TACKLING THE AFFORDABILITY CRISIS IN THE WEST: THE COLORADO HOUSING AFFORDABILITY PROJECT AND THE CHALLENGE OF ZONING REFORM

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ABSTRACT

A housing affordability crisis is sweeping across Western U.S. cities and metropolitan areas. The root causes of this affordability crisis have been well-studied, and potential solutions to the crisis are well-documented. As home prices continue to increase unabated, scholars and policymakers have rightly considered whether and how the land use regulatory system—in particular, zoning—can be reformed in such a manner as to produce more housing that is more affordable to lower- and middle-income households. But the task of achieving legislative reform is monumental, particularly in Western states with strong home rule traditions. The Colorado Housing Affordability Project (CHAP), of which the authors are members, has developed in-depth research and is deep in the midst of advocating for statewide zoning reform in Colorado. This article will review CHAP's original research on the origins and spread of Colorado's housing shortage, how and to what degree other states and local governments have addressed such shortage and will explore CHAP's legislative reform platform and how it might be applied in Colorado and other Western states.

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I. INTRODUCTION

Colorado communities, like many across the Intermountain West, face a housing affordability crisis. In our cities, rents are rising much faster than incomes, and the median list price of a new home tops a half-million dollars, with most houses selling well over the asking price. The inventory of homes for sale in Denver is at a historic low, down nearly 50% from a year ago. These trends mirror those across the West. More than a quarter of all households are "cost burdened," or paying more than a third of their income on housing costs. In high-amenity mountain towns, the astronomical cost and unavailability of housing mean that employers struggle to find workers. Those who can find housing often have to work multiple jobs to afford the cost of living, suffer extreme commutes, or both. Homeownership is out of reach for many Coloradans. This housing crisis has permeated virtually every corner of the state and is now viewed as one of the most pressing problems facing Colorado communities.

Against this backdrop, a group of lawyers and policy experts who work on land use and housing issues came together in mid-2020 to form the Colorado Housing Affordability Project (CHAP), a volunteer effort to research, study, and develop policy responses to this crisis. Recognizing that many experts are working hard to understand a range of factors contributing to the situation (including fiscal policy, the need for public subsidies, and the cost of construction, among other things), the CHAP team decided to focus on land use regulations' impacts on affordability. Joining forces with the Rocky Mountain Land Use Institute at the University of Denver Sturm College of Law and employing a group of students and their advisors from across the University, CHAP spearheaded an effort to understand zoning's role in the housing crisis and to develop a set of land use policy proposals designed to produce more affordable forms of housing.

Although the causes of this crisis are many and complex, local governments' exclusionary zoning policies (many with roots in segregation and racism) add to the

problem. Codes that restrict development to single-family homes on large lots limit construction of townhomes, duplexes, triplexes, and other more affordable forms of housing. Restrictions on accessory dwelling units, basement or attic apartments, and other flexible uses of existing homes prevent homeowners from taking steps to more easily afford the high cost of homeownership. The failure to zone areas of a community for multi-family housing or moderate density can exclude moderate or low-income people from living reasonably close to jobs, educational opportunities, and other community assets. Communities that do not zone the land around transit for relatively dense transit-oriented development (ideally including dedicated affordable units) often deny access to public transportation options to those who need it most, driving up their transportation costs. Such policies have limited the supply of land available for housing, have contributed to the escalating costs of housing, and have resulted in a mismatch between the type of naturally affordable housing that many homebuyers need and the housing that can be built.

The CHAP research team conducted an academic literature review, studied best practices and lessons learned from other high-cost states trying to address affordability challenges, and carried out an economic analysis of the impact of exclusionary zoning on housing prices in two Colorado counties. Based on this research, the CHAP team has proposed statewide land use regulatory reforms designed to allow for greater density in urban and suburban communities and to allow for more "missing middle" forms of housing (including townhomes, duplexes and triplexes, and other forms of starter homes). Importantly, CHAP has concluded that local governments operating in isolation are often unable to overcome neighborhood resistance and implement the policies required to produce the amount and type of housing needed. Because the production of affordable housing in Colorado has risen to the level of a statewide concern, CHAP proposes that the reforms take place at the state level, setting a baseline expectation that local governments take action to allow the construction of housing that their growing populations will require.

This article reviews the research conducted by the CHAP team, explores the policy approaches that seem most promising in helping to address the housing crisis, and addresses how these reforms might be applied in Colorado and other Western States. Section I of this article reviews the root causes and outcomes of Colorado's current housing challenges. It details how Colorado came to be in its present position, lacking sufficient housing supply to address current demands for housing, particularly for low- and moderate-income households. Section I also addresses the impact of the current housing crisis for the state's economic development and environmental sustainability goals. Section II of the article discusses the relationship between housing affordability and land use controls, and specifically addresses how land use controls have exacerbated the state's current lack of housing at affordable levels. Section III then discusses how other states and local governments have begun to address the challenges presented by the current affordability crisis. Section IV concludes by proposing several reforms, particularly with regard to land use regulation at the state level that would help Colorado address its current challenges. Although advocating for statewide zoning reform in a strong local-control state such as Colorado faces significant opposition, the best evidence suggests that creating reasonable, baseline housing regulation at the state level is required to overcome the myriad forces of resistance at the local level.

Throughout this article, reference is made to "affordable housing," "affordable forms of housing," "unaffordable housing" and related monikers. As used in this article, the term affordable housing references housing for which the occupant household pays less than (and preferably well less than) 30% of household income on rent or, for owner-occupied housing, the combined cost of principal, interest, taxes, and insurances. Unaffordable housing is the opposite.

II. ORIGINS AND CHALLENGES OF THE HOUSING AFFORDABILITY CRISIS

The housing affordability "crisis" was, until recently, reserved for very high-cost cities — mostly in California, New York, and resort communities in the East Coast and parts of the Mountain West.[1] Unmet housing needs in the Intermountain West existed only for very low-income households and persons experiencing homelessness. The challenge in addressing these needs was mostly a factor of inadequate resources: affordable housing development and assistance was de-prioritized by the federal government, and state and local governments viewed housing provisions, except for very low income or housing for the homeless, as a private sector job.

The housing affordability challenge today is much more complicated and harder to solve, thus warranting the "crisis" label. The ranks of *cost burdened households*, i.e., those that spend more than 30% of household income on housing costs, now include many middle-income households.[2] Workers with relatively high-paying jobs now find it difficult to purchase homes. Low-income households are displaced when market rents rise well beyond what they can afford. And homelessness, which was once uncommon in all but urban areas and coastal areas of the U.S., is found in nearly all types of communities, particularly in Western cities.[3]

A. Supply-Demand Relationships in the Housing Market

New households create demand for new housing: workers move for employment, retirees relocate, young adults begin to live on their own, and couples separate. Predicting these human behaviors is not easy, resulting in a housing market that is largely reactive. For example, a household can relocate to a new city

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1. Blumenthal, P. M., McGinty, J. R., & Pendall, R., *Strategies for Increasing Housing Supply in High-Cost Cities,* URB. INST. (Aug. 2016), https://www.urban.org/sites/default/files/publication/83656/2000907-strategies-for-increasing-housing-supply-in-high-cost-cities-dc-case-study_2.pdf;
America's Rental Housing, JOINT CTR. FOR HOUS. STUD. OF HARVARD UNIV. (2020), https://www.jchs.harvard.edu/cost-burdens-rise-middle-income-households-most-metros;
Meghan Henry et al., *The 2020 Annual Homeless Assessment Report (AHAR) to Congress, Part 1: Point-in-Time Estimates of Homelessness.* US DEP'T OF HOUS. & URB. DEV., 5-14 (2021), https://www.huduser.gov/portal/sites/default/files/pdf/2020-AHAR-Part-1.pdf.

in a matter of days, but it takes at least six months to one year—or longer when materials and labor are in short supply—to build a new home or apartment.[4]

Yet, as the example below shows, the relationship between in-migration and housing prices is not as clear as one would think. A recent study of housing choice barriers in Idaho (Analysis of Impediments to Fair Housing Choice, updated in 2022) examined the relationship between median gross rent and the number of in-migrants from other U.S. states annually from 2010 to 2019.[5] This relationship has a statistically significant correlation coefficient of 0.92, meaning that as in-migration increases, so do rent costs.[6] This relationship is expected.

Relationship between Median Rent and In-Migration, State of Idaho, 2010 to 2019

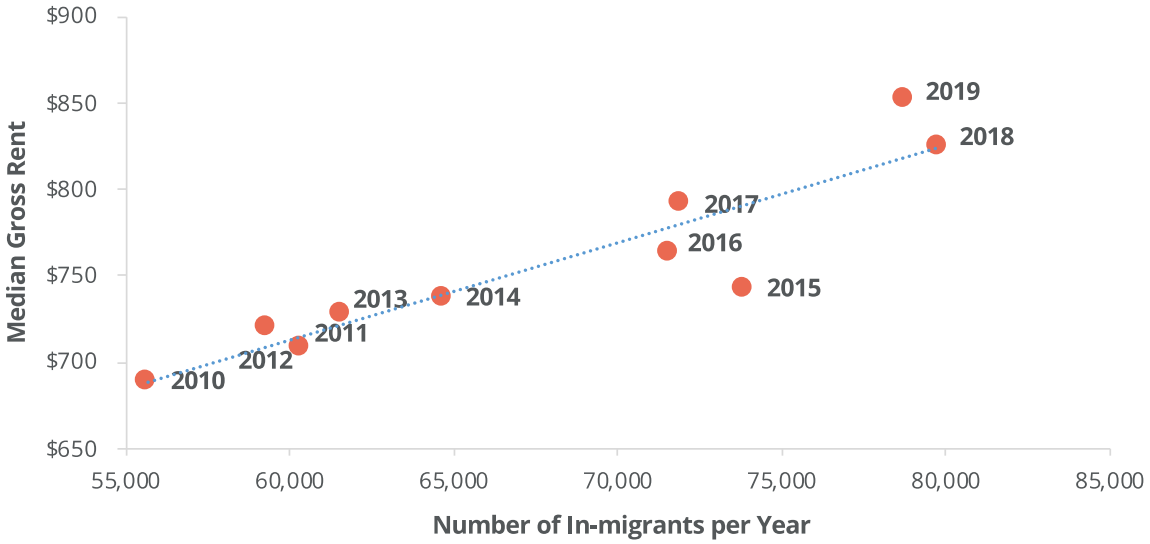

Figure 1, 2019 5-year ACS estimates, and Root Policy Research.[7]

The relationship between in-migration and home values, on the other hand, is not as clear. As illustrated in Figure 2, there is a positive relationship between the two, with a correlation coefficient of 0.62, but it is statistically *insignificant*.[8]

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4. *Average Length of Time from Start to Completion of New Privately Owned Residential Buildings*, U.S. CENSUS BUREAU: NEW RESIDENTIAL CONSTRUCTION, https://www.census.gov/construction/nrc/pdf/avg_starttocomp.pdf (last visited May 20, 2022).

5. *Analysis of Impediments to Fair Housing Choice*, IDAHO HOUS. & FIN. ASSOC. (2022), https://www.idahohousing.com/fair-housing/.

6. *Id.* Statistically significant at the 0.01% level according to Pearson's correlation test.

7. *American Community Survey 5-year Data*, U.S. CENSUS BUREAU, https://www.census.gov/data/developers/data-sets/acs-5year.2019.html (last visited May 20, 2022); *See* ROOT POL'Y RSCH., https://www.rootpolicy.com/ (last visited May 20, 2022).

8. *See infra* Figure 1.

This statistical insignificance can be visualized by the wider spread of points around the trendline compared to the previous figure.

This relationship is unexpected and demonstrates the complexity of the housing market. In the case of home values, there are too many other factors than in-migration that influence prices.

Relationship between Home Values and In-Migration, State of Idaho, 2010 to 2019

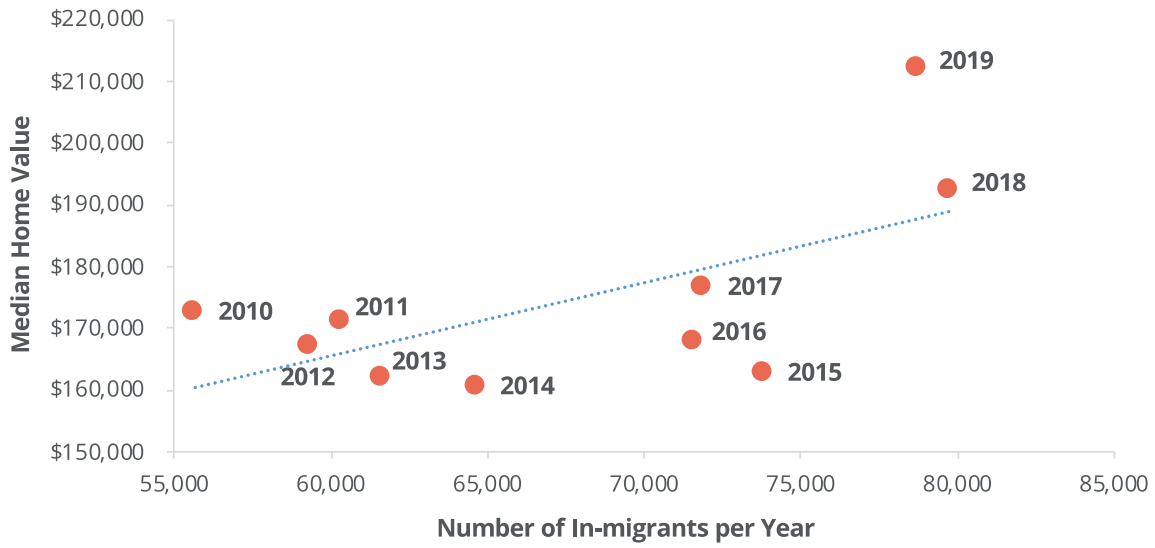

Figure 2, 2019 5-year ACS estimates, and Root Policy Research.[9]

What, then, is a local government to do?

Policymakers should understand both the factors driving the affordability crisis and the tools availability to address it. Knowing causes can produce more effective solutions, but focusing on causes alone, without regard for the available tools, can lead to inaction. Here, that means recognizing the influence that local governments have over housing supply and taking proactive steps to ensure adequate housing production. Housing demand, by contrast, defies easy management.

A functioning housing market must maintain an adequate level of vacant units–preferably with price and type diversity. An example from Colorado, based on CHAP's research, demonstrates how failing to produce needed housing hurts the housing market.[10]

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9. *American Community Survey 5-year Data*, *supra* note 5; ROOT POL'Y RSCH., *supra* note 5.

10. *State of Colorado Housing Research,* ROOT POL'Y RSCH. (Nov. 1, 2021) https://cohousingaffordabilityproject.org/wp-content/uploads/2021/11/Colorado-Housing-Research-Report_November-2021.pdf.

B. Colorado's Housing Supply Challenge

Since 1990, like most Western states, Colorado has experienced recessions and recoveries, major employment growth, rapid in-migration, increased second and vacation home ownership, aging demographics, and growing racial and ethnic diversity. Through all of these fluctuations, housing development has failed to keep up with employment and population growth. This pattern has resulted in higher housing costs and lower housing affordability that is compromising employers' ability to find workers, renters' ability to become owners, and owners' ability to manage housing costs, all of which could negatively affect the state's long term economic growth.

In the decade before the housing crisis, between 1996 and 2006, the state was adding an average of 48,000 housing units each year.[11] Since 2007, in the years after the housing crisis, despite continuing to add households, the state has averaged 26,500 units per year.[12] That is at least 21,000 homes each year that didn't get built and were needed. This reduction in new housing has also created distortions in the construction labor market that contribute to the labor shortage: construction workers left the state for higher-production states where they had more consistent work.[13]

The figure below shows the number of housing units available per household in Colorado. In 2016, Colorado reached the lowest number of housing units per household, at 1.086. Although the ratio is trending up, the state is still below pre-recession levels.

11. *Id.*

12. *Id.*

13. *Id.*

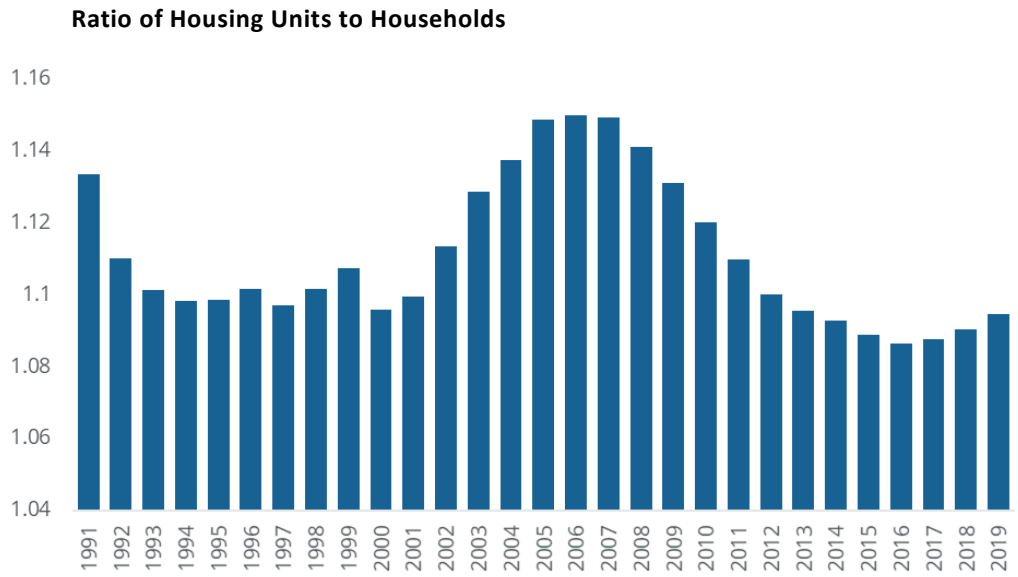


Figure 3, DOLA Colorado State Demography Office and Root Policy Research.[14]

The above data underestimate the severity of the problem because they do not adjust for changes in demand for second and vacation homes in Colorado–demand that has increased substantially with growth in household wealth, historically low interest rates, and the advent of the remote workplace. According to U.S. Census Bureau American Community Survey (ACS) estimates, the share of vacant units for seasonal, recreational, or occasional use in Colorado increased from 40% in 2010 to 50% in 2019.[15] That is, half of the state's vacant units are not available to respond to new household growth.

As shown in the following figure, while vacancies have dropped significantly for all types of housing units other than seasonal units (blue bars), seasonal, recreational, and occasional use vacancies (green bars) have actually increased. Paradoxically, in Colorado, the increase in vacant units has not created more housing availability because more of those units are reserved for seasonal use or short-term rental.

14. *Id.*

15. *Id.*

Estimated Vacant Housing Units

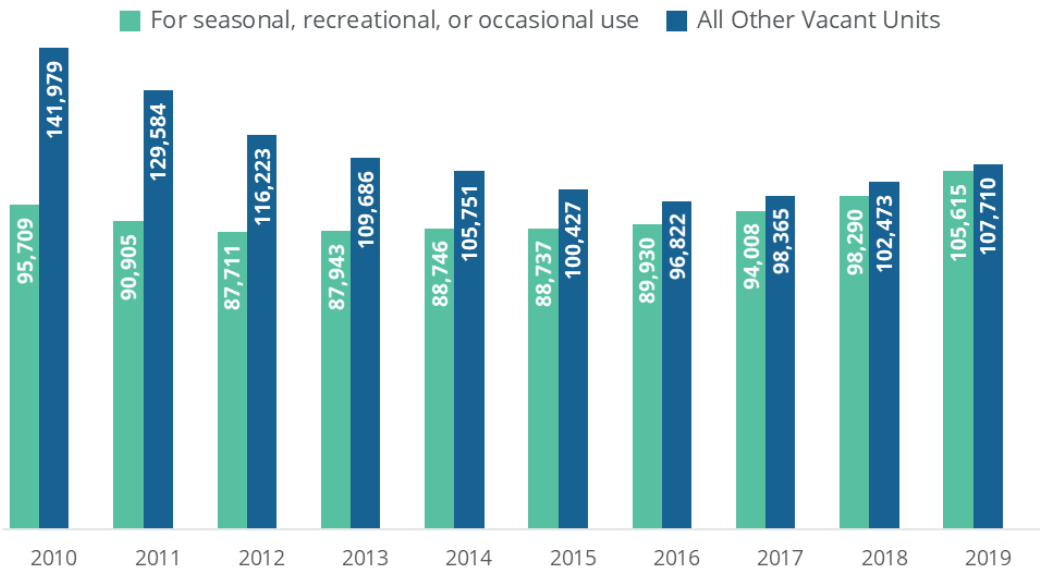


Figure 4, DOLA Colorado State Demography Office, ACS 5-year estimates, and Root Policy Research.[16]

Housing production is essential for economic growth, and it must be intentional—supplying units for all types of new households—and balance demand for seasonal use in the West.

C. Household Cost Burden in Colorado

The result of greater increases in housing costs compared to household income is higher levels of housing cost burden. Households are considered cost burdened if they spend more than 30% of their income on housing costs (including utilities).[17] Households experiencing cost burden have less money to spend on other essentials like healthcare, education, groceries, and transportation—adversely affecting their household well-being and limiting their economic growth trajectory. CHAP has undertaken research on cost burden in Colorado, and the results are striking.

Figure 5 shows the share of Colorado households experiencing cost burden by tenure and income in 2000 and 2019, in a group of selected local jurisdictions.[18] These local jurisdictions were selected because they represent a cross-section of Colorado's fast-growing areas: an urban center (Colorado Springs), two suburban counties (Jefferson and Larimer counties), a small city and its surrounding area

16. *Id.*

17. *Id.*

18. *See infra* Figure 1.

(Mesa County, home to Grand Junction), and a rural resort community (Routt County, home to Steamboat Springs).

The figures below depict that cost burden has increased only slightly for the lowest income renters, who have always faced a shortage of affordable products and must rely on publicly assisted housing. Owners with incomes between $10,000 and $20,000 exhibit the largest jumps in burden, likely related to increases in property taxes and maintenance costs.

As demonstrated by the figures, it has become increasingly common for middle income households—incomes between $35,000 and $75,000 (and for renters with incomes between $20,000 and $35,000)—to experience cost burden.

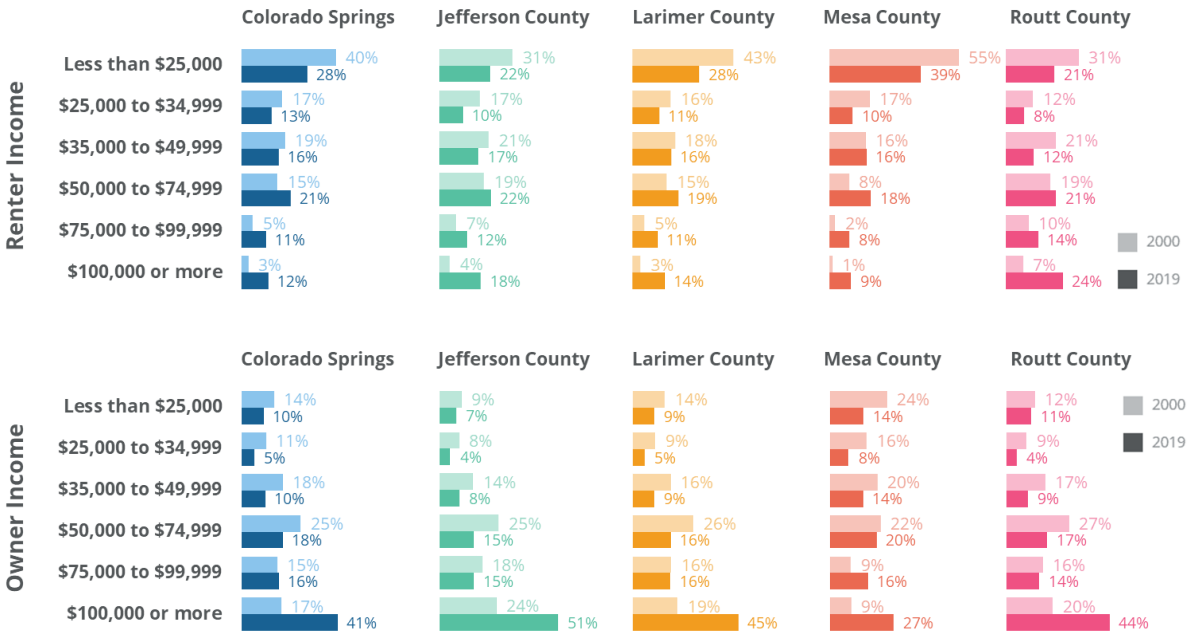


Figure 5, Housing Cost Distribution by Tenure, Sample Counties, 2000-2019, Root Policy Research.[19]

19. ROOT POL'Y RSCH., *supra* note 7.

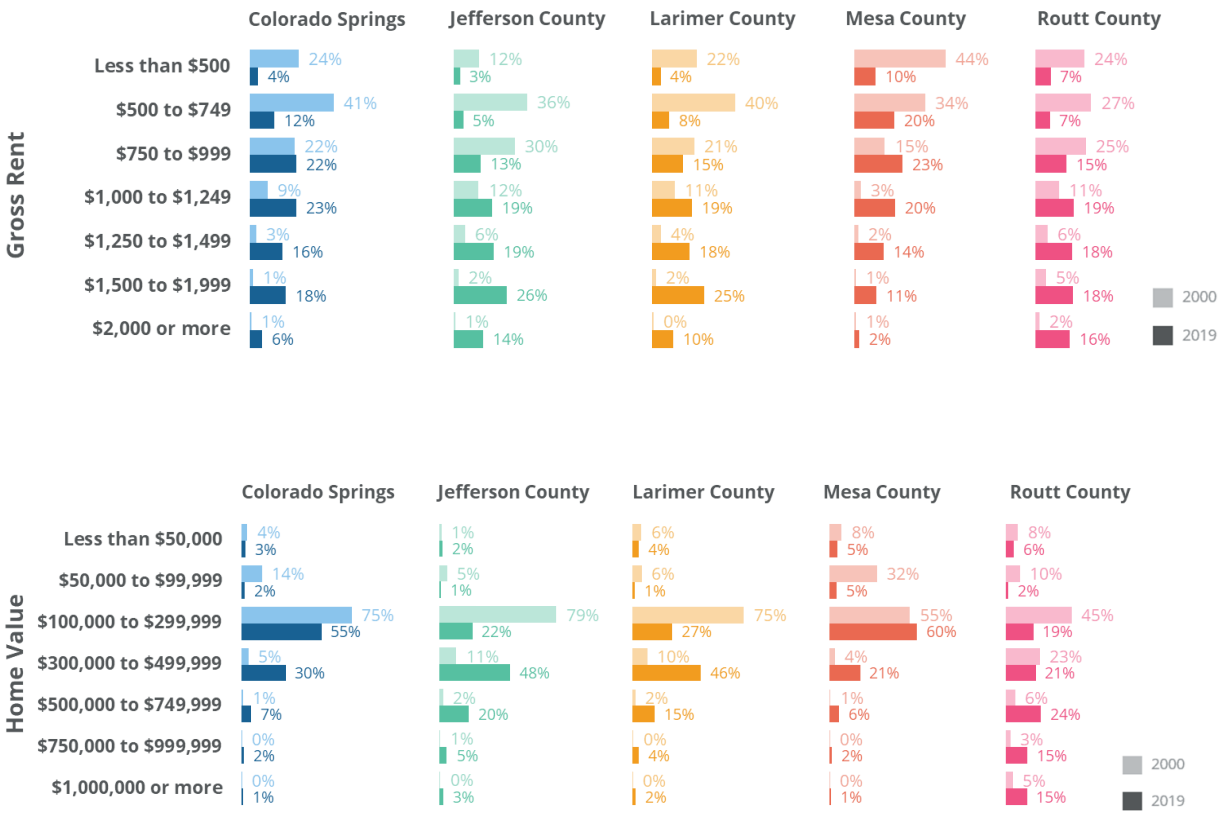


Figure 6, Share of Households Experiencing Housing Cost Burden by income and tenure, Sample Counties, 2000-2019, Root Policy Research Center.[20]

20. ROOT POL'Y RSCH., *supra* note 7.

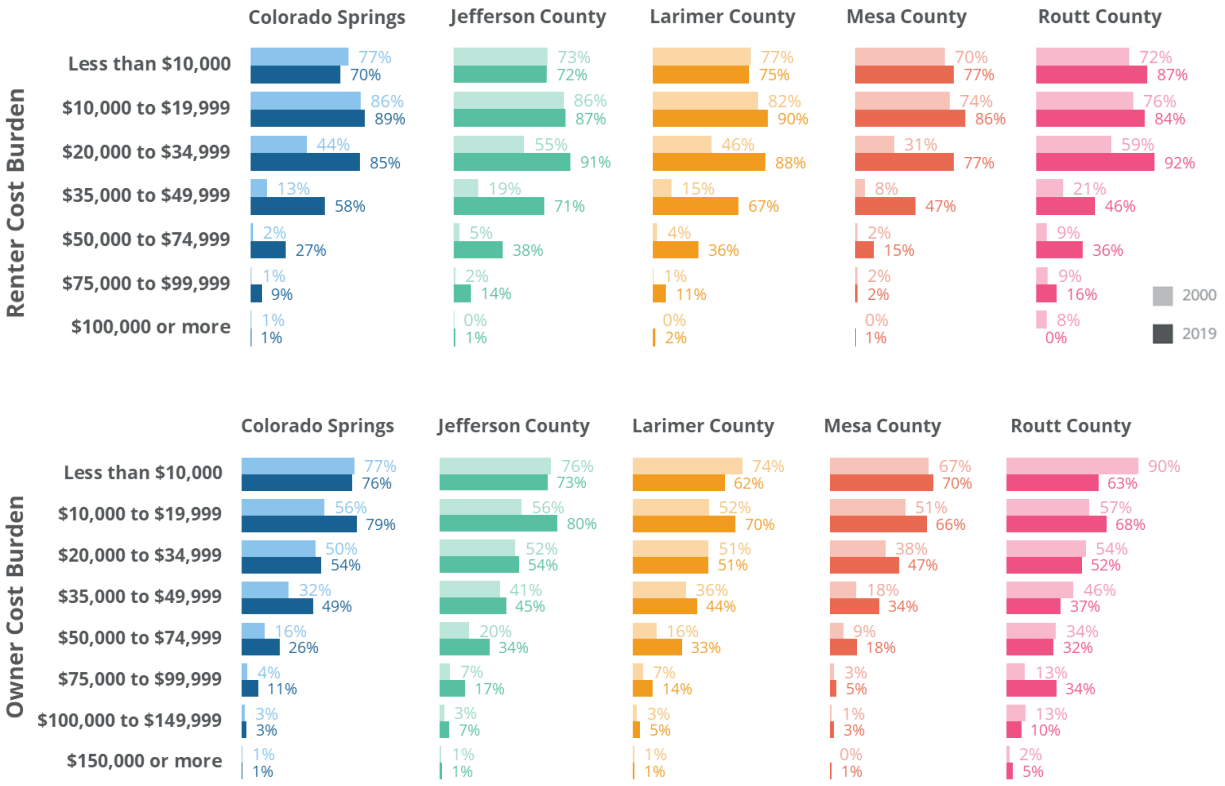


Figure 7, Share of Households Experiencing Housing Cost Burden by income and tenure, Sample Counties, 2000-2019, Root Policy Research Center.[21]

While lower income households have high rates of cost burden regardless of housing type, they are slightly less likely to be cost burdened if they occupy single family detached homes and duplexes.[22] Renter and owner households with incomes between $50,000 and $100,000 are less likely to be cost burdened if they occupy moderate-density housing units such as duplexes and triplexes.

For example, as shown in the two figures below, renter households with incomes between $50,000 and $100,000 who live in a duplex are half as likely to be

21. ROOT POL'Y RSCH., *supra* note 7.

22. This is likely driven by household and housing characteristics. For example, low-income residents who occupy LIHTC units are more likely to be cost burdened and are more likely to live in multifamily housing. In addition, low income households who live in single family detached homes might live in units that are in poor condition or might be more likely to be part of larger households with more income earners, compared to households living in multifamily structures.

cost burdened as those who occupy single family detached homes (23% compared to 46%).

Renter Cost Burden, by Income and Housing Type.

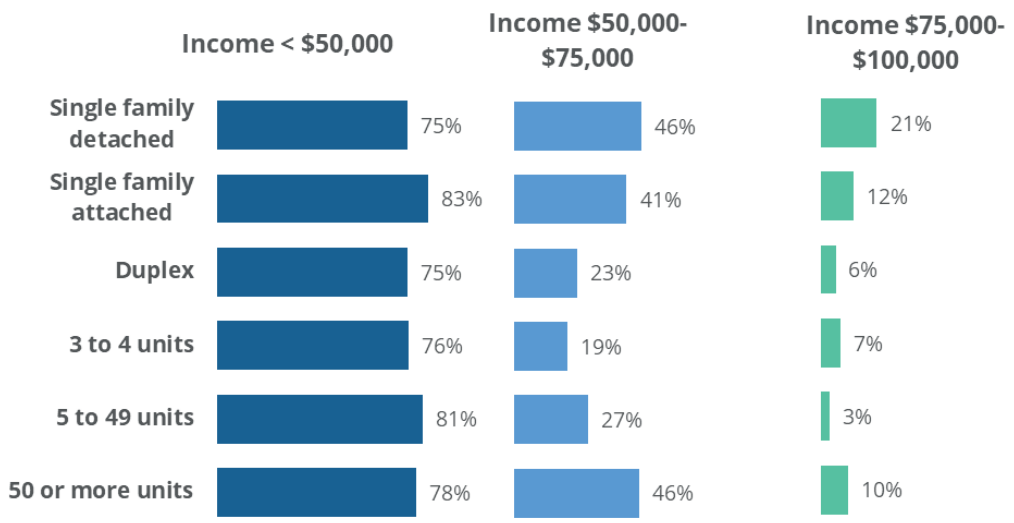
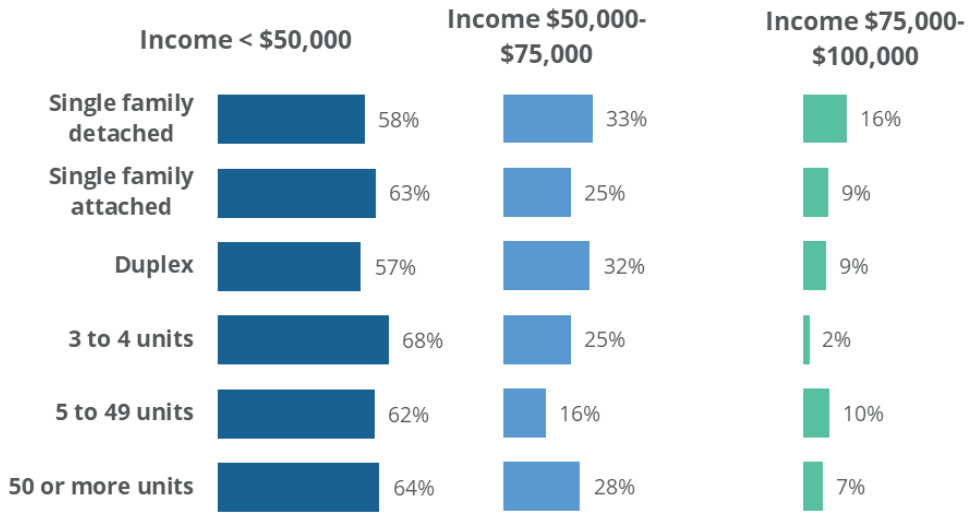


Figure 8, Share of Households Experiencing Housing Cost Burden by income and tenure, Root Policy Research Center.[23]

Owner Cost Burden, by Income and Housing Type.



23. ROOT POL'Y RSCH., *supra* note 7.

Figure 9, Share of Households Experiencing Housing Cost Burden by income and tenure, Root Policy Research Center.[24]

National academic research supports these conclusions. A 2019 study found that small, multifamily units not only house the largest share of the nation's lowest income households, but properties with 2 to 4 units are 13% less expensive than single family detached units with similar characteristics.[25] Another 2021 study found that 1-4 unit properties rent, on average, 16% below market rate.[26] Because small unit properties are most likely to be owned by small-scale landlords, vacant units are a larger loss, and these landlords typically will not tolerate vacancies as long as larger, investment-driven owners.

D. Summary

The foregoing analysis paints a clear picture. Although it is just one example among Western states, Colorado has experienced a combination of rapid population growth and underdevelopment of housing units. As a result, low and middle-income households have experienced increasing cost burden, and cost burden has been particularly exacerbated among middle-income buyers and renters of housing. Perhaps unsurprisingly, cost burden is most prevalent among middle-income households when they reside in single-family dwellings or larger, multi-family buildings (which are generally more likely to be higher-priced apartments or condominium units). The next section will review the generally understood impacts of land use regulation on housing affordability before presenting an overview of Colorado's land use regulatory system and Colorado-specific research regarding the impact of land use regulation.

III. LAND USE CONTROLS AND HOUSING AFFORDABILITY

CHAP initially hypothesized that land use regulations in Colorado localities were exacerbating the state's undersupply of housing and were also forcing the development of more-expensive forms of housing, namely single-family detached housing. The group undertook a literature review that generally confirmed this hypothesis. A brief summary of that literature review follows here. To probe whether land use regulations were impacting the housing market in Colorado specifically, CHAP undertook an analysis of zoning limitations' effects on housing affordability in two Colorado counties.

A. General Impacts of Land Use Regulation on Housing Affordability

Academic literature studying the impacts of restrictive land use regulations supports three general conclusions about their economic consequences: (1) land use controls have prevented new housing construction that historically moderated

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24. ROOT POL'Y RSCH., *supra* note 7.

25. Brian Y. An et al., *Why Are Small and Medium Multifamily Properties So Inexpensive?* J. REAL EST. FIN. & ECON., 1-21 (2021).

26. Nathaniel Decker, *Affordable Housing Without Public Subsidies: Rent-Setting Practices in Small Rental Properties.* J. AM. PLAN. ASSOC., 87(1), 62-72 (2020).

high housing prices; (2) high housing prices have prevented Americans from finding jobs in cities with greater economic opportunities; and (3) land use restrictions have transferred vast amounts of wealth from younger, poorer renters to older, richer homeowners. The most significant recent study on the impact of zoning controls on housing affordability is a 2018 article published by economists Edward Glaeser and Joseph Gyourko in the *Journal of Economic Perspectives*.[27] Building on earlier research by the two economists, that paper contained findings regarding land use regulations' relationship to housing affordability issues.[28] Unsurprisingly, the paper concluded that the most highly-regulated housing markets were also some of the least affordable.[29]

Until the early 1970s, economic growth and housing growth went hand-in-hand: when a city's economy grew, its housing stock grew along with it, and housing prices roughly tracked the cost to build new housing. If a new factory opened, for instance, builders delivered housing to meet the new workers' demands.[30] Beginning in the 1970s that relationship began to break down.[31] Cities' restrictive land use and zoning regulations slowed new housing growth, and, as a result, housing prices began to rise without corresponding construction to check them.[32] By the 1990s, the relationship was completely reversed. High housing prices predicted reduced construction in the following decade.[33]

Fifty years ago, housing prices exceeded construction costs in only a few metropolitan areas—notably, San Diego, Los Angeles, and San Francisco.[34] More recently, however, twenty-seven metro areas, including those along Colorado's Front Range, suffered from significant gaps between construction costs and housing prices.[35]

Zoning restrictions that prevent new housing development explain the change. A 2018 analysis in the *Journal of Urban Economics* confirmed that other factors, like more attractive city amenities cannot make up for these higher prices.[36] The same house simply costs more than it used to. Zoning constraints mean workers now pay more without getting more—resulting in negative effects that gross domestic product alone cannot measure. Zoning-inflated housing prices make workers worse off.

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27. Edward Glaeser & Joseph Gyourko, *The Economic Implications of Housing Supply*, 32 J. ECON. PERSPS. 3 (2018) [hereinafter Glaeser & Gyourko, *Housing Supply*]; *see also* Edward L. Glaeser, Joseph Gyourko & Raven Saks, *Why Have Housing Prices Gone Up?* 4–9 (Nat'l Bureau of Econ. Rsch, Working Paper No. 11129, 2005), http://www.nber.org/papers/w11129 [hereinafter Glaeser, Gyourko & Saks, *Housing Prices*].

28. Glaeser & Gyourko, *Housing Supply*, *supra* note 27.

29. Glaeser & Gyourko, *Housing Supply*, *supra* note 27, at 26–27.

30. Glaeser & Gyourko, *Housing Supply*, *supra* note 27, at 26–27.

31. Glaeser & Gyourko, *Housing Supply*, *supra* note 27, at 4-5.

32. Glaeser & Gyourko, *Housing Supply*, *supra* note 27; Robert C. Ellickson, *Suburban Growth Controls: An Economic and Legal Analysis*, 86 YALE L.J. 385, 390–92 (1977).

33. Glaeser, Gyourko & Saks, *Housing Prices, supra* note 27, at 31.

34. Glaeser, Gyourko & Saks, *Housing Prices, supra* note 27, at 5, 31.

35. Glaeser, Gyourko & Saks, *Housing Prices, supra* note 27, at 5, 31.

36. David Albouy & Gabriel Ehrlich, *Housing Productivity and the Social Cost of Land-use Restrictions*, 107 J. URB. ECON., 101, 107 (2018).

B. Colorado's Land Use Regulatory Framework

Like most states, land use regulation in Colorado operates within a decentralized system largely controlled by local governments; the boundaries of which exist irrespective of labor and housing markets and are instead the outcome of patchwork annexations that have occurred throughout the state's history. Although this structure alone presents a formidable challenge to any uniform statewide or regional efforts to address the housing affordability crisis, other aspects of Colorado land use and local government law compound the challenge. Colorado's land use control system differs from other states' systems in the degree of control that it confers upon local governments and in the disparate nature of the state's statutory controls over land use planning and zoning. Furthermore, state constitutional limitations on local governments' ability to generate revenue—primarily resulting from constitutional amendments that historically prevented local governments to generate tax revenue from residential properties and currently prevent local governments from raising taxes or incurring debt without voter approval—add to the difficulty of addressing the crisis.

This section summarizes Colorado's land use regulatory structure, demonstrating state government's limited authority over local governments' planning and zoning efforts, particularly with respect to their decisions regarding housing development, and its concurrent limitations on local governments' efforts to address housing affordability through direct investments in housing development and management.

There are essentially two types of Colorado local government entities: municipalities, including cities and towns, and counties.[37] Within each of these forms of local government are two additional forms of government: statutory and home rule.[38] For the state's sixty statutory counties and 172 statutory municipalities, state statutes and the state constitution control nearly all aspects of government.[39] With respect to counties, state law establishes elective offices and elected officials' responsibilities in managing county government, sets salaries for officials, establishes discretionary and non-discretionary powers of county government, and controls county revenue sources.[40] For statutory municipalities, statutes provide a process for formation of a city or town and establish the governing structure of cities and towns.[41] State statutes provide authorization for statutory cities and towns to provide a variety of services from emergency services to utilities, health, and public finance.[42]

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37. CHRIS CREIGHTON, ET AL., 2018 COLORADO LOCAL GOVERNMENT HANDBOOK, 719 COLO. LEGIS. COUNCIL, 1, 3, 15 (2018), https://leg.colorado.gov/sites/default/files/2018_local_government_handbook_with_cover_0.pdf [hereinafter *2018 Colorado Handbook].*

38. *See, e.g.*, COLO. REV. STAT. §§ 30-1-101–906; COLO. REV. STAT. §§ 31-1-101–712; *see also 2018 Colorado Handbook*, *supra* note 37, at 3–11, 15–17.

39. *See, e.g.*, COLO. REV. STAT. §§ 30-1-101–906; COLO. REV. STAT. §§ 31-1-101–712; *see also 2018 Colorado Handbook*, *supra* note 37, at 3–11, 15–17.

40. *2018 Colorado Handbook*, *supra* note37, at 3.

41. *See* COLO. REV. STAT. §§ 31-2-101–109; COLO. REV. STAT §§ 31-4-101–507.

42. *2018 Colorado Handbook*, *supra* note 37, at 16.

In Colorado, land use controls are discretionary powers and local governments are not required to exercise land use regulatory authority.[43] The state has enacted subdivision and zoning enabling statutes for statutory counties and municipalities.[44] These zoning enabling laws address such matters as the preparation of master plans, establishment of planning commissions, development of zoning plans, and adoption of zoning.[45] They also address related topics such as variances and zoning appeals, subdivision platting of properties, and the adoption of building codes.[46] All Colorado municipalities and almost all of the state's counties have adopted some form of zoning law.[47]

There are several ancillary statutes that confer additional authority on local governments to regulate land use and development in Colorado. Municipal governments are afforded power to annex unincorporated territory.[48] All local governments are granted authority to regulate in particular areas and activities of state interest (such as the development of utility systems, transportation facilities, mineral extraction, and other areas);[49] adopt planned unit development zoning;[50] approve site specific development plans conferring vested property rights upon landowners;[51] levy impact fees and development charges;[52] impose conditions on land use approvals;[53] and review development for impacts on the adequacy of water supply.[54] Local governments are additionally authorized to establish and operate urban renewal authorities[55] and to approve the creation of special districts[56] to assist in the financing and operation of public improvements. Although each of these powers carries limitations and restrictions, these statutes confer broad authority on all local governments in Colorado to plan for, regulate, and manage land use and development within their territorial jurisdiction.

While the powers afforded to statutory jurisdictions in Colorado are similar to those of local governments, Colorado's parallel system of local home rule is unique. As of the 2020 Census, nearly four million of the state's residents, or approximately 70% of the population, resided in a home rule municipality.[57] Ninety-seven cities and towns, two counties, and two consolidated city-counties have elected

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43. COLO. REV. STAT. §§ 31-23-101–314 (do not *require* that municipalities enact zoning regulations, for instance).

44. COLO. REV. STAT. §§ 30-28-101–404 (counties); COLO. REV. STAT. §§ 31-23-101–314 (municipalities).

45. COLO. REV. STAT. §§ 30-28-101–139; COLO. REV. STAT. §§ 31-23-301–314.

46. *Id.*

47. Petition for Writ of Certiorari, Boulder Cty. Bd. of Adjustment v. Save Our St. Vrain Valley, Inc., No. 2021SC344 (May 13, 2021), at 13, n.6.

48. COLO. REV. STAT. §§ 31-12-101–123.

49. COLO. REV. STAT. §§ 24-65.1-101–108.

50. COLO. REV. STAT. §§ 24-67-101–108.

51. COLO. REV. STAT. §§ 24-68-101–106.

52. COLO. REV. STAT. §§ 29-20-104.5.

53. COLO. REV. STAT. §§ 29-20-203.

54. COLO. REV. STAT. §§ 29-20-301–306.

55. COLO. REV. STAT. §§ 31-25-101–116.

56. COLO. REV. STAT. §§ 32-1-101–113.

57. U.S. Census Bureau, Colorado: 2020 Census (2020).

treatment as a home rule jurisdiction.[58] These home rule jurisdictions enjoy "plenary authority" to operate and regulate in areas of local concern—effectively the authority to supersede state law.[59] In the area of land use and zoning, Colorado home rule jurisdictions are effectively untethered by the requirements set forth in state zoning and subdivision enabling statutes.[60]

Although vast, this authority conferred upon home rule municipalities has some limitations. Home rule jurisdictions' regulatory authority extends only to matters of local concern.[61] What constitutes a matter of local concern has provided fertile ground for preemption battles between state agencies, local governments, and private property owners caught between them.[62] In response, the Colorado Supreme Court has developed a judicial test to determine whether a particular matter is a matter of purely local, purely statewide, or mixed state and local concern.[63] A matter of purely local concern is the proper subject for regulation by a home rule jurisdiction, while matters of statewide or mixed concern permit state legislation to preempt local ordinances.[64]

Planning and zoning are generally matters of local concern in Colorado.[65] Thus, home rule jurisdictions enjoy plenary authority over these matters. Nevertheless, certain adjacent subject areas, particularly where the state legislature has declared a matter of statewide concern, may be capable of state legislative intervention. The Colorado Supreme Court concluded, for example, that an anti-rent control statute, which the legislature expressly declared a matter of statewide concern, preempted a home rule town's affordable housing requirements imposed through its zoning regulations.[66] In that case, the court observed that the legislature's declaration that rent control was a matter of

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58. Colorado Legislative Council Staff, *supra* note, at 15.

59. Town of Telluride v. Lot Thirty-Four Venture, L.L.C., 3 P.3d 30, 37 (Colo. 2000); *see also* COLO. CONST. Art. XX, § 6 (1876). ("It is the intention of this article to grant and confirm to the people of all municipalities coming within its provisions the full right of self-government in both local and municipal matters and the enumeration herein of certain powers shall not be construed to deny such cities and towns, and to the people thereof, any right or power essential or proper to the full exercise of such right.").

60. Voss v. Lundvall Bros., Inc., 830 P.2d 1061, 1064–65 (Colo. 1992).

61. City of Longmont v. Colo. Oil & Gas Ass'n., 369 P.3d 573, 579 (Colo. 2016).

62. *E.g.*, Town of Telluride v. Lot Thirty-Four Venture, L.L.C., 3 P.3d 30, 38 (Colo. 2000).

63. *See id.* at 580 ("To determine whether a regulatory matter is one of statewide, local, or mixed state and local concern, 'we weigh the relative interests of the state and the municipality in regulating the particular issue in the case,' making the determination on a case-by-case basis considering the totality of the circumstances. The pertinent factors that guide our inquiry include (1) the need for statewide uniformity of regulation, (2) the extraterritorial impact of the local regulation, (3) whether the state or local governments have traditionally regulated the matter, and (4) whether the Colorado Constitution specifically commits the matter to either state or local regulation.") (citations omitted).

64. *Id.* at 581–82.

65. Rademan v. City & Cnty. of Denver, 526 P.2d 1325, 1326–28 (Colo. 1974) ("[Z]oning laws and city planning are areas which are best left to local government and . . . decisions which relate to the decided course of community development should be upheld, even though a reviewing court may disagree with the wiseness of the municipality's choice.").

66. Town of Telluride v. Lot Thirty-Four Venture, L.L.C., 3 P.3d 30, 38 (Colo. 2000).

statewide concern was persuasive; it was not dispositive.[67] Other cases have found a home rule city's prohibition on hydraulic fracturing for mineral extraction preempted by state regulation in the area of oil and gas development,[68] and another home rule city's attempt to control state foster care homes through a zoning ordinance was preempted by state regulation in that area.[69] Generally speaking, the sum of these cases is that where the state legislature has declared a matter of statewide concern, the courts are likely to permit state legislation to preempt local regulation.

Although they enjoy broad discretion in regulating land use, Colorado local governments have far less authority to develop revenue, particularly from residential land uses. As is the case with local governments in other states, localities in Colorado derive tax revenue from ad valorem property taxes and sales taxes on commercial transactions. Until its repeal by voters in 2020, a constitutional provision, enacted by voters in 1982 and commonly known as the Gallagher Amendment, imposed an artificial cap on the rate of assessment of residential property in Colorado.[70] And the state constitution's TABOR amendment, adopted by voters in 1992, prohibits local governments from raising taxes or incurring multiple-fiscal year financial obligations without voter approval.[71] The result of these two provisions has been to constrain property tax revenues from residential properties—a particularly challenging proposition for suburban, primarily bedroom communities—and to dissuade local governments from raising taxes or incurring debt.[72]

The combination of broad authority for local governments in land use regulation and constrained ability to raise revenue or incur long-term debt presents a uniquely difficult challenge for a state facing a housing affordability crisis resulting in part from an undersupply of housing. The fiscal limitations discussed above create a heavy disincentive for local governments to plan and zone for residential development, and the TABOR amendment limits local governments' ability to raise and dedicate revenue to the public construction or maintenance of housing.[73] Operating in a vacuum of state legislation regarding planning and zoning for housing development—and particularly affordable housing development—home rule local jurisdictions in Colorado lack meaningful incentives, aside from localized political pressures (which can favor affordable housing development, but frequently militate against it), to plan and zone for the development of more affordable forms of housing.

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67. *Id.*

68. *See, e.g.*, *City of Longmont*, 369 P.3d 573.

69. *See, e.g.*, City of Northglenn v. Ibarra, 62 P.3d 151 (Colo. 2003).

70. See Michael R. Johnson et al., *State Constitutional Tax Limitations: The Colorado and California Experiences*, 35 URB. LAW. 817, 830–32 (2003); Andrew Kenney, *Colorado Voters Repeal Gallagher Restraint on Residential Property Taxes*, COLO. PUB. RADIO (Nov. 3, 2020), https://www.cpr.org/2020/11/03/colorado-election-results-repeal-gallagher-amendment-b/.

71. COLO. CONST. art. X, § 20; *see also* Peter J. Whitmore, *The Taxpayers Bill of Rights—Twenty Years of Litigation*, 42 COLO. LAW. 35, 37–38 (2013).

72. *See* Johnson et al., *supra* note 70, at 832–34.

73. *See, e.g.*, Johnson et al., *supra* note 70, at 828–29, 832–34.

Although Colorado voters approved a repeal of the Gallagher Amendment in 2020, it is reasonable to conclude that the balance of Colorado's land use and fiscal regulatory environment precludes an entirely local response to the state's housing affordability crisis. Without voter repeal, TABOR will continue to restrict local efforts to raise and maintain revenue streams to support affordable housing. Thus, legislative action—premised upon the statewide nature of the housing affordability crisis—will be necessary to address the patchwork of planning and zoning laws that limit the creation of housing supply in Colorado.

C. Land Use Regulation and Colorado's Housing Supply Shortage

Predominantly, local governments in Colorado have deployed their plenary authority over land use and zoning regulation to advance lower-density, largely single-family housing patterns. To test the theory that land use regulations have resulted in the development of less-affordable forms of housing, the CHAP team used geographic information systems (GIS) mapping in two fast-growing Colorado counties—Jefferson and Larimer counties. Land use regulations were overlaid with assessment data to identify development patterns from 2010 to 2021 under current land use regulations and the impact of PUDs and subdivision requirements on land capacity utilization.

There are an estimated 1.3 million acres of land in Jefferson County.[74] Approximately 95,000 of those acres are protected by environmental preserves and easements.[75] Of the remaining 1.2 million acres, 95% of land in Jefferson County permits single family residential development by right, 2% of land permits duplexes, and less than 1% of land permits tri- or fourplexes.[76] This trend is similar in Larimer County, where there is an estimated total of 1.8 million total acres, 1.1 million of which is protected land.[77] Of the approximately 760,000 acres remaining, 94% of the land in Larimer County permits single family residential development by right, 14% permits duplexes, 12% permits triplexes, and less than 1% permits fourplexes.[78]

Unsurprisingly, then, in Colorado, building permits historically have been and continue to be dominated by single-family units and large multifamily structures. On average, around 70% of units permitted since 1980 were single-family units and around 26% were multifamily structures of 5 units or more.[79]

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74. Johnson et al., *supra* note 70, at 17.
75. Johnson et al., *supra* note 70, at 17.
76. Johnson et al., *supra* note 70, at 17.
77. Johnson et al., *supra* note 70, at 17.
78. Johnson et al., *supra* note 70, at 17.
79. Johnson et al., *supra* note 70, at 17.

Building Permits by Units in Structure

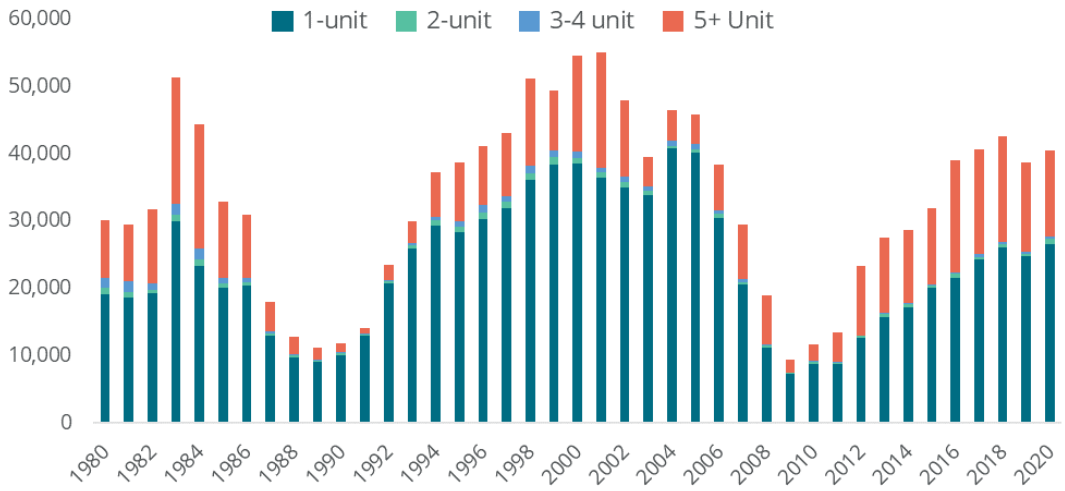

Figure 10, Root Policy Research.[80]

These types of units are the most expensive for owners and renters, and households living in these unit types have the highest levels of housing cost burden.[81] Single family detached units remain more expensive compared to higher density housing units.[82] Renter and owner households with incomes between $50,000 and $100,000—typically core workforce—are less likely to be cost burdened if they occupy moderate-density housing units such as duplexes and triplexes.

By way of example, in 2019, the median rent for a single family detached home was 35% more expensive than the median rent for a duplex, and 40% more expensive than the median rent for a triplex or fourplex.[83] Note that the use of "attached homes" in this context are rowhomes and townhomes—not duplexes/triplexes/fourplexes.

Large multifamily structures were once the least expensive rental option and are now one of the most expensive options—largely due to higher construction costs, as well as the amenities now built into these developments.[84]

Incidentally, these types of housing that have been permitted and developed are also increasingly inconsistent with trends in household composition: the strongest growth in household types in Colorado will be for adults *without*

80. ROOT POL'Y RSCH., *supra* note 7.

81. Johnson et al., *supra* note 70, at 17.

82. Johnson et al., *supra* note 70, at 17.

83. Johnson et al., *supra* note 70, at 17.

84. Johnson et al., *supra* note 70, at 17.

children.[85] The share of households with more than one adult and children is just 25% and will decline to 23% by 2050.[86]

Median Gross Rent by Housing Type and Single Family Rent Premium

	Median Gross Rent				Single Family Detached Rent Premium			
	1990	2000	2010	2019	1990	2000	2010	2019
Housing Type								
Single family detached	$525	$775	$1,104	$1,470	0%	0%	0%	0%
Single family attached	$521	$796	$1,000	$1,466	1%	-3%	10%	0%
Duplex	$405	$644	$810	$1,089	30%	20%	36%	35%
3 to 4 units	$375	$600	$748	$1,048	40%	29%	48%	40%
5 to 9 units	$368	$649	$785	$1,200	43%	19%	41%	23%
10 to 19 units	$376	$655	$793	$1,222	40%	18%	39%	20%
29 to 49 units	$358	$591	$737	$1,201	47%	31%	50%	22%
50+ units	$361	$630	$757	$1,338	45%	23%	46%	10%

Figure 11.[87]

Similarly, in 2019, the median home value for a single family detached home was 17% higher than the median value for a duplex and 46% higher than the median value for triplex or fourplex.[88]

D. Consequences of Unaffordable Housing

Lack of affordable housing supply has a variety of negative consequences for states and regions. Because a lack of affordable housing may limit or restrict workers' ability to locate in a particular state or region or may increase the costs of doing business in that state or region, there are negative economic consequences. Similarly, because a lack of affordable housing may force the construction of housing further away from employment centers, there may be environmental consequences to a lack of housing, in the form of increased carbon emissions or

85. Johnson et al., *supra* note 70, at 17.

86. Johnson et al., *supra* note 70, at 17.

87. Johnson et al., *supra* note 70, at 17. Nominal dollars Single family attached homes in this context refer to townhomes and rowhomes.

88. Johnson et al., *supra* note 70, at 17. These comparisons are for illustrative purposes only since they do not control for other housing attributes such as age and location.

consumption of land for development. Other consequences could include lack of access to opportunities such as educational attainment for low- or moderate-income households. This section examines some of the economic and environmental consequences of an undersupply of affordable housing.

i. Economic Consequences

The economic consequences of unaffordable housing have been well-documented. A widely cited 2015 economic analysis covering 220 cities and almost a half century of American growth concluded that high housing prices have lowered the U.S.'s potential GDP by 13.5%.[89] That amounts about $2.5 trillion (adjusted from 2009 to today's dollars) in lost productivity, or more than $11,500 for the average worker.

The explanation is intuitive, if not immediately obvious: high housing prices have dampened Americans' historical enthusiasm for moving toward opportunity.[90] Substantial literature has since augmented the original 2015 finding that increased housing prices are preventing Americans from moving away from failing cities and toward those that are more prosperous; the latter of which include many cities in the West.[91] The result: worker productivity is lower because workers remain in regions that cannot make full use of their talents.[92] Adding to these conclusions, a Federal Reserve review of the literature considered credible another body of literature finding that frictions in the mortgage market and the difficulties of selling a home could not explain Americans' decisions to remain in lower productivity locales.[93]

In addition to reducing growth, unaffordable housing markets change who benefits from increasing housing costs: most gains go to the already wealthy. Recent research indicates that the already affluent have not only enjoyed a disproportionate share of the country's growth, but that home price gains account

89. In other words, restrictive zoning lowered growth every year between 1964 and 2009, resulting in total, national economic output that is 13.5% lower than it would have been without those zoning restrictions. Chang-Tai Hsieh & Enrico Moretti, *Why Do Cities Matter? Local Growth and Aggregate Growth*, KREISMAN WORKING PAPERS SERIES HOUS. L. & POL'Y,1, 3 (2015).

90. Since 1980, migration rates have declined, and disadvantaged people no longer disproportionately move to higher wage areas. *See* Raven Molloy et al., *Internal Migration in the United States*, 25 J. ECON. PERSPS. 3: 173, 173–74 (2011); Peter Ganong & Daniel Shoag, *Why Has Regional Income Convergence in the U.S. Declined?*, 102 J. URB. ECON. 67, 67 (2017).

91. *E.g.*, Edward L. Glaeser, & Josph Gyourko, *The Economic Implications of Housing Supply*, 32 J. ECON. PERSPS. 3, 3 (2018); Christopher Tonetti, *Comment on "Tarnishing the Golden and Empire States: Land-Use Regulations and the U.S. Economic Slowdown," by Herkenhoff, Ohanian, and Prescott*, 93 J. MONETARY ECON. 110, 110 (2018).

92. *See generally*, Chang-Tai Hsieh & Enrico Moretti, *Housing Constraints and Spatial Misallocation*, 11 AM. ECON. J.: MACROECONOMICS 2 (2019).

93. Jia, Ning, Raven Molloy, Christopher Smith, & Abigail Wozniak, *The Economics of Internal Migration: Advances and Policy Questions*, BD. OF GOVERNORS OF THE FED. RSRV. SYSTEM: FIN. & ECON. DISCUSSION SERIES 21-24 (Feb. 2022), https://doi.org/10.17016/FEDS.2022.003.

for a significant fraction of that growth.[94] At the same time, home price gains reduce affordability for renters looking to enter the housing market, and those renters are on average younger and poorer than current homeowners.[95]

Growing home prices have therefore transferred vast amounts of wealth to older, wealthier homeowners. In 1983, the median 35–44-year-old held about $56,000 in housing net worth.[96] Thirty years later, that number was just $6,000.[97] Both older and already-wealthy Americans watched their housing wealth grow; however, the top one percent of Americans between 35 and 44 saw their housing wealth double from about $530,000 to more than $1 million, and median Americans between 65 and 74 saw their housing net worth increase from about $80,000 to more than $100,000.[98]

ii. Environmental Consequences

Beyond their economic impacts, the high costs of urban living have pushed many families out of denser, transit-oriented areas and into sprawling, suburban, greenfield developments. The literature examining the harmful environmental impacts of an undersupply of housing in urban regions broadly identifies three primary points: (1) suburban sprawl results in more vehicle miles traveled ("VMT") and greenhouse gas emissions than denser, compact development; (2) zoning that promotes the development of single-family homes on large lots increases land consumption, reducing wildlife habitat and forest cover; and (3) land use restrictions against denser development increase the consumption of water resources.

Higher average VMT—widely considered a reliable measure of the environmental impact of land use patterns—has consistently been linked with suburbanization[99] and single-family zoning.[100] Numerous studies suggest that denser development, as an element of compact development that includes access to transit and a diversity of amenities, can reduce VMT.[101] Over time, as more compact development is concentrated in an area, the reduction in both the length and number of vehicle trips decreases, in turn reducing greenhouse gas emissions.[102] Studies vary on the exact amount by which VMT and greenhouse gas

94. Gianni La Cava, *Housing Prices, Mortgage Interest Rates and the Rising Share of Capital Income in the United States*, BANK FOR INTERNATIONAL SETTLEMENTS: WORKING PAPER NO 572, 10-11 (2016), https://www.bis.org/publ/work572.pdf.

95. *See* Glaeser & Gyourko, *supra* note 85, at 21.

96. Glaeser & Gyourko *Housing Supply*, *supra* note 29, at 22.

97. Glaeser & Gyourko *Housing Supply*, *supra* note 29, at 22.

98. Glaeser & Gyourko *Housing Supply*, *supra* note 29, at 22.

99. Robert L. Liberty, *Abolishing Exclusionary Zoning: A Natural Policy Alliance for Environmentalists and Affordable Housing Advocates*, 30 B.C. ENV'T AFF. L. REV. 581, 588 (2003).

100. *See generally* REID EWING ET AL., GROWING COOLER: THE EVIDENCE ON URBAN DEVELOPMENT AND CLIMATE CHANGE (2007), https://www.nrdc.org/sites/default/files/cit_07092401a.pdf.

101. *Land Use and Driving: The Role Compact Development Can Play in Reducing Greenhouse Gas Emissions*, URB. LAND USE INST., 2 (2010), https://2os2f877tnl1dvtmc3wy0aq1-wpengine.netdna-ssl.com/wp-content/uploads/ULI-Documents/Land-Use-and-Driving-Low-Res.pdf.

102. *Id.* at 7.

emissions can be reduced. However, several have found that denser, transit-oriented development can reduce average VMT by up to 25–60% over time, in turn reducing greenhouse gas emissions from transportation by up to 12–60%.[103]

Sprawl not only increases greenhouse gas emissions, it also increases development's impact on land resources. Simply by restricting the number of units allowed per acre and requiring larger lot sizes, lower-density development results in more land consumption than moderate- and high-density development. This increased land consumption presents several consequences.

First, because it can involve deforestation, sprawl often reduces the amount of forested land available to absorb carbon dioxide emissions.[104] Second, greater demands for land can lead to development in sensitive habitat and wildlife corridors; sprawl has long been cited as a threat to biodiversity and the survival of threatened and endangered species.[105] Third, sprawl and increased land consumption can alter the environment such that it creates risks for the human population.[106] By increasing impervious surfaces, sprawl increases flood risk,[107] and by pushing development further into the wildland urban interface, it increases risk of forest fire impact.[108]

Relatedly, the preservation of land through denser development also increases the preservation of water quality as it ensures more space is retained for watershed services.[109] Higher density development creates less impervious surface and demands less water usage than lower density development.[110] A 2006 EPA study specifically found that compared to lower-density development, per residence, higher density development (1) generates less stormwater runoff; (2) generates less impervious cover; and (3) affects less of the watershed.[111] Additionally, the study noted that density limits in certain municipalities may quickly drive growth to other parts of a region, resulting in severe and disproportionate effects on water quality.[112] Denser development also reduces the amount of water used in lawn irrigation: a 2018 study on the effect of infill

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103. *Growing Cooler*, *Moving Cooler*, and *Driving and the Built Environment* all have different figures. URB. LAND USE INST., *supra* note 101, at 7 (discussing three different studies: *Growing Cooler*, *Moving Cooler*, and *Driving and the Built Environment*).

104. EWING ET. AL., *supra* note 101, at 3.

105. Reid Ewing et al., *Endangered by Sprawl: How Runaway Development Threatens America's Wildlife*, 1 (2005), https://www.nwf.org/~/media/PDFs/Wildlife/EndangeredbySprawl.pdf.

106. *Id.* at 3.

107. *Rethinking Urban Sprawl: Moving Towards Sustainable Cities*, OECD, 11 (2018), https://www.oecd.org/environment/tools-evaluation/Policy-Highlights-Rethinking-Urban-Sprawl.pdf.

108. *See* Volker C. Radeloff et al., *Rapid Growth of the US Wildland-Urban Interface Raises Wildfire Risk*, PROCS. NAT'L ACAD. OF SCIS., 115(13), 3314, 3314 (March 12, 2018), https://www.pnas.org/doi/10.1073/pnas.1718850115; Patrick Sisson, *As Cities Confront Climate Change, is Density the Answer?*, CURBED (Dec. 11, 2018, 3:35 PM), https://archive.curbed.com/2018/12/11/18136188/city-density-climate-change-zoning.

109. Lynn Richards, *Protecting Water Resources with Higher-Density Development*, EPA, 4 (2005), https://www.epa.gov/smartgrowth/protecting-water-resources-higher-density-development.

110. *See id.* at 7–9.

111. *Id.* at 27.

112. *Id.* at 8.

development on outdoor water consumption in one Denver neighborhood showed that the average irrigation rate for single-family parcels is 46% higher than that for multi-family parcels.[113]

E. Summary

It is well-established that land use regulation has contributed to the lack of affordable housing in U.S. metropolitan areas. The generally high degree of regulatory authority enjoyed by Colorado local governments has generated an expected result: local governments plan and zone for single-family housing, and the market has largely delivered single-family housing, to the exclusion of more affordable forms of housing such as attached units, rowhomes, and townhomes. Not only has this pattern of development resulted in a lack of affordable types of housing, it has also exacerbated economic and environmental challenges facing the state. The next section addresses examples of other states' and localities' actions to respond to the housing affordability crisis, and then the article goes on to propose a land use reform agenda for Colorado.

IV. LAND USE REFORM FOR AFFORDABILITY

Although this article has focused on Colorado's housing affordability challenges, the problem of undersupply of housing is prevalent in many other states, particularly those that have experienced a high rate of growth similar to that of Colorado. Many of those states, and some local governments, are taking dramatic policy action to address the lack of affordable housing, and much of that policy action has attempted to address the orientation of land use regulation toward single-family sprawling patterns of development. This section summarizes state-level and local-level reforms that have been taken in recent years in order to solve many of the same issues that Colorado presently faces.

A. State-Level Reforms

A number of states have in recent years attempted to address housing affordability in the statehouse, not city hall. The measures enacted generally reduce land use and zoning restrictions on accessory dwelling units (ADUs), permit "missing middle" housing[114] in more areas, appropriate funds for affordable housing initiatives and research, require more land use training for officials, and modify municipalities' voting procedures for zoning code changes, among other things. We summarize some of that most significant legislation below.

Connecticut. Connecticut's House Bill 6107 became law on June 10, 2021.[115] Generally, the measure expanded the availability of ADUs statewide and removed

113. Kyle Blount et al., *Building to Conserve: Quantifying the outdoor water savings of residential development in Denver*, Colorado 214 LANDSCAPE & URB. PLAN. 1, 11 (2021).

114. "Middle housing" is a term defined by state law that typically means "duplexes, triplexes, quadplexes, cottage clusters, and townhouses." CONN. GEN. STAT. ANN. § 8-1a(5) (West 2021).

115. *Substitute for Raised H.B. No. 6107 Session Year 2021*, CONN. GEN. ASSEMB., https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&which_year=2021&bill_num=6107 (last visited Apr. 22, 2022); CONN. GEN. STAT. ANN. § 8-1 (West 2021).

barriers to their construction.[116] HB 6107 permits ADUs "as of right" in all single family dwelling districts, meaning that municipalities can no longer require special permits or public hearings for the development of ADUs.[117] The legislation also provided guidance as to how to promote housing affordability: limited parking requirements, encouraged an analysis of VMTs in addition to standard reviews of traffic impact, prohibited minimum floor area requirements, banned caps on multi-family housing units, required each jurisdiction to adopt a plan to increase affordable housing units, and established a commission to evaluate policies that impact land use, housing affordability, infrastructure, and conservation.[118] On the other hand HB 6107 also allowed municipalities to opt out of its most significant mandatory provisions regarding ADU's parking requirements upon a 2/3 vote of the planning commission and city council.[119]

Utah. Utah passed three main pieces of legislation in 2021 to address affordable housing concerns. First, House Bill 82, "Single Family Housing Modifications," was signed into law on March 16, 2021.[120] HB 82 required municipalities statewide to adopt regulations allowing "internal" ADUS (IADUs) included in the primary structure while prohibiting those new dwellings from being used as short-term rentals (STRs).[121]

Second, Senate Bill 164 "Utah Housing Affordability Amendments" was signed on March 17, 2021 and addressed a number of housing affordability matters including providing grant money for some costs of building low-income housing, funding programs to slow evictions, allowing local governments to contribute land for private, affordable housing, and requiring cities to develop plans to address affordable housing concerns.[122]

Third, House Bill 409 modifies the state's Municipal Land Use, Development and Management Act (LUDMA)[123] to require land use training for zoning larger-city zoning commission, modify the evidentiary standard for land use appeals to better uphold development approvals, and mandate that municipalities adopt more objective standards for approving conditional uses.[124]

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116. H.B. 6107, 2021 Gen. Assemb. Reg. Sess. (Conn. 2021) (enacted).

117. H.B. 6107(3), 2021 Gen. Assemb. Reg. Sess. (Conn. 2021) (enacted); Alexis Harrison, *The HB 6107 zoning bill myths vs 'facts' vs the reality*, CT MIRROR (June 1, 2021), https://ctmirror.org/category/ct-viewpoints/the-hb-6107-zoning-bill-myths-vs-facts-vs-the-reality/.

118. *See generally* H.B. 6107, 2021 Gen. Assemb. Reg. Sess. (Conn. 2021).

119. H.B. 6107(5), 2021 Gen. Assemb. Reg. Sess. (Conn. 2021); *see also* Kristina Vakhman, *Affordable Housing Bill Passes with Questionable Impact*, CT NEWS JUNKIE (May 20, 2021, 8:44 PM), https://ctnewsjunkie.com/2021/05/20/affordable-housing-bill-passes-with-questionable-impact/.

120. H.B. 82, 2021 Gen. Assemb., Reg. Sess. (Utah 2021).

121. *Id.* at § 4 (enacting Utah Code § 10-9a-530) (IADUs must be attached to a single-family dwelling and are permitted in any area zoned primarily for residential use. *Id.* § 4(4)).

122. S.B. 164 § 6, Gen. Assemb., Reg. Sess. (Utah 2021) (enacting Utah Code § 35A-8-507.5).

123. *2021 Utah Legislative Session: Top 3 Land Use Bills HB82, HB98 & HB409,* UTAH LEAGUE OF CITIES & TOWNS, (Mar. 24, 2021), https://apautah.org/wp-content/uploads/2021/03/ULCT-Land-Use-Bill-Summary-Part-1-2021-.pdf.

124. H.B. 409 § 2(6)(b)(ii), Gen. Assemb., Reg. Sess. (Utah 2021) (amending Utah Code § 10-9a-302).

Massachusetts. In 2021, Massachusetts passed House Bill 5250, which modified the state's Zoning Act to address housing affordability and development concerns[125] by reducing the voting threshold to implement some zoning changes and grant development permits to build more affordable housing,[126] and requiring that municipalities in the Massachusetts Bay Transportation Authority adopt a zoning ordinance or bylaw to allow at least one multifamily district as of right.[127]

Oregon. Oregon's statehouse has actively involved itself in land use for decades. In 2019 the legislature passed House Bill 2003 and House Bill 2001. The former requires medium and large cities to study the current and future housing needs of residents, in addition to requiring cities to develop strategies to ensure needed housing is actually available.[128] The strategies a municipality adopts must "include a list of specific actions, including the adoption of measures and policies, that the city shall undertake . . . ."[129] The latter, HB 2001, had a more direct effect, dramatically expanding the zones where middle housing may be located and prohibiting enforcement of private restrictions that disallow middle housing, among other provisions.[130] Taken together, HB 2003 and HB 2001 have cleared a path for greatly expanded affordable housing in Oregon.

California. Although California has long ranked poorly on measures of housing affordability, it has more recently moved to address its affordability crisis. Most dramatically, Senate Bills 9[131] and 10,[132] enacted in the fall of 2021, eliminate single family zoning by allowing duplexes on almost any lot and will eventually require localities to permit certain levels of housing density in transit-rich areas.

The state has also attempted to expand construction of ADUs. California defines an ADU as "an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence . . . [it] include[s] permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated."[133] The State enacted two nearly identical provisions relating to ADUs in October 2019:

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125. H.B. 5250 §§ 16–14, Gen. Assemb., Reg. Sess. (Mass. 2021); *see also* Andrew E. Bensson, *Massachusetts House Bill No. 5250: Revisions to Massachusetts Zoning*, 11 NAT'L L. REV. 48 (Feb. 17, 2021).

126. H.B. 5250 §§ 19, 24, 27; Eric Weld, *New Housing Choice Law Could have Large Impact on Affordable Housing in Massachusetts*, MASSLANDLORDS.NET, https://masslandlords.net/new-housing-choice-law-could-have-large-impact-on-affordable-housing-in-massachusetts/ (last visited July 30, 2021).

127. H.B. 5250, *supra* note 127, § 18.

128. *House Bill 2003: Requiring Cities to Update Housing Needs Studies and Create Housing Production Strategies,* OREGON DEP'T OF LAND CONSERVATION & DEV., https://www.oregon.gov/lcd/UP/Documents/HB2003OverviewPublic.pdf (last updated Nov. 13, 2019).

129. H.B. 2003, 2019 Reg. Sess. § 4(2) (Or. 2019).

130. H.B. 2001, 2019 Reg. Sess. § 2(2)(b) (Or. 2019); *Id.* § 2(3). For the purposes of the section of this memorandum on Oregon, "large city" means a city with a population of 25,000 or more, and "medium city" means a city with a population of more than 10,000 and less than 25,000. *Id.* §§ 2(2)–(3).

131. S. 9, 2021-22 Reg. Sess. (Cal. 2021) (enacted).

132. S.10, 2021-22 Reg. Sess. (Cal. 2021) (enacted).

133. CAL. GOV'T CODE § 65852.22(h)(1).

Assembly Bill 881 and Assembly Bill 68.[134] These two laws are comprehensive ADU reforms opening new areas to ADUs and easing permitting requirements. In addition, Assembly Bill 670[135] and Senate Bill 13,[136] also passed in the fall of 2019, limit the scope of prohibitions on ADUs and impact fees associated with ADUs, respectively.

Since the above legislation was enacted in 2019, California has issued many more permits for ADUs. Specifically, the number of ADU permits increased from approximately 9,000 in 2018 to 12,392 in 2020.[137] The significant increase (38%) in permits issued suggests that the legislation has been successful in making ADU construction more feasible. Additionally, a California study taking into account "findings from ADU owner and city planner surveys, as well as the analysis of the California Department of Housing and Community Development's Annual Progress Report (APR) data" found that ADU legislation enjoys widespread support among the public and elected officials alike.[138] A 2020 study from the University of California Berkeley's Terner Center for Housing Affordability further found that ADU completions—that is, the ADUs actually built—more than tripled, from 2,000 in 2018 to 7,000 in 2019.[139]

Vermont. Senate Bill 237 became law in Vermont on October 12, 2020. This piece of legislation aims to expand the accessibility of affordable housing for the "missing middle." Like other recent legislation S.B. 237 expands ADU availability and eliminates barriers to ADU construction.[140] It also prioritizes housing affordability over neighborhood character by banning multifamily project denials solely on the basis of character.[141]

B. Local-Level Land Use and Zoning Reform

Although local governments have a limited set of tools to impact housing affordability and the politics of land use regulation present some disincentive for local politicians to add housing density, strategies that local governments have undertaken to address housing affordability include amending single-family zoning restrictions to allow more missing middle housing, incentivizing the creation of

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134. This section primarily analyzes the text of Assemb. B. 881; however, many of the provisions of Assemb. B. 68 are the same. *See* Assemb. B. 881, 2019–20 Reg. Sess. (Cal. 2019); Assemb. B. 68, 2019–20 Reg. Sess. (Cal. 2019).

135. Assemb. B. 670, 2019–20 Reg. Sess. (Cal. 2019).

136. S.13, 2019–20 Reg. Sess. §1(f)(3)(A) (Cal. 2019).

137. *About Accessory Dwelling Units*, CALIFORNIA ADU, https://www.aducalifornia.org/ (last updated June 30, 2021).

138. *Id.*

139. Karen Chapple et al., *Reaching California's ADU Potential: Progress to Date and the Need for ADU Finance,* TERNER CTR. FOR HOUS. INNOVATION, (August 28, 2020) https://ternercenter.berkeley.edu/research-and-policy/reaching-californias-adu-potential-progress-to-date-and-the-need-for-adu-finance/.

140. S.237 (Act 179), 2019–20 Reg. Sess. 24 V.S.A. § 4412 (Vt. 2020).

141. *Id.*

affordable units through bonuses and easing permitting requirements, and tax abatements.[142]

In 2019, Minneapolis, Minnesota garnered national attention for its efforts to eliminate single-family zoning.[143] Before this change, nearly 70% of the residential land in Minneapolis consisted of single-family zoning areas.[144] Now, after this change, multi-family housing, such as duplexes and triplexes, are allowed.[145] Effectively, this has tripled the legal housing capacity in many neighborhoods throughout the city.[146] It remains to be seen whether the more permissive legal environment will result in increased middle housing construction, however.

Similarly, Fairfax County, Virginia, eased height and density restriction for all buildings near and around METRO stations or that are in certain commercial areas.[147] The county's goal was to allow the area's housing and commercial activity to grow, without increasing traffic congestion.[148] To accomplish this, the new zoning code increased the floor area ratio from 2.5/5.0 to 5.0/5.0, thereby allowing buildings to have more space for housing units.[149]

These eased restrictions have increased the number of people that can live and work near transit lines while not causing congestion in the city.[150] Several other local governments, like Seattle, Washington, have successfully taken similar action.[151] In Seattle, the city rezoned several single-family neighborhoods into a new zoning area called *residential small lots*.[152] This new designation is essentially equivalent to a single-family lot but permits two primary homes, rather than

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142. Many local governments have also adopted more permissive or encouraging regulations for ADUs. Because those measures were broadly addressed in Section IV.A., *supra*, we do not further review them here. *See supra* Section IV.A.

143. Minneapolis, Minn., Code § 521.10 (2021).

144. Richard D. Kahlenberg, *How Minneapolis Ended Single-Family Zoning,* THE CENTURY FOUND. (Oct. 24, 2019), https://tcf.org/content/report/minneapolis-ended-single-family-zoning/?agreed=1.

145. MINNEAPOLIS MINN CODE § 546.30 (2021); Kahlenberg, *supra* note145.

146. Kahlenberg, *supra* note 145.

147. Solomon Greene & Jorge Gonzalez-Hermoso, *How Communities are Rethinking Zoning to Improve Housing Affordability and Access to Opportunity*, URB. WIRE (June 12, 2019), https://www.urban.org/urban-wire/how-communities-are-rethinking-zoning-improve-housing-affordability-and-access-opportunity.

148. *Id.*

149. Fairfax Country, Art. 2(4)(B)(3), ENCODE PLUS, https://online.encodeplus.com/regs/fairfaxcounty-va/doc-viewer.aspx?secid=643&keywords=transit%27s%2Ctransited%2Ctransiting%2Ctransits%2Ctransits%27%2Ctransit%2Cstation%27s%2Cstationed%2Cstationing%2Cstations%2Cstations%27%2Cstation#secid-229; Canaan Merchant, *A Zoning Change in Fairfax will Allow More Density*, GREATER GREATER WASHINGTON (June 29, 2016), https://ggwash.org/view/41968/a-zoning-change-in-fairfax-will-allow-more-density.

150. Greene & González-Hermoso, *supra* note 148.

151. Greene & González-Hermoso, *supra* note 148.

152. *See generally Residential Small Lot (RSL)*, SEATTLE.GOV , http://www.seattle.gov/documents/Departments/HALA/Policy/MHA_zone_summaries.pdf (last visited Apr. 22, 2022); *Housing Development Assistance,* AUSTINTEXAS.GOV, http://www.austintexas.gov/department/housing-development-assistance (last visited Apr. 22, 2022).

requiring only one.[153] The zoning code leaves open the possibility for neighborhood plans to permit tandem houses and cottage houses on lots zoned as residential small lots.[154] This can help increase the amount of housing in the area, but as several commentators have stated, it will not impact the overall look of the city. In fact, many note that the use of multiple cottages on a smaller lot actually increases the aesthetic appeal of an area.[155]

Austin, Texas, has developed several programs designed to incentivize affordable housing.[156] The city's "Affordable Housing Density Bonus Program" for example, "allows developers to build more units than are [otherwise] allowed . . . if the developer agrees to set aside a portion of the units for income-restricted affordable housing."[157] Similarly, the city's *SMART Housing* program incentivizes transit-oriented, income-restricted housing by expediting the review process and waiving the development fees for housing projects that meet certain income and locational requirements.[158] Similarly, Austin's *Affordability Unlocked Program* reduces regulatory barriers and limitations for projects including substantial (at least of half of total units) income-restricted housing.[159] Waived or reduced regulations include dwelling unit occupancy limits, minimum lot size, and lot width requirements.[160] Other incentives include height and density bonuses.[161]

Other cities, like San Diego, California, have also waived various fees and expedited the review process for income-restricted housing developments.[162] Addressing middle housing, projects that offer 100% affordable units at 100% of the area median income, San Diego offers an *express review process* that aims to cut project review times in half and reduce fee payments.[163]

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153. Seattle, Wash., Mun. Code § 23.43; Dan Bertolet, *A Baby Step Toward Revamping Single-Family Zoning*, SIGHTLINE INSTITUTE: HOUSING & URBANISM (March 22, 2018), https://www.sightline.org/2018/03/22/a-baby-step-toward-revamping-single-family-zoning/.

154. Seattle, Wash., Mun. Code § 23.43.006.

155. Matt Miner, *RSL Zoning: Will This Help to Improve the Look of Seattle?*, GET HAPPY AT HOME (June 17, 2019), https://www.gethappyathome.com/rsl-zoning-will-this-help-to-improve-the-look-of-seattle/.

156. These programs include Private Activity Bonds issued by the city to finance multi-family developments, tax credits, and resources specifically designed to help keep the cost of constructing affordable housing low. *Housing Development Assistance*, AUSTINTEXAS.GOV, https://www.austintexas.gov/department/housing-development-assistance (last visited Apr. 11, 2022).

157. *Id.*

158. Austin, Tex., Land Dev. Code§ 25-1-703; *Development Incentives and Agreements*, AUSTINTEXAS.GOV, https://austintexas.gov/page/development-incentives-and-agreements (last visited Aug. 6, 2021).

159. *Affordability Unlocked Development Bonus Program*, AUSTINTEXAS.GOV, https://www.austintexas.gov/department/affordability-unlocked-development-bonus-program (last visited Aug. 6, 2021).

160. *Id*.

161. *Id*.

162. *See e.g.*, City of San Diego Development Services Department, *Affordable, In-Fill Housing and Sustainable Buildings Expedite Program,* SANDIEGO.GOV: DEVELOPMENT SERVS., 2 (July 2020), https://www.sandiego.gov/sites/default/files/dsdib538.pdf.

163. *Id.*

In several cities nationwide, public housing authorities are purchasing apartment complexes and abandoned buildings to convert into affordable housing. For example, Gary, Indiana's housing authority in 2020 bought several abandoned properties, including vacant elementary schools.[164] The city is working to demolish or rework these buildings to provide affordable housing units.[165]

Similarly, Dallas, Texas, purchased an apartment complex near a transit line.[166] The city then leased the property to a developer who will oversee and operate the buildings.[167] The lease requires that at least 50% of the units be used for affordable housing.[168] To meet this requirement, "the apartments must be rented to residents earning less than 80% of the area's median income."[169]

Several local governments have tried to incentivize affordable housing by providing tax abatements for property owners.[170] For example, in Seattle, Washington, the city has created a property tax exemption program for affordable housing properties.[171] Under this program, an approved project will receive a "streamlined review process" and a "certificate of tax exemption" for residential improvements.[172] In order to be approved, projects must first be in a designated "residential targeted area."[173] These areas are places that the city council has found to be in need of affordable housing.[174] Among other requirements, approved projects must offer affordable units for tenants with incomes at or below 50% of the area's median income for the duration of the project.[175]

Overall, this project has received a positive reaction from developers.[176] Notably, many project managers have stated that the streamlined application

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164. Carole Carlson, *More Vacant Gary Schools Sold; City Biggest Buyer*, CHICAGO TRIB.: POST-TRIB. (Dec. 14, 2020), https://www.chicagotribune.com/suburbs/post-tribune/ct-ptb-gary-schools-sold-st-1215-20201214-px3vzmrpwjbixjxmxrtl64hq7m-story.html.

165. *See* Gary, *Housing Authority Annual Plan*, at 7; *see also* Carlson, *supra* note 166; IND. CODE §36-7-1.5.

166. Steve Brown, *Dallas Housing Authority Adds to Affordable Housing with Purchase of Inwood Road Apartments*, THE DALLAS MORNING NEWS: BUSINESS, (May 6, 2020) https://www.dallasnews.com/business/real-estate/2020/05/06/dallas-housing-authority-adds-to-affordable-housing-with-purchase-of-inwood-road-apartments/.

167. *Id.*

168. *Id.*

169. *Id.*

170. While the Colorado constitution requires uniform property taxation, it is possible that affordable housing efforts could be included amongst the exemptions in the future. *See generally* COLO. CONST. ART. X.

171. *See generally* SEATTLE MUN. CODE CH. 5.73.

172. *Id.* at 030.

173. *Id.* at 040.

174. *Id.* at 030.

175. *Id.* at 040.

176. *Property Tax Exemptions Promote Affordable Rental and Homeownership Housing in Seattle*, REGUL. BARRIERS CLEARINGHOUSE, https://archives.huduser.gov/rbc/archives/newsletter/vol4iss2more.html (last visited Apr. 24, 2022).

process and tax benefits that the program offers have allowed them to finish projects that would not have otherwise been possible.[177]

C. Summary

State and local reform efforts have taken many shapes but share some broad similarities. Of the state reforms, expanding ADU access has proven the most popular tactic, but Massachusetts' eased voting requirements, and Oregon's focus on expanding zone districts allowing middle housing deserve particular emphasis. Local governments have also promoted ADUs, density bonuses, and eased permitting schemes for affordable housing. Efforts focused on middle housing remain few and far between, however.

V. ADVOCATING FOR POLICY REFORM

Based on its research regarding existing housing market challenges and the legal barriers to statewide land use reform in Colorado, in combination with research regarding innovative practices in other states and localities, CHAP has prepared a policy platform that it has used to advocate for statewide land use regulatory reform in Colorado. This platform takes account of several of the conclusions that have already been presented in this article, including: (1) Colorado faces an undersupply of housing in comparison to its recent population growth; (2) Colorado's undersupply of housing has most impacted middle-income households, which have seen the most significant increases in cost burden over the past two decades; (3) middle-income households are more likely to be cost-burdened if they live in a single-family detached home, compared to those middle-income households that live in *missing middle* forms of housing; (4) strict land use and zoning regulations are one of many causes of high housing cost, particularly where they restrict the types of housing that are most affordable to middle-income households; (5) Colorado's land use control system confers significant power on local governments to engage in land use regulation, while limiting local governments' ability to use fiscal tools to address housing needs; and (6) Colorado's land use regulatory system has largely produced single-family detached housing to the exclusion of other types of housing that are more likely to be affordable to middle-income households.

CHAP proposes that its policy platform be imposed by the state legislature as a matter of statewide concern.[178] Recognizing that the state's housing affordability challenges are largely concentrated in urbanized or urbanizing areas, and that the affordable housing challenges faced by rural areas differ from those in urban areas, the CHAP platform would apply only to the largest municipalities (with a population of 10,000 or more) in the state's largest counties (with populations of 50,000 or more).[179] As such, the CHAP platform would still cover jurisdictions in which well over 80% of the state's population resides.

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177. *Id.*

178. *Our Platform*, COLORADO HOUS. AFFORDABILITY PROJ., https://cohousingaffordabilityproject.org/our-platform/ (last visited May 20, 2022).

179. *Id.*

The specific points of the platform include requirements, and a menu of additional policy proposals[180] that local governments would be required to choose from in order to meet the CHAP requirements:

- Planning for realistic housing needs. CHAP's platform would require every covered city and town to adopt a housing plan, or a comprehensive plan housing element, using reputable data to determine affordable housing needs, develop action for how those needs will be addressed over a 20-year period, and to update that plan at least once every five years. Colorado law currently does not require local governments to analyze housing affordability or affordable housing needs. CHAP believes that developing and understanding data on housing demand is critical to ensuring that communities are meeting demand generated by economic development, and providing a supply of housing that is affordable to a variety of income levels. Given the close relationship between land use planning and providing sufficient housing to meet needs, it is critical that local governments have good, consistent information to plan and zone for the most appropriate types of housing development.

- Zoning for transit-oriented development. CHAP's platform would require every covered city and town to zone all property within one-eighth of a mile of each fixed rail transit or bus rapid transit station to allow a minimum residential development density of 40 dwelling units per acre, subject to requirements for the production of affordable housing units in new residential projects. Transit-oriented development (TOD) reduces dependence on cars—which account for 90% of all transportation spending in the United States. The average American spends 13% of his or her income on transportation, meaning that TOD saves households money that would otherwise be spent on cars, and thus reduces the overall cost of living.

- Accessory dwelling units. CHAP's platform would allow local governments to opt into permitting accessory dwelling units by-right in every agricultural, single-family, or two-family zoning district, or in any portion of a planned unit development that allows agricultural, single-family, or two-family uses, in the state, exempt from maximum density limitations. Under this proposal, ADUs would be allowed wherever agricultural or single- or two-family residential units are allowed and would not count against limits on the number of housing units per acre in those zoning districts.

- Reforming single-family zoning or allowing missing middle housing. The CHAP platform would allow local governments to opt into eliminating single-family zoning or setting a minimum percentage of land area for the development of attached, moderate-density housing. If a locality opted to eliminate single-family zoning, CHAP proposes permitting at least four dwelling units per parcel in current single-family districts. The second

180. *Id.*

option would require a locality to zone at least 10% of its land area for townhome or rowhome construction at 10 dwelling units per acre, ensuring that more affordable forms of housing are available to accommodate Colorado's growing workforce. This proposal ensures that every community contributes to providing housing for a diverse group of renters or buyers and contributes to housing their workforce.

- Expedited approvals for affordable housing. The CHAP platform would allow local governments to opt to provide administrative, non-discretionary development approvals to all multi-family dwelling projects that provide at least 25% of units at sales prices or rents affordable to low-to-moderate income households. A 2018 study found that regulatory costs—including the costs of delay associated with permitting processes—comprised nearly 20% of the cost of building a single-family home, and over 32% of the cost of building a multi-family housing project. These delay costs are particularly challenging for developers of affordable housing, which generally have tight project budgets.

- Reduced parking for affordable housing. The CHAP platform would allow local governments to opt to reduce minimum vehicle parking requirements by 50% for any income-restricted affordable housing units. Minimum parking requirements require a housing developer to acquire the necessary land to construct parking. On top of that, a 2018 study indicated that surface parking lots cost approximately $5,000 to $10,000 per space, and garage parking costs between $25,000 and $50,000 per space.181 These costs make supplying affordable housing difficult, if not impossible. At the same time, higher-income households generally have more vehicles than lower-income households, and owners are more likely to have vehicles than renters.

- Reduced fees for affordable housing. The CHAP platform would allow local governments to opt to reduce utility connection fees and development impact fees by at least one-third for all residential developments that provide at least 25% of units at sales prices or rents affordable to low-to-moderate income households. Utility connections and impact fees can cost a housing project hundreds of thousands—or even millions—of dollars. These fees are particularly challenging for projects that have affordable housing units, which generally have tight project budgets.

The CHAP proposals are rooted in the policy research that has been conducted as part of CHAP's program. Three separate land use reforms were tested in Jefferson and Larimer counties for their potential to build housing supply by

181. Eric Scharnhorst, Quantified Parking: Comprehensive Parking Inventories for Five U.S. Cities, RSCH. INST. FOR HOUS. AMERICA (May 2018), https://www.mba.org/docs/default-source/research---riha-reports/18806-research-riha-parking-report.pdf?sfvrsn=d59a2d33_0.

unlocking underutilized land.[182] The impact of those policy proposals was measured through the number of residential units that *could have been created* if they were in place beginning in 2010-2021, and if they were in place going forward.[183] That analysis found that:[184]

- Adding Accessory Dwelling Units (ADUs) on single family lots could have increased housing units by 1,200 in Jefferson County (adding 7% capacity) and 2,300 in Larimer County (27% capacity). However, due to cost and financing barriers, which are typically borne by owners, actual production would likely be lower.

- Land use reforms that allow duplexes, triplexes, fourplexes, and sixplexes could have increased housing unit production by 1,770 to 4,400 units in Jefferson County (11%-21% capacity), and 6,300 to 17,100 in Larimer County (32% to 87% capacity), depending on the type of units developed.

- A broader regulatory change that requires at least 10% of vacant land zoned for 10 dwelling units/acre (sixplex and denser) would make the most difference. If 10% of currently vacant land were developed to this density, as many as 100,000 new residential units could be built in Jefferson County and 272,000 units in Larimer County. This impact is large because so little of these counties, and municipalities in these counties, have zoned land for this level of density.

Two important observations arose out of this research that could impact the effectiveness of land use reforms proposed under the CHAP Platform. First, the prevalence of customized zoning, in the form of planned unit developments (PUDs), in Jefferson County limits the effectiveness of zoning reform on unit production—67% of unit growth from 2010 to 2021 was in a PUD and was not impacted by the modeled zoning reforms.[185] Given the challenges with amending pre-existing PUDs, the prevalence of PUDs throughout Colorado—particularly in new developments—creates a barrier to unlocking underutilized land and ensuring an equal distribution of impacts from zoning reform.[186] On the other hand, the prevalence of PUDs also offers an opportunity to promote affordability and a diversity of housing types through the PUD approval process—however, these negotiations take place at the local level.[187]

Second, residential developments are generally built to the maximum density permitted by the zoning code to avoid rezoning or subdivision processes—which

182. *State of Colorado Housing Research*, ROOT POL'Y RSCH. 1, 1 (Nov. 1, 2021), https://cohousingaffordabilityproject.org/wp-content/uploads/2021/11/Colorado-Housing-Research-Report_November-2021.pdf.

183. *Id.* at 4.

184. *Id.* at 5

185. *Id.* at 34.

186. *Id.* at 3.

187. *Id.* at 5.

can be costly and unpredictable.[188] In both counties, properties that have developed since 2010 on land that allows for both single family and duplex developments by right typically have been built to the density permitted by the zoning code without subdividing land.[189] This resulted in an underutilization of land under current zoning ordinances to avoid undergoing a subdivision process.[190] Therefore, a streamlined subdivision rezoning process may help unlock additional capacity already permitted under the zoning code.[191]

When land use reforms are modeled for future growth on vacant land, there is more potential for ADU capacity to be added to Jefferson and Larimer County land parcels *without PUD zoning* than for du- through six-plexes due to the limited number of vacant parcels.[192] Maximizing density by adding du- through six-plexes would involve demolishing existing units, which can be costly and invite neighborhood resistance.[193] Still, there are many opportunities to maximize the density of vacant remaining single family detached lots to increase capacity and, more importantly, incorporate these unit types through PUDs.[194]

VI. CONCLUSION

Colorado's experience provides a lesson for the intermountain West, showcasing both the difficulties and the opportunities for policymakers to promote housing affordability. Restrictions on housing supply have played an enormous role in the housing affordability crisis and, taking Colorado as representative, much of the region remains reserved for large-lot single family housing. The crisis is only growing worse, and restrictions like these increase costs, slow migration toward economic opportunity, and transfer wealth, in addition to increasing carbon emissions and absorbing wildland for greenfield development. In Colorado, the intractability of these problems is in part the product of strong local control, where policymakers have fewer incentives to improve housing affordability and face higher consequences. A review of state and local housing affordability policies suggests, generally, that state-level action can address these concerns, with measures aimed at allowing more middling housing and reducing regulatory barriers in the way of its construction. Finally, building on the research and these experiences, CHAP has proposed a suite of legislative measures aimed at increasing middle housing and ADU, promoting transit-oriented development, and reducing regulatory requirements and burdens, all at the state level. These measures, both alone and in concert, should moderate housing prices and restore some semblance of affordability in a state where many have lost sight of it.

188. ROOT POL'Y RSCH., *supra* note 182, at 2.
189. ROOT POL'Y RSCH., *supra* note 182, at 2.
190. ROOT POL'Y RSCH., *supra* note 182, at 2.
191. ROOT POL'Y RSCH., *supra* note 182, at 2.
192. ROOT POL'Y RSCH., *supra* note 182, at 3.
193. ROOT POL'Y RSCH., *supra* note 182, at 3.
194. ROOT POL'Y RSCH., *supra* note 182, at 3.