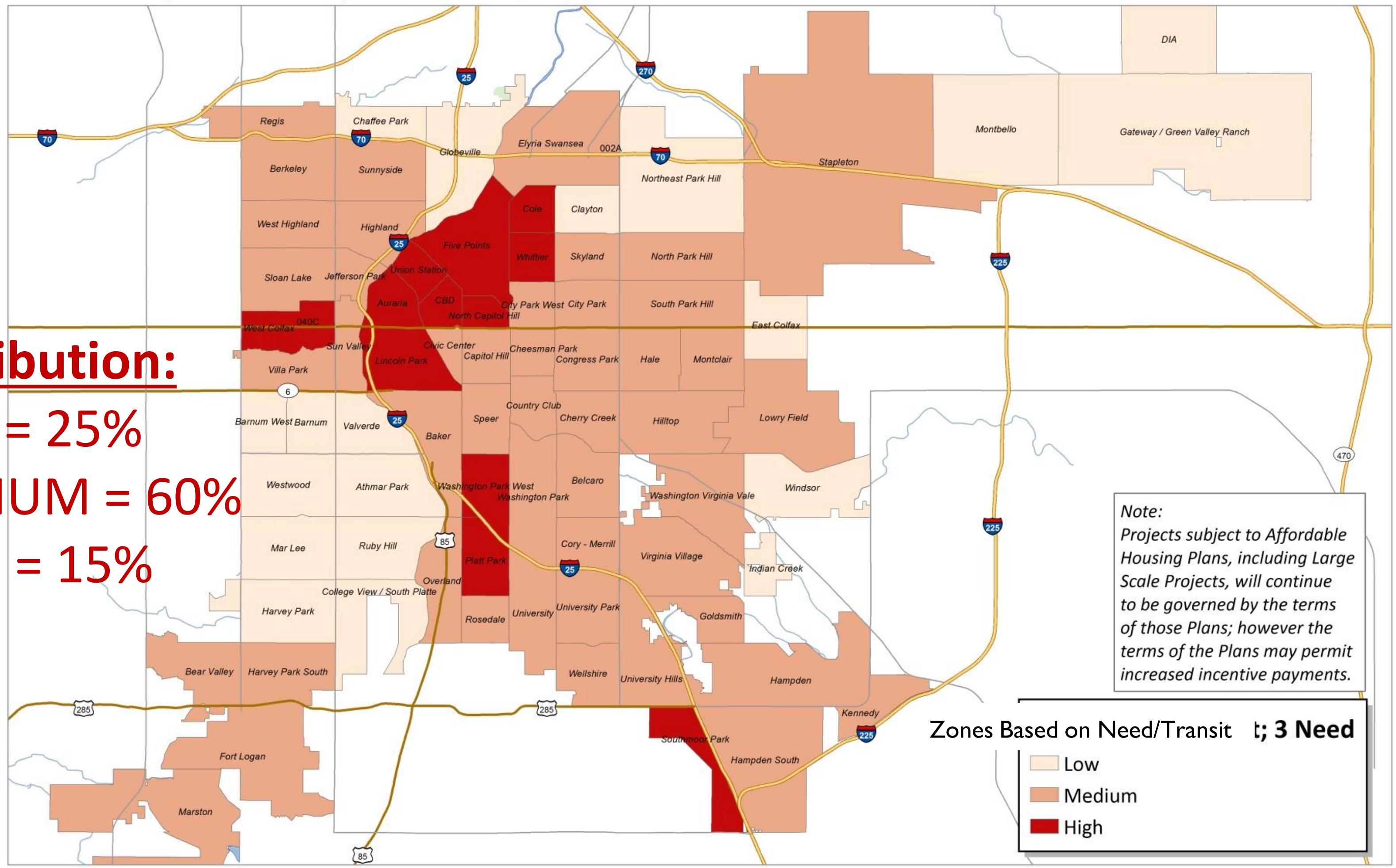
- Median for-sale home prices and proximity to transit used to create three zones by statistical neighborhood
- Per-unit incentive payments and cash-in-lieu will vary based on zones
  - Up to $25,000/unit for incentive (Sec. 107(a))
  - Up to 100% of AMI for buyout (Ord. Sec.106(b)(1)(G))
- Zones and amounts determined in regulations, so can be evaluated and adjusted every 2-3 years, if needed
- A $5,000 bonus incentive for providing deeper affordability to 60% of AMI (not due to an alternative/flexible plan) (Ord. Sec.107(a))

Details of Zones

- Virtually no change for 60% of the city
- Decreased cash in lieu for areas with lowest home prices (25% of city) to minimize creation of units in areas where they are more likely to compete with market-rate units, lowering of incentive payments to prioritize scarce resources to areas of greatest need
- Dramatically increased per-unit cash incentive payment for homes built in high need areas (15% of the city) to improve economics of building affordable homes where needed most, while increasing the cash-in-lieu payment to deter projects from paying cash instead of building on-site OR through flexibility

Regulations: “Zones” for variable cash-in-lieu or incentives

Denver Housing Economic Study - IHO Zone Maps Options



Distribution:

LOW = 25%

MEDIUM = 60%

HIGH = 15%

Tiered Cash In Lieu (CIL) and Incentives - By Zones
(Regs)

Zone	*CIL	*Cash Incentives
High	70% of Sales Price	$25,000 per unit
Medium	50% of Sales Price (Existing)	$6,500 per unit (Existing adjusted by inflation)
Low	25% of Sales price	$2,500 per unit * Except within ½ mile of transit, which receives the medium incentive

Phase II: Ordinance Changes

III. Removing the Limit on Incentive Payments in a Year (Ord. Sec.107(a))

- High-cost condo structures that cannot phase their affordable homes, like a single-family home developer could, will NOT be subject to the $250,000 annual incentive payment limit, and can receive the entire incentive they are due

IV. Smaller Threshold for Customized Plans (Ord. Sec.103(u) - definition of an MPDU)

- Any GDP or PUD that includes a for-sale component of more than 30 units that would trigger the ordinance
- Any master planned development exceeding 1000 housing units

V. Clarification of Uses of Special Revenue Fund (Ord. Sec.102(h) and Sec. 103(z) - definition of special revenue fund))

- First priority is payment of incentives, director must adopt policy that preserves some funds for this use
- Second priority is preservation or creation of affordable housing, with an effort to use funds generated in high zones in proximity to where the funds were generated where practicable
- Use of fund for administrative expenses limited to 5%

VI. Clarification of Non-cash incentives (Ord. Sec.108)

- Will now be available to any project building MPDUs (no requirement to build extra units to qualify)
- Density bonus: Consistency with new zoning code – only a few sections allow for some floor area benefit for MPDUs
- Parking reduction: Consistency with new zoning code – allows a 20% reduction for some zone districts (market factors limit effectiveness, but no reason to remove a possible benefit, for example near transit)
- Expedited permitting: Making more general, with details to be updated in the regulations

Questions and Discussions

Diane Barrett

diane.barrett@denvergov.org

Kirsten Whetstone

kirsten@parkcity.org

Peter Pollock, FAICP

ppollock@lincolninst.edu

Don Elliott, FAICP

delliott@clarionassociates.com

Determining "Zones" for Cash in Lieu/Incentives

High, medium, and low zones based on the overlay of two metrics

1. **Fixed-rail Transit**

Why?: Proximity to transit saves moderate income families money compared to owning and/or always using a car.

Data and thresholds: ≥30% or ≥50% of neighborhood within ½ mile of fixed rail transit station.

2. **Median Sales Prices**

Why?: We have a greater need for new affordable housing as a part of development in higher cost neighborhoods than in neighborhoods where the market already creates moderate priced housing.

Data and Threshold: median sales distributed into three tiers citywide by neighborhood.