



Housing and Racial Bias

Part I: Connecting Zoning to Housing Policy

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Your Presenters



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Presentation Outline

- Housing and the law
 - Connecting zoning and housing
 - Sources of law
- Barriers to housing affordability
 - Defining housing needs and identifying racial bias
- Market-based constraints on housing supply—and solutions

Part II will address public interventions and low-income housing solutions

Zoning and housing: a brief legal history...

- 1916: first zoning ordinance in the nation (New York City)
 - Not the first land use regulation...
- *Buchanan v. Warley*, 245 U.S. 60 (1917)
 - U.S. Supreme Court invalidates Louisville, KY ordinance prohibiting “colored people” from occupying a dwelling on a majority white block, and vice versa
- 1922: Standard State Zoning Enabling Act
 - “For the purpose of promoting health, safety, morals, or the general welfare of the community...”
 - Regulation of population density, “character” specifically contemplated

Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926)

- Local zoning code contained use districts
 - Single-family residential, two-family residential, multi-family residential, and handful of commercial and industrial districts
- Zoning upheld as a constitutional exercise of the police power reserved to states (and by extension, local governments)

Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926)

*[T]he segregation of residential, business, and industrial buildings will make it easier to provide fire apparatus suitable for the character and intensity of the development in each section; **that it will increase the safety and security of home life**; greatly tend to prevent street accidents, especially to children, by reducing the traffic and resulting confusion in residential sections; decrease noise and other conditions which produce or intensify nervous disorders; **preserve a more favorable environment in which to rear children**, etc. With particular reference to apartment houses, it is pointed out that the development of detached house sections is greatly retarded by the coming of apartment houses, which has sometimes resulted in destroying the entire section for private house purposes; that in such sections **very often the apartment house is a mere parasite**, constructed in order to take advantage of the open spaces and attractive surroundings created by the residential character of the district. Moreover, the coming of one apartment house is followed by others, interfering by their height and bulk with the free circulation of air and monopolizing the rays of the sun which otherwise would fall upon the smaller homes, and bringing, as their necessary accompaniments, the disturbing noises incident to increased traffic and business, and the occupation, by means of moving and parked automobiles, of larger portions of the streets, **thus detracting from their safety and depriving children of the privilege of quiet and open spaces for play, enjoyed by those in more favored localities**, — until, finally, the residential character of the neighborhood and its desirability as a place of detached residences are utterly destroyed.*

Meanwhile, in the private sector...

- *Shelley v. Kraemer*, 334 U.S. 1 (1948)
 - U.S. Supreme Court invalidates state enforcement of private racially-restrictive covenants as violating Equal Protection Clause

said Tracts to a corporation or association formed by residents or owners of property in Innis Arden No. 2, or to a corporation or association formed by residents or owners of Innis Arden, for community purposes, in the activities of which corporation or association residents of Innis Arden No. 2 shall have the right to participate, subject to reasonable restrictions and requirements imposed by such corporation or association.

14. **RACIAL RESTRICTIONS.** No property in said addition shall at any time be sold, conveyed, rented or leased in whole or in part to any person or persons not of the White or Caucasian race. No person other than one of the White or Caucasian race shall be permitted to occupy any property in said addition or portion thereof or building thereon except a domestic servant actually employed by a person of the White or Caucasian race where the latter is an occupant of such property.

15. **ANIMALS.** No hogs, cattle, horses, sheep, goats, or or similar livestock shall be permitted or maintained on said property at any time. Chicken hens, pigeons, rabbits and other similar small livestock, not exceeding a total of twenty-five in number, shall be permitted but must be kept on the premises of the owner. Not more than one dog and cat may be kept for each building site. No pen, yard, run, hutch, coop or other structure or area for the housing and keeping of the above described poultry or animals shall be built or maintained closer

Source: WOSU Public Media

Berman v. Parker, 348 U.S. 26 (1954)

- Slum clearance upheld as a constitutional exercise of Fifth Amendment eminent domain authority
- Aesthetic regulation deemed a constitutional exercise of the police power: “It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.”

Berman v. Parker, 348 U.S. 26 (1954)

Public safety, public health, morality, peace and quiet, law and order – these are some of the more conspicuous examples of the traditional application of the police power to municipal affairs. Yet they merely illustrate the scope of the power and do not delimit it. Miserable and disreputable housing conditions may do more than spread disease and crime and immorality. They may also suffocate the spirit by reducing the people who live there to the status of cattle. They may indeed make living an almost insufferable burden. They may also be an ugly sore, a blight on the community which robs it of charm, which makes it a place from which men turn. The misery of housing may despoil a community as an open sewer may ruin a river.

Village of Belle Terre v. Boraas, 416 U.S. 1 (1974)

- U.S. Supreme Court sustained local ordinance defining “family” as related by blood, marriage, or adoption or up to 2 unrelated people

A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a land-use project addressed to family needs. [...] The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.

Legal History of Zoning and Housing: Summary

- Zoning and land use regulation are constitutional exercises of the police power
 - Protecting single-family districts is a virtuous policy goal and legally appropriate
- Aesthetic and character regulation are constitutional exercises of zoning authority
- Regulation of familial relationships are constitutional exercises of zoning authority

Fair and Affordable Housing Law

- Federal
 - Constitutional limitations
 - Takings Clause, Equal Protection Clause, Due Process Clause
 - Civil rights laws
 - Fair Housing Act of 1968, 42 U.S.C. § 3601 *et seq.*
 - Fair Housing Amendments Act, 42 U.S.C. § 3601 *et seq.*
 - Rehabilitation Act, 29 U.S.C. § 701
 - Americans With Disabilities Act, 42 U.S.C. § 12101 *et seq.*
 - Funding sources
 - Housing and Community Development Act of 1974 (CDBG): 42 U.S.C. § 5301 *et seq.*
 - Cranston-Gonzalez National Affordable Housing Act of 1990 (HOME Investment Partnership Program): 42 U.S.C. § 12703 *et seq.*

Fair and Affordable Housing Law

- State
 - Constitutional limitations: mirror federal
 - Civil rights laws: mirror federal
 - Limitations on local government authority
 - “Group home” statutes, C.R.S. § 30-28-115; 31-23-303
 - Rent control statute, C.R.S. § 38-12-301
 - Housing Authority Law, C.R.S. § 29-4-201 *et seq.*
 - Consumer/landowner protection laws
 - Construction Defect Action Reform Act of 2001
 - Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101 *et seq.*
 - Funding programs
 - Colorado Affordable Housing Construction Grants Fund

Fair and Affordable Housing Law

- Local
 - Zoning codes
 - Building, housing codes
 - Mandatory inclusionary housing
 - Affordable housing funds
 - Public housing authorities

Barriers to Fair and Affordable Housing: Legal

- Local government
 - Zoning regulations
 - Minimum lot, house sizes
 - Restrictions on multi-family development, density, manufactured housing
 - Restrictions on group living arrangements, restrictive definitions of “family”
 - Design, site development restrictions (parking, landscaping, open space, etc.)
 - Conditions of approval: improvements obligations, dedication requirements, etc.
 - Procedural requirements (cost, time, etc.)
 - Standing/empowerment of NIMBY
 - Building regulations
 - Minimum house/unit sizes
 - Safety code requirements
 - LEED requirements, other environmental regulations
- Private legal barriers: covenants, etc.

Barriers to Fair and Affordable Housing: Practical

- Land availability
- Land cost
- Market demand
- Environmental conditions
- Construction costs and infrastructure installation
- Financing
- Accessibility to commerce, employment centers
- NIMBYism
- Non-housing costs that are related to housing (i.e. transportation)

Rocky Mountain Land Use Institute

Housing Access and Racial Bias: Part 1

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**What is affordable
housing?**

Housing is affordable when it costs less than 30% of income

Federal definition of affordability:

- 1). Housing costs are “affordable” if they do not exceed 30% of household’s gross monthly income
- 2). “Costs” include basic utilities, mortgage insurance, HOA fees and property taxes

Households paying
>30% for housing are
“cost burdened”



Households paying
>50% for housing are
“severely cost burdened”



Income Thresholds & Target Housing Solutions

"extremely" low income
=< \$30,000 per year, poverty level

< 30% MFI



Public housing, Section 8, tenant-based rental assistance, transitional housing, other deeply subsidized rentals.

"very" low income
\$30,000-\$50,000 per year

30-50% MFI



Public housing, Section 8, rental tax credit developments, other rental products. Shared equity and land trust for homeownership.

"low" income
\$50,000-\$80,000 per year

50-80% MFI



Generally live in privately provided rental housing. Ownership with shared equity, land trust, other deed-restricted products, attached homes, homes in affordable areas.

"median" to "moderate" income
\$80,000-\$120,000 per year

80-120% MFI



Privately provided rental housing. General target for homeownership programs, can buy without assistance in affordable areas.

**Why do we have
affordable housing
needs?**

Market Factors: Rules of Supply and Demand Work Differently

1. Physical development of housing **lags behind the factors** that create demand
2. Housing is **very dynamic**, closely tied to many aspects of the economy: interest rates, tax incentives, returns on capital, employment levels, demographic shifts, in-migration, economic stimulus
3. Construction and labor costs are **very high**—and margins narrow with height

Commitment Issues: Addressing Housing Needs has not been a Priority

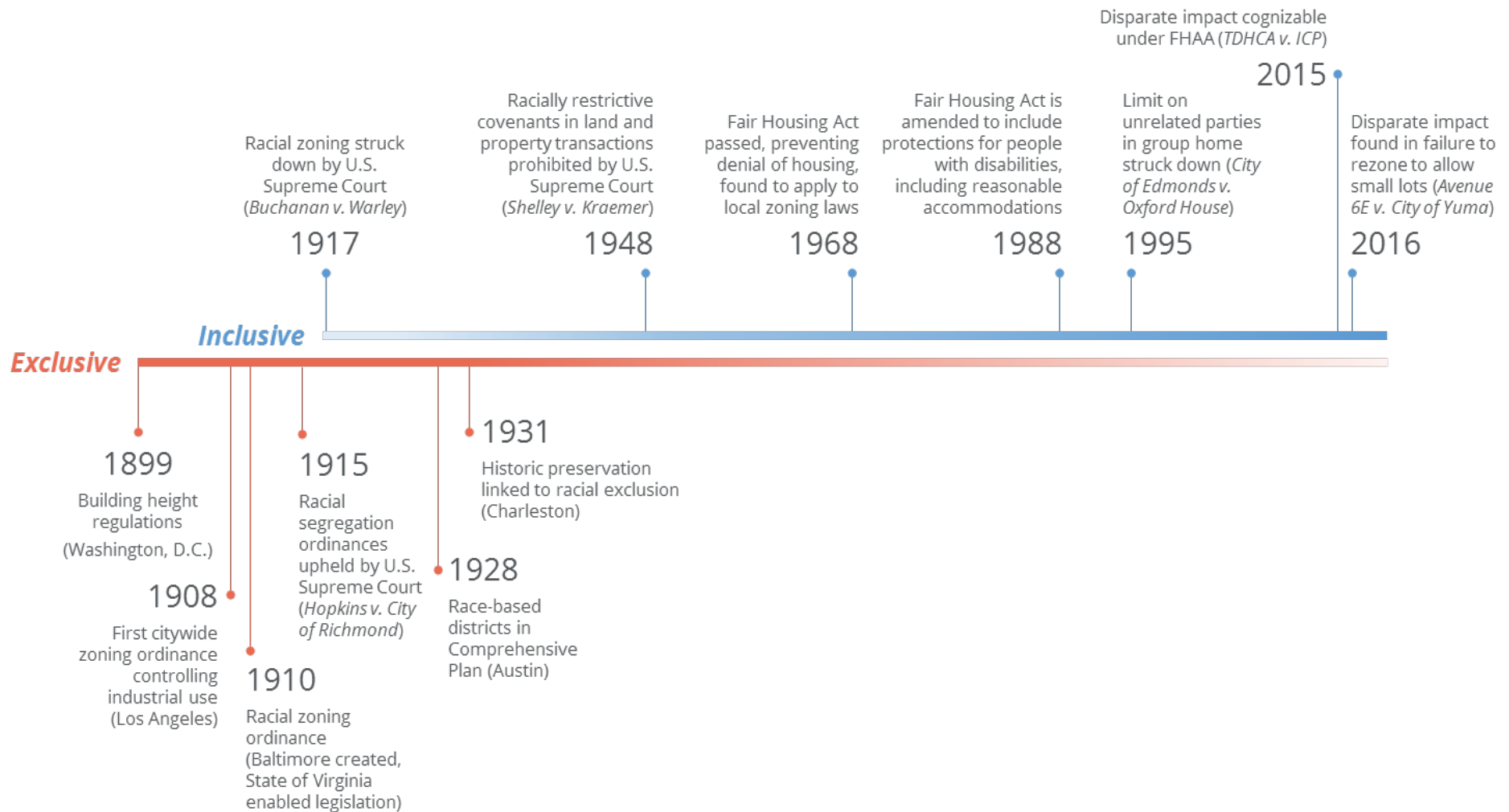
1. **Inconsistent philosophies** about if and how the federal government should address housing needs
2. Housing has been (and is still largely) addressed **reactively rather than proactively**
3. Return from investment is hard to measure—and **probably takes more than an elected officials' term to realize**
4. **"Not my job."** Housing needs are not the responsibility of local government; this is the federal government or private sector's job

“Perfect Storm”: Rapid Increase in Prices

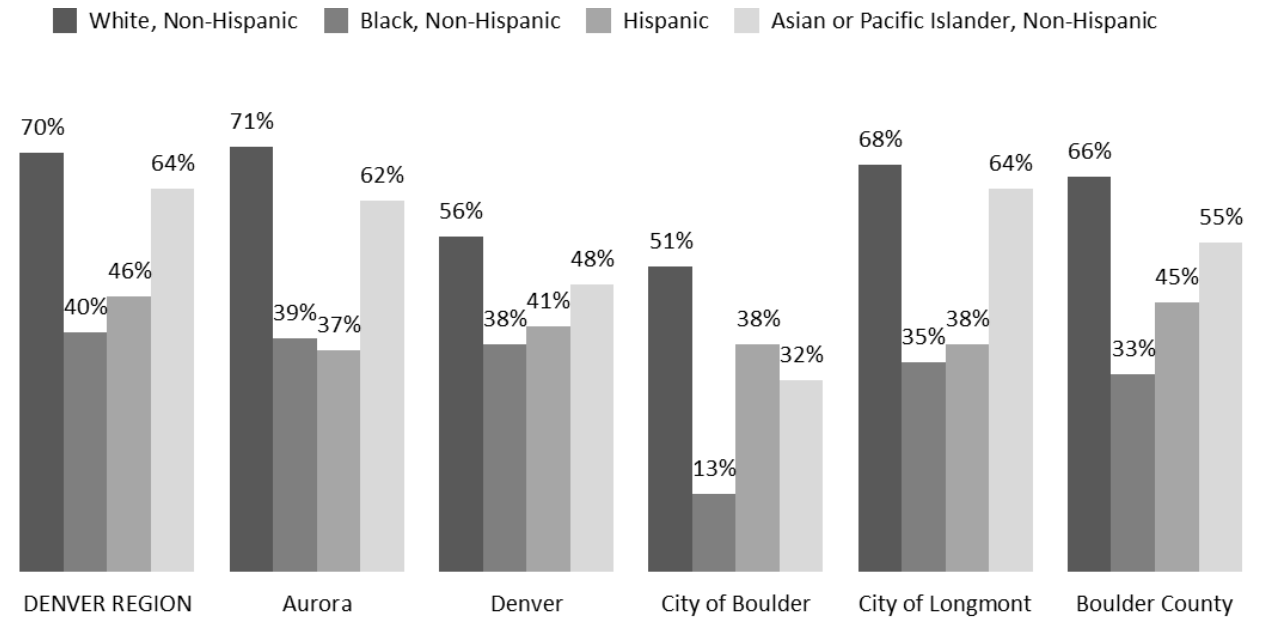
1. **Demographic changes**—influx of young adults needing housing
2. **Hyper-concentrated preferences**
Boomers and Millennials
3. Post-recession **pent up demand** for housing and low supply
4. **“Closed” markets** on West and East coasts of the U.S.
5. Years and years of **underinvestment by federal government**
6. Then, **COVID-19**

**Why is housing policy
racially biased?**

Gov't policies have been exclusive longer than inclusive



**Inequities
are very
hard to
reverse...**



**...and have
led to
these
outcomes**

An African American/Black Denver resident is...

1. **2x** more likely to be severely cost burdened
2. **2x** more likely to get a subprime loan when buying or refinancing a home—
even if I earn > \$100,000
3. **60%** more likely to be displaced from housing
4. **4x** more likely to face housing discrimination
5. **Nearly 3x** more likely to occupy public housing than what demographics would suggest

This is “structural racism”

“A system in which public policies, institutional practices, cultural representations, and other norms work in various, often reinforcing ways to perpetuate racial group inequity.

Structural racism is not something that a few people or institutions choose to practice.

Instead it has been a feature of the social, economic and political systems in which we all exist.”

What works to address needs: Market Interventions

What works: Market Interventions

- **Add to supply**—Make better use of land through infill and height incentives. Allow a wide(r) variety of housing types by right. Let households define “family.”
- **Reduce development costs**—Streamline development approval for affordable developments (and certainly do not ask more of them). Relax design, dedication (open space), and site requirements when they don't make sense.

What works: Market Interventions

- **Elevate housing policy**—Set transparent and equitable goals and hold to them in the face of opposition. Dedicate resources to housing solutions.
- **Try new programs—now.** Implement “value added” or “no net loss” programs for developers such as density bonuses, property tax exemptions, fee waivers/reductions, parking reductions. Reward small landlords providing naturally occurring affordable housing with improvement grants.

Questions?

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