Dolores DOLA Innovative Housing Strategies
LUC and Policy Drafting | April 11, 2023

Contents

April 11 Meeting: We will focus on the issues highlighted in GREEN.

I. Background: 2021 Updates to the Dolores LUC

The Town incorporated a number of the DOLA strategy recommendations into the LUC update, including:

A. Granting duplexes, triplexes, or other appropriate multi-family housing options as a use by right in single-family residential zoning districts (**Task Complete**);
B. Classification of a proposed affordable housing development as a use by right when it meets the building density and design standard of a given zoning district (**Need AH definition to trigger this permission**);
C. Authorizing accessory dwelling units as a use by right on parcels in single family zoning districts that meet the safety and infrastructure capacity considerations of local governments (**Task Complete**); and
D. Allowing the development of small square footage residential unit sizes (**Task Complete**).

II. April 11 Discussion Topics

A. Affordable Housing Policy and Definitions
B. Length of Deed Restriction Information
C. Workforce Housing Discussion
D. Expedited Review Discussion
E. PUD Community Benefits Discussion

III. Next Steps

A. Affordable Housing Definition

April 11: Proposed Affordable Housing Definition

Colorado affordable housing definitions recap:

Tenancy	HB 1271	Proposition 123
Rental	80% of AMI	60% of AMI
Ownership	140% of AMI	100% of AMI

Proposed Affordable Housing Policy:

Dolores, Colorado, establishes the following affordable housing policies and definitions, adjustable as necessary to remain eligible for applicable sources of state and federal funding.

Dolores, Colorado, will aim to approve housing developments priced so that more rental households earning no more than 80% of the Area Median Income, and existing homeowners earning no more than 140% of the Area Median Income, can afford to live in the Town.[1]

Where required by state or federal funding requirements, these standards shall be adjusted as follows:

Dolores, Colorado, will aim to approve, and as needed, annually increase the supply of new and existing housing so that more rental households earning no more than 60% of the Area Median Income, and existing homeowners earning no more than 100% of the Area Median Income, and first-time homeowners earning no more than 120% of the Area Median Income, can afford to live in the Town while paying no more than 30% of their gross monthly income for housing.[2]

[1] HB 1271 definition
[2] Prop. 123 requirements

Proposed Affordable Housing Definition (add to LUC):

Affordable housing is either a rental unit(s) priced for households earning no more than 80% of the Area Median Income, or an ownership unit(s) priced for households earning no more than 140% of the Area Median Income. AMI information shall be determined by the U.S. Department of Housing and Urban Development (HUD), and affordable rental information shall be as determined by the Colorado Housing Finance Authority (CHFA).

April 11: Length of Deed Restriction Information

Generally recommended length: 35-50 years

Some programs restart the affordability period every time the house is sold, create a perpetually affordable unit.

Administration of an affordable housing program, including management of the unit(s) is usually provided by either a housing authority or a similar organization such as a community land trust. Dolores does not need to have an administration program in place to qualify for additional DOLA funding.

Additional information is attached in Appendix A: Deed Restrictions. These overviews come from:

1. Local Housing Solutions[3]
2. The Grounded Solutions Network[4]

April 11: What is Workforce Housing

Workforce housing is housing that is designated for local residents that work in the community with a household income that qualifies for the affordable housing range. "Work in the community" can be assessed through a minimum number of hours worked in a local business or occupation types, such as teachers, public sector, or emergency services.

The designation of "workforce housing" essentially adds another type of qualification to affordable housing. Dolores will need to determine whether a secondary qualification will help meet Town affordable housing goals.

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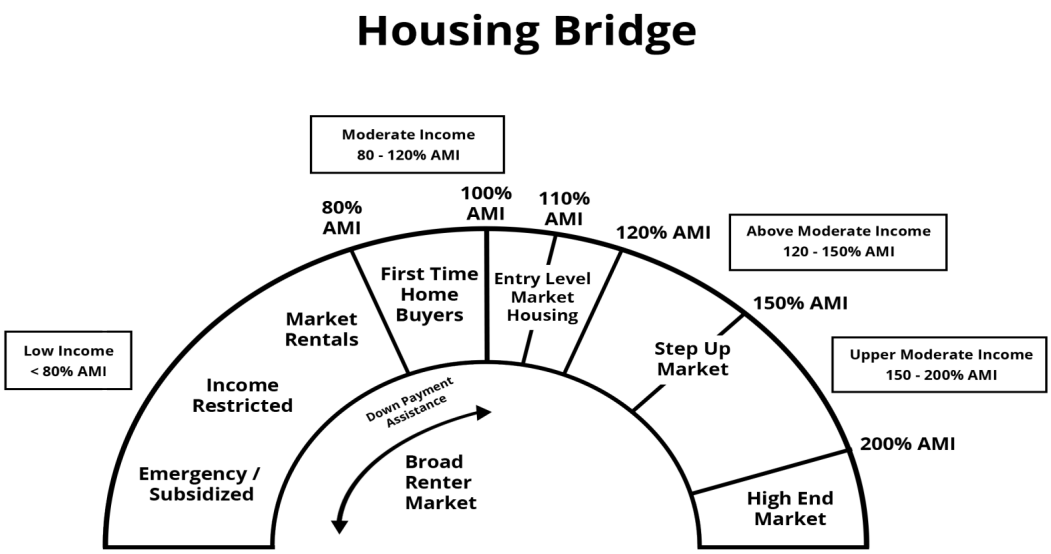
[3] https://localhousingsolutions.org/housing-policy-library/deed-restricted-homeownership/#:~:text=Deed%20restrictions%20usually%20apply%20for,to%20apply%20for%20much%20longer.

[4] https://inclusionaryhousing.org/designing-a-policy/affordability-preservation/mechanisms-for-preserving-affordability/

B. Background Material from February Meeting

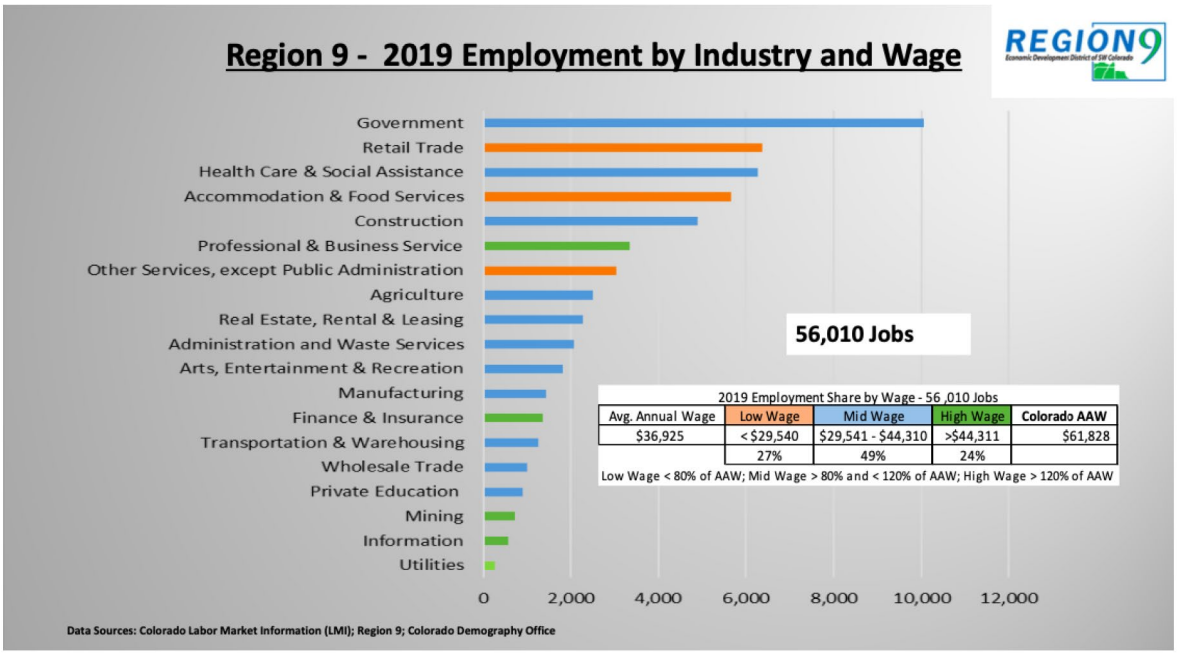
Four of the strategies are designed to be specifically applicable to "affordable housing." DOLA requires that affordable housing for rentals be defined at 80% or less of the average median income (AMI) and affordable housing for ownership be defined at 140% or less of AMI. DOLA uses a Housing Bridge graphic to illustrate the typical range of affordability:



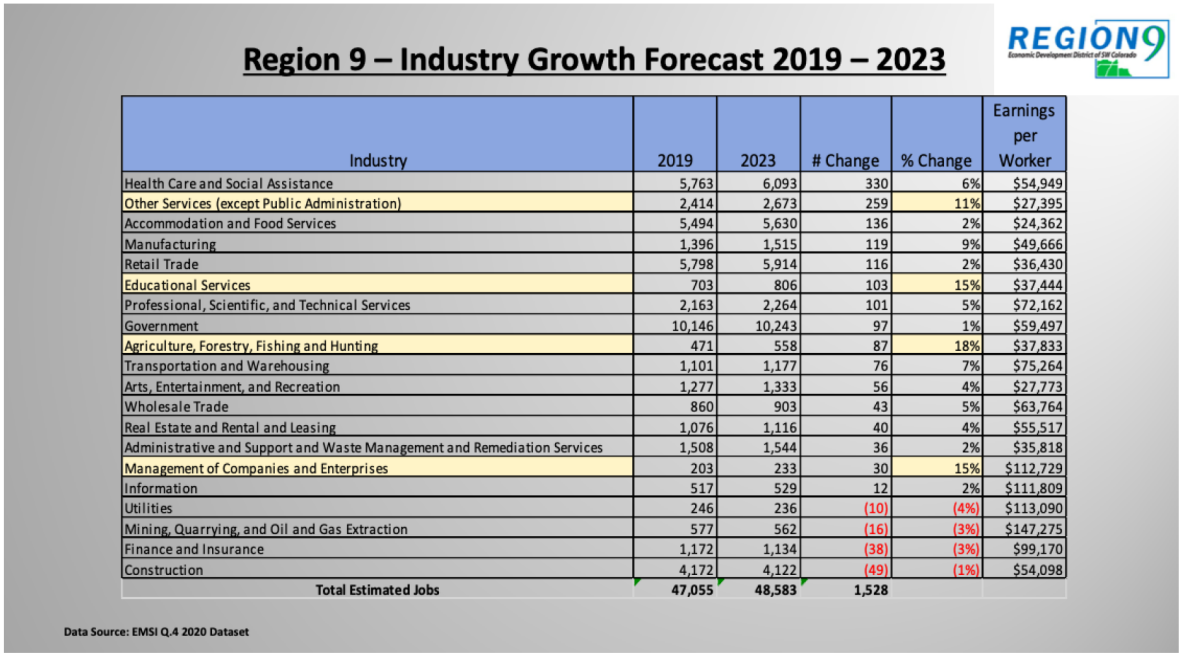
Used with permission of McCormick and Associates, Inc.

Dolores can choose to set the affordability cutoff at a lower income level. In many communities, affordable is defined as housing that is affordable to residents with an income of 80% of the county average median income.

To help think about local jobs and salaries, the attached Regional Housing Needs Assessment includes the following recent local information:



Source: Region 9 Economic Development District, SW Forum 2021.



Region 9 – Industry Growth Forecast 2019 – 2023

Industry	2019	2023	# Change	% Change	Earnings per Worker
Health Care and Social Assistance	5,763	6,093	330	6%	$54,949
Other Services (except Public Administration)	2,414	2,673	259	11%	$27,395
Accommodation and Food Services	5,494	5,630	136	2%	$24,362
Manufacturing	1,396	1,515	119	9%	$49,666
Retail Trade	5,798	5,914	116	2%	$36,430
Educational Services	703	806	103	15%	$37,444
Professional, Scientific, and Technical Services	2,163	2,264	101	5%	$72,162
Government	10,146	10,243	97	1%	$59,497
Agriculture, Forestry, Fishing and Hunting	471	558	87	18%	$37,833
Transportation and Warehousing	1,101	1,177	76	7%	$75,264
Arts, Entertainment, and Recreation	1,277	1,333	56	4%	$27,773
Wholesale Trade	860	903	43	5%	$63,764
Real Estate and Rental and Leasing	1,076	1,116	40	4%	$55,517
Administrative and Support and Waste Management and Remediation Services	1,508	1,544	36	2%	$35,818
Management of Companies and Enterprises	203	233	30	15%	$112,729
Information	517	529	12	2%	$111,809
Utilities	246	236	(10)	(4%)	$113,090
Mining, Quarrying, and Oil and Gas Extraction	577	562	(16)	(3%)	$147,275
Finance and Insurance	1,172	1,134	(38)	(3%)	$99,170
Construction	4,172	4,122	(49)	(1%)	$54,098
Total Estimated Jobs	**47,055**	**48,583**	**1,528**		

Data Source: EMSI Q.4 2020 Dataset

Source: Region 9 Economic Development District, SW Forum 2021.

Translating the salary information into housing prices, for a two-person household In Montezuma County (30 years at 5.25% interest):

1. 120% of AMI: $78,960 annually and maximum home price of $370,000.
2. 100% of AMI: $65,800 annually and maximum home price of $300,000.

The average annual income for community and social service work in Dolores is $54,642.
The average annual income for construction jobs in Dolores is $53,638.

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3. 80% of AMI: $52,000 annually and maximum home price of $250,000, maximum monthly rent for a two-bedroom unit of $1,480.00

The average annual income for an elementary school teacher in Dolores is $41,981.
The average annual household income in Dolores is $40,137.

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4. 60% of AMI: $40,000 annually and maximum home price of $150,000, maximum monthly rent for a two-bedroom unit of approximately $1,100.00.

The average annual wage in Southwestern Colorado is $36,925

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5. 45% of AMI is approximately $29,610 annually, with a maximum affordable monthly rent of approximately $832.00

A worker making the Colorado minimum wage of $13.65/hour makes $28,293 per year.

C. Colorado Proposition 123

In November 2022, Colorado voters passed Proposition 123 which is designed to provide additional affordable housing funding across a variety of categories to local governments, private developers, and Colorado residents. Adoption of Prop. 123 enabled the creation of the State Affordable Housing Fund and dedication of one-tenth of one percent (0.1%) of state income tax revenue to fund housing programs, including:

- Providing grants to local governments and loans to nonprofit organizations to acquire and maintain land for the development of affordable housing;
- Creating an affordable housing equity program to make equity investments in multi-family rental units to ensure that rent is no more than 30% of a household's income;
- Creating a concessionary debt program to provide debt financing for low- and middle-income multi-family rental developments and existing affordable housing projects;
- Creating an affordable home ownership program providing down-payment assistance for homebuyers meeting certain income requirements;

- Creating a grant program for local governments to increase capacity to process land use, permitting, and zoning applications for housing projects; and
- Creating a program to provide rental assistance, housing vouchers, and other case management for persons experiencing homelessness.

Prop. 123 defines affordable slightly differently than DOLA:

1. Housing for renters making up to 60% of AMI (DOLA is 80%)
2. Housing for homeowners making up to 100% of AMI (DOLA is 120%)

Defining affordable housing in a manner that satisfies Prop. 123 will also satisfy the DOLA requirements.

D. Action

1. ~~Define affordable housing. Suggestions:~~
   a. ~~In Dolores, affordable units meet the following requirements:~~
      1. ~~Affordable for sale unit means a unit required to be affordable for households making (select a percentage between 80% and 100%) or less of the AMI.~~
      2. ~~Affordable rental unit means a unit required to be affordable for households making (select a percentage between 45% and 60%) or less of the AMI.~~
   b. ~~AMI or Area Median Income means the median income for Montezuma County, adjusted for household size, as calculated by the U.S. Department of Housing and Urban Development (HUD).~~
   c. ~~Affordable rent is defined as the Colorado Housing and Finance Authority (CHFA) Income Limit and Maximum Rent Tables for All Colorado Counties.~~
2. ~~Determine period of time for which housing must remain affordable. The typical range is 30 to 50 years.~~
3. ~~Determine whether there will be a workforce or local first requirement (defined by school district boundary).~~
4. ~~Amend the LUC to reference the Town's affordable housing policy to trigger Code standards that are applicable to affordable housing.~~

IV. Town Administration and LUC Updates

A. Expanding Affordable Housing Through Additional LUC Updates

April 11: Continued Discussion

1. **DOLA Strategy: The classification of a proposed affordable housing development as a use by right when it meets the building density and design standards of a given zone district.**

   a. Policy Questions:

   What is the minimum required percentage of affordable units needed to qualify as an affordable housing development:

   1. Any application that includes affordable housing, even just one unit;
   2. Projects with a minimum number or percentage of affordable units; or
   3. Only projects with 100% affordable units?

   b. Next Steps

   Amend the use table to designate affordable housing as a permitted use when the project qualifies as affordable housing and provides the required number of units. Proposed updated use table on the following page.

Proposed Use Table Amendments

Table 4.1: Primary Uses	LLR	new	R1	new	MRF	MH	CB1 + 2	CH	LI	new	P	R10	R35	Additional Use Limitations
	LLR1	LLR 2	NR1	NR2	NR3	MH P	DM U	CM U	IND	P1	P2	R10	R35	
	Key: /P/ Permitted Use /PL/ Permitted with Use Limitations /C/ Conditional Use /--/ Not Permitted [1] Affordable Housing Required													
RESIDENTIAL														
Households Living (dwelling unit/structure)														
1 du/structure	P	P	P	P	P	P	C	PL	--	--	--	P	P	
2 du/structure	P	P	P	P	P	P	PL	PL	--	--	--	--	--	Sec. 4.5.A
Townhomes (3 or more attached units)	C[1]	C[1]	C[1]	P	P	--	C	P	--	--	--	--	--	Sec. 4.5.A
3-4 du/structure multifamily	--	--	C[1]	P	P	--	PL	PL	--	--	--	--	--	Sec. 4.5.A
5-8 du/structure apartment	--	--	--	--	P	--	C	PL	--	--	--	--	--	
9+ du/structure apartment	--	--	--	--	P	--	--	PL	--	--	--	--	--	
Affordable housing development	P	P	P	P	P	P	P	P	--	--	--	P	P	
Manufactured Home	--	--	--	--	--	P	--	--	--	--	--	--	--	Sec. 4.5.A

Drafting notes:

1. Definition of "affordable housing development: a residential rental or ownership development in which at least [add number or percentage] of the units are affordable housing and are income restricted for a minimum period of [add number] years.
2. Proposed development must conform with zone district dimensional standards without any requests for variances.

2. **DOLA Strategies: The creation of an expedited review process for affordable housing aimed at households the annual income of which is at or below 120% of the area median income of households of that size in the county in which the housing is located; AND/OR The creation of an expedited development review process for acquiring or repurposing underutilized commercial property that can be rezoned to include affordable housing units, including the preservation of existing affordable housing units.**
   a. Are either of these approaches interesting to the Town?
   b. Dolores Policy Questions
      1. What is the qualifying level of affordable units (e.g., 100% of project, 20% of project, 1 unit?)
      2. Should expedited approvals for residential projects be limited to specific zone districts/geographic areas?
      3. Should expedited approvals for commercial conversions be limited to specific zone districts/geographic areas?
      4. Should expedited approvals be limited to projects that meet all LUC criteria without waivers/variances/PD approval/or external design guidelines?

April 11: Affordable Housing Expedited Review Process

1. **Administrative Review**

   An affordable housing site plan shall be reviewed in accordance with the general approval procedures applicable to administrative review in Section 13.6, with the following modifications:

   a. A community meeting shall be required for those projects that propose:
      1. 10 or more total dwelling units;
      2. 10,000 square feet or more of floor area; or
      3. Development of 3 or more units on a lot adjacent to an existing single-family detached dwelling.
   b. The total time between when the affordable housing site plan application is determined to be complete and the approval of the site plan shall not exceed 120 days. Applicants shall have 20 days to resubmit revised documents to address comments from the Town or the application shall be considered inactive and abandoned.

c. The construction of on-site affordable units in any development shall be timed such that the units shall be constructed and pass final inspection concurrently or prior to the market-rate dwelling units in that development.

2. Parking

a. Required Off-Street Parking

Parking shall be provided in accordance with Table 8.1 except that off-street parking for affordable housing units shall be provided at a minimum of 1 space per dwelling unit.

b. Bicycle Parking

Bicycle parking for developments with affordable housing units shall be provided as follows:

1. Short-term spaces: 2 plus .05 per bedroom calculated across the entire development. Short-term spaces shall meet the design requirements of Section <> [to be added].
2. Long-term spaces: 2 plus .05 per bedroom calculated across the entire development. Long-term bicycle parking shall be covered, enclosed, and secured to the maximum extent practicable. Long-term bicycle parking may be located inside a building.

3. Applicability of Standards to Adaptive Reuse of Commercial Properties for Affordable Housing Projects

a. Zoning District Standards

1. The structure may be expanded to the dimensional maximums of the applicable zoning district.
2. If the structure is nonconforming, it may be expanded in all aspects except expansion of the nonconformity.

b. Development Standards

The site shall be brought into compliance with applicable requirements of the following sections when lot space is reasonably available:

1. Article 7, Landscaping, Screening, and Trees
2. Article 8, Parking, Loading, and Access.
3. The site shall be brought into full compliance with Article 10, Outdoor Lighting and Article 11, Signs.

4. **Submission Requirements**

The following information shall be submitted with an application for expedited review:

a. Name of proposed development.

b. Sworn proof of ownership and a notarized letter of authorization from the landowner permitting a representative to process the application.

c. The land area and legal description.

d. The proposed land use and the area of each use in square feet.

e. The existing zoning of the property.

f. A chart comparing all of the regulations and requirements of the proposed development with those of the zoning district for proposed use(s), building heights, minimum lot area, lot width, setbacks, street frontage, building coverage, and open space ratio.

g. The zoning and residential density of all adjacent properties.

h. Public and private utility service lines and/or main lines with appurtenances.

i. Title certificate or abstract of titles covering all lands to be conveyed to the Town.

j. Current tax information.

k. If the application involves public improvements:

    1. Preliminary construction plans for the proposed public improvements including street plan and profile sheets, storm drainage improvements plans and other improvements;

    2. A preliminary pavement design report;

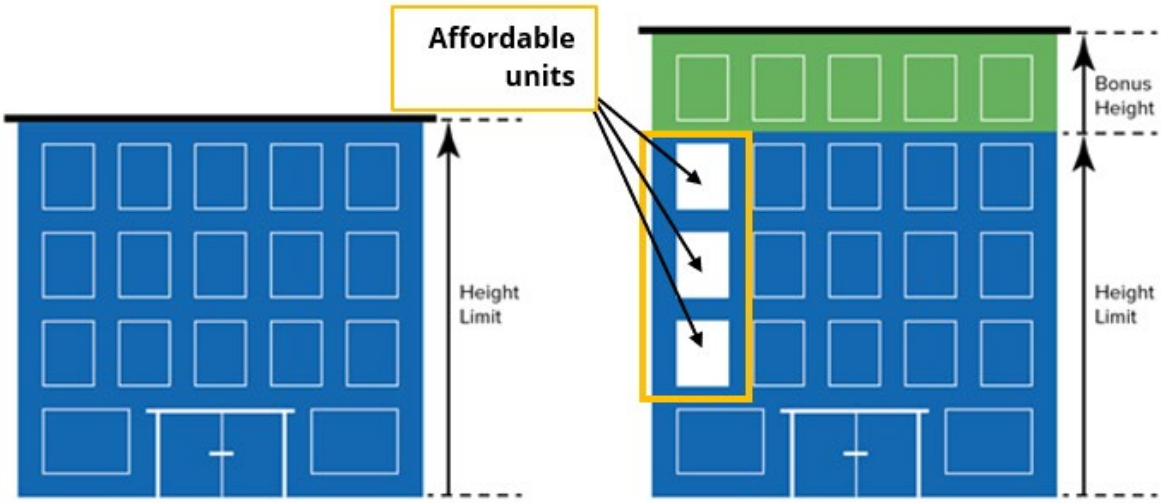
    3. A Traffic Study, if required by Section <>.

    4. A draft Affordable Housing Agreement with the Town that documents how the applicant will meet the requirements of this section.

    5. Signature blocks for the Zoning Administrator and Planning and Zoning Commission chair.

April 11: Density bonus on hold for next meeting

5. **DOLA Strategy: The establishment of a density bonus program to increase the construction of units that meet critical housing needs in the local community.**
   a. This strategy is intended to: Allow more housing units to be built on a specific site than would otherwise be allowed by the applicable zone district.
   b. It works by: Changing required zoning standards in a manner that allows the construction of more building area. Bonuses could include:
      1. Relaxing dimensional standards such as minimum lot size, lot coverage, or setbacks
      2. Permitting a larger number of dwelling units in a building or development site
      3. Providing a bonus height allowance or exemption from height restrictions that allows for construction of additional stories
      4. Reducing the amount of open space required on a development site
      5. Reducing the required number of parking spaces



6. **DOLA Strategy: Allowing planned unit developments (PUD) with integrated affordable housing units.**
   a. This strategy is intended to: Support the creation of additional affordable housing by requiring the creation of affordable housing as one of the requirements of PUD approval.
   b. It works by: changing the PUD regulations to specify that affordable housing development must be included in any new planned unit development.
   c. Dolores Policy Questions
      1. Should the PUD regulations be amended to require some amount of affordable housing?
      2. How much affordable housing should be required?

April 11: PUD Community Benefit Ideas

This is a sample code section from another community that shows how they will incorporate housing and other community priorities as PUD community benefit requirements. This list could be limited to affordable housing or changed to reflect other community priorities in Dolores.

In order to be deemed as an acceptable alternative to the Town's established zone districts, the Conceptual and Final PUD shall include at least one of the following community benefits:

A. Affordable Housing
Affordable housing providing at least __ <insert minimum number> units of deed-restricted affordable housing.

B. Sustainable/Resilient Design
The application must propose project, site, or building design features demonstrated to achieve two or more of the following reductions in resource consumption or trip generation when compared to those levels anticipated for developments of a similar type under the reference base district:

1. A reduction in water consumption of at least 25 percent; or

2. A reduction in non-renewable energy use of at least 25 percent; or

3. A reduction in average daily motor vehicle trip generation of at least 25 percent

C. Park or Trail Dedication to Remedy Current Deficiencies
The application shall include a report that describes deficiencies in the existing local parks and recreation system. The application shall include information as to how the project will solve or improve such deficiencies.

Current PUD regulations start on the following page.

Section 13.20 Planned Unit Development

A. Purpose

The PUD, Planned Unit Development District is designed to provide flexibility in the siting of structures to avoid or mitigate any hazardous areas, historic and prehistoric sites; to take advantage of the sites unique, natural, resource or scenic features; and to preserve open spaces. It is intended for application in all residential districts.

B. Types of Planned Unit Developments

The Town Board, after public hearing and due notice and after recommendation from the Planning and Zoning Commission, may authorize the creation of the Planned Unit Development Districts on parcels of land containing at least five times the minimum lot area in the underlying zone district. A Planned Unit Development designation may be applied to land intended for residential development purposes.

C. Procedures

1. Common Procedures

Common procedures for a PUD approval are established in Table 13.2.

2. Specific Procedures

Every PUD District approved under the provisions of this LUC shall follow the rezoning procedure of Sec. 13.30, Zoning Map Amendment, and be considered an amendment to the zoning map.

D. Site Plan Requirement

1. The establishment of a Planned Unit Development District shall require a comprehensive site plan of the development per Sec. 13.23. The site plan shall be approved as part of the ordinance approving a Planned Unit Development prior to the issuance of any further approvals or permits.

2. The site plan and ordinance shall set forth the requirements for ingress and egress to the property with adequate right of way, special setbacks, sidewalks, trails, utilities, drainage, parking space, building height, maximum lot coverage, common open space, screening or fencing, landscaping and other development and protective requirements including a plan for the maintenance of common open space.

E. Permitted Variation from Zoning Standards

In order to achieve the purpose and intent of the PUD District, variation may be permitted with respect to the minimum lot area, setbacks, lot width, lot coverage, and height.

F. Maximum Density

The maximum density shall be no greater than that permitted in the underlying zone district prior to PUD approval. Densities may be reduced if:

1. There is not sufficient water pressure and other utilities to service the proposed development;
2. There are not adequate roads to ensure fire protection to the proposed development;
3. The land is not suitable for the proposed development because of soil or geologic conditions, flood hazards or the presence of historic or prehistoric sites; or
4. The design and location of any proposed structure, road, or driveway in the proposed development is not compatible with surrounding land uses, would adversely affect the neighborhood character or adversely affect critical natural features of the site.

G. Minimum Common Open Space

The minimum common open space shall be 30 percent of the land area in the PUD; provided that, all areas in a PUD that are impacted by geologic hazards, flood hazards, or the presence of historic or prehistoric sites shall be set aside as common open space for the benefit of the residents and occupants of the PUD.

H. Uses

The permitted, accessory, conditional, and temporary uses allowed shall be those of the underlying zone district.

B. Town Participation in Affordable Housing Creation

1. **DOLA Strategy: Use of vacant publicly owned real property within the local government for the development of affordable housing.**
2. **DOLA Strategy: The creation of a program to subsidize or otherwise reduce local development review fees, including but not limited to building permit fees, planning waivers, and water and sewer tap fees for affordable housing development.**

C. Establish an Affordable Housing Linkage Fee

A linkage fee (also called an affordable housing impact fee) is a fee assessed for each square foot of new market-rate construction, both residential and non-residential. The funds collected are used to pay for affordable housing or elements of an affordable housing development, such as land acquisition or construction.

Like all impact fees, an affordable housing linkage fee would be limited to the creation of "new" projects and could not be used to improve existing affordable housing. Funds can be used for renter and homebuyer assistance, which might include down payment assistance. Funds from an affordable housing linkage fee could also be directed to a local affordable housing land bank.

1. This strategy is intended to:
    a. Increase the amount of funding available to support affordable housing.
    b. Leverage all private-sector development to participate in meeting local housing needs.
2. It works by: Amending the LUC to require the payment of a linkage fee as part of some or all development approvals. The project types (e.g., all projects, projects over a certain size, exempt single family construction on a lot that was already subdivided) and fee amount are established by the Town.
3. Administration: The Town will need to do a fee calculation similar to other impact fees and then determine the appropriate amount of fee to apply. The collected fees will need to be tracked and accounted for to ensure compliance with the program and legal requirements.
4. Dolores Policy Questions:
    a. Does the Town want to consider the establishment of an affordable housing linkage fee to help offset some of the costs of creating affordable housing?
    b. If the Board is unsure, what information would be helpful to determining the next step in this process?

D. The creation of a land donation, land acquisition, or land banking program

Land banks are public authorities or non-profit organizations created to acquire, hold, manage, and sometimes redevelop property in order to return these properties to productive use to meet community goals, such as increasing affordable housing supply or stabilizing property values.

Land banks can play a number of different roles depending on a community's development goals, including: (a) providing a mechanism for assembling parcels of tax-delinquent or abandoned properties for redevelopment; (b) acquiring and holding strategically valuable properties until the community can develop them as affordable housing, and; (c) acquiring properties to convert to other uses such as retail, parks, or open space for flood mitigation. In addition to acquiring and holding land, land banks can maintain, rehabilitate, demolish, and lease or sell property.

1. This strategy is intended to: Establish a local government program that can buy, acquire, and hold land for later development as affordable housing. In a strong housing market, communities tend to make strategic acquisitions in areas that are redeveloping to hold room for future affordable housing development. In a softer housing market, communities tend to focus on purchase of vacant and abandoned properties for clean-up and beneficial reuse.

2. It works by:
    a. Acquiring, possibly assembling, and holding land to be used for affordable housing. Acquisition can be through:
        - Tax foreclosure
        - Donation
        - Land bank purchase (funding from HUD NSP grants, developer's fees, revenue from land sales, rental income)
    b. Reducing land ownership "holding costs" by holding the property tax free (and sometimes clear title issues) before transferring the land to a project sponsor or developer when a project is ready to build
    c. Maintaining the property owned by the land bank
    d. Negotiating the sale or donation of the property
3. Administration: Land banking requires specialty experience and is typically administered by either a stand-alone land bank or a housing authority. The Town may need to arrange to have a staff member trained and/or partner with a local or regional land bank organization.

2. Dolores Policy Questions:

a. Does the Town want to consider the establishment of a local or regional land bank?

b. If the Board is unsure, what information would be helpful to determining the next step in this process?

Appendix A: Information About Deed Restrictions

On this page

Deed-restricted homeownership

This brief is appropriate for:

Housing Market Condition: Soft Markets, Strong Markets

Administering Agency: Department of Housing and/or Community Development, Nonprofit Organization

Overview

Deed-restricted homeownership is a mechanism for preserving the long-term affordability of units whose price was reduced to below-market levels through a government or philanthropic subsidy, inclusionary zoning or affordability incentive.

Deed restrictions help to safeguard the long-term value to the community of the initial investment in affordable homeownership by limiting any subsequent sales of the home to income-eligible borrowers at an affordable price. The resale restrictions are attached to the property's deed, and may be enforced for several decades or more, depending on state law. Buyers of deed-restricted properties are typically allowed to retain some but not all of the benefits of home price appreciation, thereby preserving ongoing affordability for the next buyer, in keeping with the terms of the restriction.

Deed-restricted homeownership can be used to preserve long-term affordability in any community. It may be particularly valuable where large amounts of assistance are needed to bring home prices within reach of low- and moderate-income families, and where rapid increases in home prices are expected.

This section describes some of the considerations for communities interested in developing deed-restricted homeownership.

Deed restrictions place conditions on the deed to a property setting out certain limits or acceptable uses. The conditions, also known as covenants, “run with the land” and as a result bind current and future homeowners. Deed restrictions have been used for years by developers and condominium associations, typically to place limits on home size or aesthetic choices, for example, limiting the choices of acceptable exterior paint colors of homes within a subdivision. Local governments and non-profits have also adopted the tool as a method of preserving affordable homeownership. To do so, deed restrictions are placed on the property that limit the terms of future sales to maintain affordability for subsequent buyers.

Deed-restricted homeownership is a form of shared equity homeownership. Other forms include Community Land Trusts (/housing-policy-library/community-land-trusts/) and limited equity cooperatives (/housing-policy-library/limited-equity-cooperatives/). Shared equity homeownership is an approach to homeownership that balances the dual goals of maintaining the long-term affordability of homes to future home purchases and allowing purchasers to build wealth through homeownership. Opinions differ on whether shared appreciation mortgages (/housing-policy-library/shared-appreciation-mortgages/) should be considered a form of shared equity homeownership. For more information on shared equity and homeownership, visit the National Housing Institute’s Shared Equity Homeownership report and Harvard University’s Joint Center for Housing Studies report on Filling the Void Between Homeownership and Rental Housing.

Deed-restricted homeownership programs preserve affordability through a variety of mechanisms. Covenants can govern:

- *How the resale price is set at future sales*. Deed restrictions typically prescribe a formula which sets a ceiling on the subsequent sales price of the home. Like the resale formulas used with shared appreciation mortgages (/housing-policy-library/shared-appreciation-mortgages/) and by community land trusts (/housing-policy-library/community-land-trusts/), these formulas typically balance the goals of building wealth for the homeowner and maintaining affordability for future

homebuyers. As one example, the resale formula may be tied to changes in the area median income. For example, the price might be set at the original purchase price plus an increment reflecting the increase in the area median income during the owner's tenure. For example, if the homeowners purchased the home for $200,000 and the area median income increased by 15 percent during the owner's residence in the home, the maximum sales price would be $230,000. This approach ensures that, once the home is made affordable, the home remains generally affordable to households based on that same income standard in the future, unless interest rates change. Other resale formulas limit the percentage of any appreciation in the market value of comparable homes which the owner can realize, requiring the homeowner to sell the home for no more than the original purchase price plus a specified percentage of the appreciation, such as 25 percent.

- *The pool of eligible buyers*. Common restrictions on future buyers set limits on the household income of a future buyer, for example at or below 80 percent of the median household income.
- *Acceptable uses*. Common restrictions on use include requiring the owner to occupy the home as a primary residence and to maintain the home to certain habitability standards.

Deed restrictions usually apply for a defined period of time, such as 30 or 45 years, after which they expire. In some programs, the clock restarts each time the home is sold, so in practice the deed restrictions tend to apply for much longer. Some states, including Maine, Massachusetts, Oregon, Rhode Island, and Vermont have authorized "perpetual" deed restrictions for subsidized owner-occupied homes.[1] (https://www.localhousingsolutions.org/housing-policy-library/deed-restricted-homeownership/#post-608-footnote-

[1] Where allowed under state law, perpetual deed restrictions will be more effective at preserving long-term affordability compared to time-limited deed restrictions. See related brief, *Determining the duration of required affordability for dedicated affordable housing*. (/refine/determining-the-duration-of-required-affordability-for-dedicated-affordable-housing/)

One advantage of deed restrictions is that they should be discovered during a routine title search. As a result, these restrictions are sometimes called "self-enforcing". In practice, however, the restrictions may be overlooked, accidentally or purposefully.

Many communities have come to realize that successful deed-restricted homeownership programs require monitoring and enforcement to ensure properties do not slip through the cracks. To ensure the protections are identified and enforced when the home is sold, some communities also file a lien, often for a nominal amount, in addition to restrictions on the deed. Liens are harder to ignore since they must be removed and paid before a home can be sold with a clear title. Regular contact with homeowners or annual registration requirements can also help make sure the units are owner-occupied and in good condition.

It is also important to monitor that the homeowner is not falling behind with payments. Deed restrictions are subordinated to the borrower's first mortgage, meaning the mortgage holder's interest takes precedent. As a result, deed restrictions can be wiped out if a borrower experiences foreclosure. This provides another reason for communities to monitor and provide support to owners of homes in deed-restricted homeownership programs. This debt subordination is also a challenge in distressed markets or markets in the midst of a significant decline: localities may need to provide assistance to owners of deed-restricted homes in order give them the flexibility of a sale while protecting the long-term value of affordable homeownership.

Deed restrictions are often used in conjunction with other policies discussed in the Housing Policy Library. For example, deed restrictions can be used to preserve the long-term affordability of units made affordable through inclusionary zoning (/housing-policy-library/inclusionary-zoning/). Some community land trusts (/housing-policy-library/community-land-trusts/) also use deed restrictions to maintain long-term affordability. Deed restricted housing may also benefit from the application of tax abatements or exemptions (/housing-policy-library/tax-abatements-or-exemptions/).

Eligibility

Deed-restricted homeownership programs typically target low- and moderate-income families. Many programs require homebuyers to have incomes that are no greater than 80 percent of the area median income. This is particularly true for projects where federal funds are used. However, each program sets its own restrictions. In the high-cost Bay area city of **Novato, CA**, for example, homebuyers may have incomes no greater than 120 percent of the area median income. Some programs give preferences

to families with other characteristics, such as those who already live or work in the community. Many programs also target first time homebuyers (typically defined as having not owned a home in the previous three years).

Homebuyers of a deed-restricted unit are often required to attend a homebuyer education (/housing-policy-library/housing-education-and-counseling/) course and/or participate in homeownership counseling prior to purchase, which may be offered directly or in partnership with a local non-profit organization. These supports can help prospective homebuyers determine if deed-restricted homeownership is a good option for them, learn how much of a home they can afford, and improve their credit scores (if needed) so they meet applicable underwriting requirements for a mortgage.

Examples

The **Montgomery County Maryland** Moderately Priced Dwelling Unit Program uses deed restrictions with a shared-equity resale formula to maintain affordable homeownership options in this high priced area. Many of the units in this program were created through the county's Inclusionary Zoning Ordinance, which was first adopted in 1973 and has produced over 12,000 units.

HelloHousing manages deed-restricted homeownership programs for multiple municipalities in **California's Bay Area**. Each program has its own rules and restrictions. For example, the City of Novato's program places deed-restrictions that allow sellers to receive a share of appreciation that is based on the change in area median income as well as the depreciated value of approved capital improvements.

Mountain Village, Colorado launched a Community Housing Initiative in 2021. Through the Your Equity Support (YES) Deed Restriction Program, they incentivize new purchasers and existing property owners to deed restrict their property to expand the permanent pool of housing for full-time residents and maintain affordability. The town will pay homeowners a portion of the home's value (15-20 percent of the appraised value of the property, not to exceed $200,000) in exchange for placing a deed restriction on the property. Currently, two-thirds of the full-time occupied housing units in Mountain Village are deed-restricted, the highest deed-restricted to free-market housing ratio in the region.

Related resources

- This HUD report discusses multiple shared equity homeownership programs and how they facilitate broader access to affordable housing. The report highlights San Francisco's Below Market Rate Ownership Program which carry deed restrictions to preserve affordability for future buyers and allow for modest wealth creation for buyers.
- This National Housing Institute report includes a discussion about deed-restricted homeownership programs along with other models of shared equity homeownership. The section discusses how affordability is maintained in this model and what the regulations are surrounding this contractual constraint, while also describing the history and prevalence of deed-restricted homes.
- Grounded Solutions, a merger of the National Community Land Trust Network and the Cornerstone Partnership, provides technical support and resources for developing permanently affordable housing. The deed-restrictions section of their website presents many articles and tools about different aspects of deed-restricted homeownership programs. The sample documents library offers mortgage lenders who will offer loans to buyers of deed-restricted properties.
- Fannie Mae developed this flyer which provides more information for lenders about making a loan when a home has resale restrictions.
- Community Land Trust Network produced a graphic to better understand permanently affordable housing. They further explain potential models and submodels that can be used to achieve permanent affordability.

1. "Implementing Restrictions on Ownership," 2011.

On this page

Determining the duration of required affordability for dedicated affordable housing

Some affordable housing programs are designed to preserve affordability for a set period of time, sometimes called a "control period." During the control period, covered units are subject to rent or sales price limitations and new occupants must meet established income requirements.

These regulatory restrictions help to ensure that homes created through affordability programs serve their intended purpose and do not immediately convert to market rates. After the control period has expired, the units can be rented or sold at market levels or converted to other uses. While some owners, particularly non-profit or mission-oriented organizations, choose to keep the affordability provisions in place even after the legal requirements expire, others opt out and allow the units to convert to market rates.

To serve the most people possible, and maximize the return on the public investment, it's generally a good practice for localities to aim to preserve affordability for the longest possible time. Cities, towns, and counties can strive for "permanent" affordability in their housing programs, where use restrictions remain in place in perpetuity or, at minimum, require affordability that persists for the full 50-year lifecycle of a property. While federal regulations allow for shorter periods of affordability—new rental housing developed with HOME funding, for example, must remain affordable for at least 20 years and projects funded with Low Income Housing Tax Credits (LIHTC) are required to have an affordability term of at least 30 years—these federal requirements are minimums, not maximums, and should be viewed as starting points to be exceeded where possible.

While long-term affordability is the best way to get the most value from every dollar of investment, it does bring some trade-offs that need to be considered when designing policies. This brief describes some of those considerations, as well as steps that localities can take to

mitigate potential downsides.

Homeownership units: balancing wealth generation with long-term affordability

Most affordability requirements associated with ownership units are structured to allow the owners to earn a modest return when they sell their homes while still preserving affordability for the next family, an arrangement known as "shared equity" homeownership. When structured appropriately, this arrangement can work well for both the first and subsequent home purchasers. When structured poorly, however, buyers may be unable to build assets when they sell, and may even need to sell at a loss in order to preserve affordability for the next buyer. Some critics argue that placing limits on the ability of low-income and minority homebuyers to build assets is unfair and deprives them of the opportunities enjoyed by other homeowners. However, other approaches that do not restrict affordability can also be viewed as unfair in that they provide substantial benefits to one household while depriving others of the ability to be assisted. For example, assistance structured as an interest-free loan that is forgiven over time results in a windfall for one buyer, but fails to preserve those resources to assist future households. Fortunately, in high cost markets it is generally possible to balance the goals of preserving public subsidies (by keeping a share of any home price appreciation in the home) and allowing for some level of individual asset accumulation and wealth generation (by distributing the rest to the seller).[1] (/refine/determining-the-duration-of-required-affordability-for-dedicated-affordable-housing/#footnote) Moreover, when families purchase homes at below-market levels, they have a measure of protection from losses, as they may still be able to sell for the original purchase price (or even at a modest profit) even if market values decline somewhat.[2] (/refine/determining-the-duration-of-required-affordability-for-dedicated-affordable-housing/#footnote) This helps to ensure a predictable level of asset growth, although asset pricing and owner equity policies should be carefully tuned with challenges faced by homeowners in soft or softening markets.

Rental units: planning for long-term capital needs

Under traditional financing models, when rents are held at affordable levels over long periods of time, there may not be sufficient revenue to cover the cost of critical capital investments that are needed over the lifecycle of any property, such as replacing the roof or other major systems as they wear out. Failure to make these improvements in a timely manner can lead to deterioration and eventually leave an entire building uninhabitable. One approach to addressing this challenge has been to inject new subsidies into these properties after 15 to 20 years, often through the LIHTC program. Using 4% tax credits, property owners who are committed to preserving affordability may be able to raise funds to undertake needed rehabilitation. However, this approach often comes with high transaction costs as well as the

opportunity costs associated with having to focus on recapitalizing existing properties rather than creating new affordable properties. An alternative approach is to consider changes to the underwriting of subsidized properties that reflect a much longer timeframe. Many affordable properties are financed with the expectation that they will need recapitalization every 15 to 20 years. "Lifecycle" underwriting, by contrast, assumes a term of 50+ years, and structures the original development transaction so that rental properties remain viable—financially and physically—for a longer period that aligns with long-term affordability requirements. Research on a sample of 269 affordable rental properties found that about half of the properties would remain financially and physically viable over a 50-year lifecycle with no additional funding, if given access to cash flow and refinancing proceeds. For the remaining properties, financial and physical viability would be possible with an additional upfront deposit of $6,500 per unit – a modest sum relative to total development costs.[3] (/refine/determining-the-duration-of-required-affordability-for-dedicated-affordable-housing/#footnote) While the sample used in this study is not representative of all properties, the findings illustrate the potential value of exploring lifecycle underwriting as a way to reduce the long-term costs of preserving the affordability of multifamily housing.

Monitoring and oversight

Families who purchase affordable homes agree to comply with a variety of conditions. These include resale restrictions that limit the price of the property as well as other provisions, such as requirements to use the property as a principal residence. Ongoing monitoring helps to ensure that these conditions are met. Income-restricted rental properties also need some level of oversight to ensure that new tenants meet income requirements, affordable rent levels are maintained, and the property is maintained effectively.

Localities that do not have the staff capacity to fill this monitoring and oversight role sometimes certify third-party organizations to act as partners that can monitor compliance and review requests for exceptions to program regulations. Partner organizations may also deliver homeownership counseling and foreclosure prevention assistance and qualify new buyers. Localities can also build notification requirements and rights of first refusal into the deed restriction that limits the resale price of affordable ownership properties. These provisions can help to alert the sponsoring agency to any pending sales, so it can step in if the sale does not comply with program requirements. Smaller localities can consider regional partnerships to jointly manage compliance with the terms of affordability programs, either through a jointly managed entity or shared management of partner organizations.

While there is a cost to ensuring compliance over time, in most cases it will be substantially lower than the cost of providing additional subsidy dollars year after year in programs where long-term affordability is not maintained. However, it is not always cost-effective to do so. Where the administrative costs of monitoring sales begin to approach the value of the subsidy —for example, for a first-time homeownership program that provides $2,500 in closing cost assistance—cities may determine that it makes more sense to structure the assistance as grant funding (or a forgivable loan) with no expectation of continued affordability. In other cases, however, the per-unit subsidy cost will be large enough to justify the investment in maintaining it. This threshold will vary by market, but a potential minimum may be a per-unit subsidy of $10,000.

Flexibility to weather downturns

Long-term affordability requirements help to promote a stable supply of affordable housing, particularly in neighborhoods where local real estate market trends and community opposition limit the feasibility of replacing units that convert to market rate in the same or similar locations. As home prices increase, long-term affordability requirements become increasingly important. When prices drop substantially, however, it may be difficult for owners of resale-restricted properties to find buyers. In extreme cases, homeowners may be “trapped” in units they are unable to sell, as buyers choose comparably-priced units that don’t carry any resale restrictions. In anticipation of this scenario, localities can build provisions into the program regulations that allow for a relaxation of affordability covenants in extenuating circumstances.

It is also important to acknowledge neighborhood change, and recognize that areas that were once rich in amenities and resources may deteriorate over time. In mature high-cost markets, preserving the long-term affordability of specific housing units may be critical to providing continued access to good schools and other services for lower-income households. In less stable markets, however, municipalities may wish to consider policies that provide for the long-term preservation of *subsidies*, rather than specific units. This approach provides flexibility to shift the location of affordable housing, while helping to ensure the public subsidy keeps pace with the need.

[1] See *Balancing Affordability and Opportunity: An Evaluation of Affordable Homeownership Programs with Long-Term Affordability Controls* by Kenneth Temkin, Brett Theodos, and David Price for an evaluation of eight shared equity programs. The authors find that homebuyers are able to earn competitive returns while keeping home prices affordable to additional lower income buyers.

[2] In declining market scenarios, shared equity programs can even result in *greater* returns than might otherwise be possible in traditional homeownership. See *Filling the Void Between Homeownership and Rental Housing: A Case for Expanding the Use of Shared Equity Homeownership* by Jeffrey Lubell, pages 9-11, for a discussion of how shared-equity homeownership can be used to mitigate the risks of traditional homeownership.

[3] See *Lifecycle Underwriting: Potential Policy and Practical Implications* by Maya Brennan, Amy Deora, Ethan Handelman, Anker Heegaard, Albert Lee, Jeffrey Lubell, and Charlie Wilkins for more information on lifecycle underwriting.

For rental units, affordability is generally protected through a deed restriction or covenant which imposes both maximum rents and tenant eligibility standards for a fixed period of time.

For homeownership units, most communities use some form of the shared equity homeownership model to protect affordability. Some shared equity programs rely on loan documents that require owners to repay a share of appreciation. Others record deed restrictions or covenants requiring homebuyers to resell for no more than an affordable price for a future lower-income homebuyer, which is determined by a shared equity resale formula. Similarly, some programs rely on ground leases utilized by community land trusts, a nonprofit partner. Ground leases also use a formula to restrict resale prices to preserve affordability.

Davidson, North Carolina

In Davidson new inclusionary homeownership units are priced so that they will be affordable to households earning less than 120 percent of the median income. When a family chooses to sell, the city's deed restriction requires that they notify the city before attempting to market their home. The city has the right to purchase their home at a price determined by a formula spelled out in the deed restriction.

In almost all cases, the city assigns this right to another lower-income, eligible buyer. In this case, the formula allows the home's price to rise only as fast at the annual change in the area median income. For a family selling after 10 years, this annual increase might yield tens of thousands of dollars upon resale (in addition to the return of the family's down payment and the amount paid off their mortgage loan). But by limiting the seller's proceeds, the home is able to stay affordable to help a new family earning below 120 percent of AMI.

Shared Equity Resale Formulas

Most inclusionary housing programs use resale restrictions to ensure that whenever a home is resold during the affordability period, it is sold at an affordable price. While programs use different resale formulas, most programs seek to balance two goals: allowing the homeowner to benefit from some price appreciation in order to accumulate wealth; and keeping resale prices affordable for subsequent low- and moderate-income homebuyers.

The choice of resale formula has implications for advancing racial equity. Homeownership has traditionally been a main method of wealth-building for American households. Yet Black, brown and other homeowners of color have not realized the same gains as White households, due to both systemic exclusion from homeownership and lower gains in property values. Inclusionary housing programs can put homeownership opportunities in reach for low-income households of color.

Different programs give different priority to wealth accumulation and affordability preservation, depending on local market conditions and the characteristics of targeted households and/or neighborhoods.

A program that uses a resale formula that provides more equity to the seller upon resale (placing greater emphasis on wealth-building) runs the risk that significant additional subsidy could be needed to help keep the home affordable to the next buyer, or that without additional subsidy the home may lose affordability. On the other hand, a program that uses a resale formula that keeps more of the appreciation in the home (placing greater emphasis on long-term affordability) provides less wealth-building opportunity for each individual homeowner. Priorities should be informed by feedback from local racial equity organizations and people of color.

Twin Cities Habitat for Humanity* has a resale formula that places greater emphasis on wealth-building. Under their shared equity formula, the share of appreciation that the homeowner receives increases for every year that they own the home.

San Mateo, CA's Below Market Rate (Inclusionary) Program uses an AMI-based formula, where the resale price is based on the change in Area Median Income. This formula places greater emphasis on long-term affordability.

Index Formulas

One popular approach to setting a resale price is the index-based formula. Typically the program will set the resale price equal to the original affordable purchase price plus a set rate of appreciation tied to changes in area median income (AMI) or the consumer price index (CPI).

Washington, DC, calculates the change in AMI based on a 10-year rolling average, which helps prevent a situation in which a homeowner would have to sell at a loss due to a short-term dip in AMI or sell at a price that is unlikely to allow the subsequent homeowner any price appreciation because of a short-term spike in AMI.

The AMI-based appreciation model is one of the most intuitive approaches from a long-term affordability perspective, as it ensures that the home price will still be affordable to the same targeted income group in the future. The AMI-based index formula does not, however, ensure that basic homeownership cost assumptions will remain constant over time.

Fixed-Percentage Formulas

Some jurisdictions use a fixed-percentage formula whereby the resale formula is determined by adding a pre-determined percentage increase to the original purchase price each year. This approach is simpler to explain to potential homebuyers and affords homeowners greater certainty about what to expect at the point of resale.

Park City, Utah allows an annual appreciation rate of 3 percent, though if market values in the city appreciate less than 3 percent annually, the inclusionary homeowner is limited to the rate of citywide market appreciation.

Boulder, Colorado uses a hybrid approach in an attempt to strike the right balance in their community. The program ties the resale price to an annual appreciation factor based on whichever index—the AMI or CPI—grew at a lower rate over the ownership period, but it also caps the price increase at 3.5 percent.

Appraisal Based Formulas

Burlington, Vermont, **Chicago, llinois, Santa Fe, New Mexico**, and **Chapel Hill, North Carolina** use appraisal-based (market-appreciation) formulas. Under this structure, the resale price is set based on the original price plus a percentage of the difference between the home's original appraised value and the appraised value at the time of resale. Localities often set limits on the maximum allowable appreciation. In Burlington, for example, the resale price can be increased by 25 percent of the home's market appreciation (as determined by appraisals).

In most cases, programs also allow the homeowner to increase the resale price to reflect the value of major repairs or other permitted improvements made by the homeowner during ownership, which helps to maintain the quality and condition of the affordable housing stock.

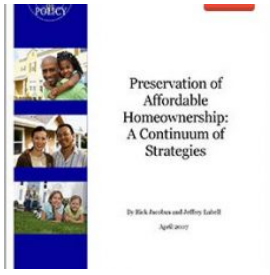
This type of formula is most tied to the housing market, which means it is also affected by the systemic racism inherent in the housing market. For example, homes in neighborhoods where the population is predominantly people of color have been shown to appreciate less than comparable homes in neighborhoods where the population is mostly White. This type of formula is also less predictable than other formulas. Partly for these reasons, many jurisdictions are moving toward a fixed-percentage formula.

Common Questions

- Why is long-term affordability so important?
- How long should affordability restrictions last?
- Can we achieve lasting affordability without perpetual restrictions?
- When should a city reexamine its resale formula for inclusionary ownership units?

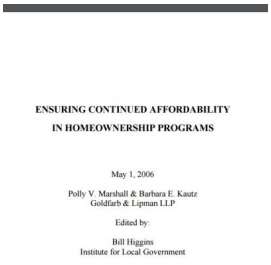
Resources

PRESERVATION OF AFFORDABLE HOMEOWNERSHIP: A CONTINUUM OF STRATEGIES



This report by the National Housing Conference's Center for Housing Policy compares the range of affordability preservation mechanism used to protect public investment in affordable homeownership units. View Report

ENSURING CONTINUED AFFORDABILITY IN HOMEOWNERSHIP PROGRAMS



This report by two California attorneys describes in detail the proven mechanisms that local governments have used to protect long-term affordability of below market-rate homeownership units. The report includes case studies of successful litigation over the enforcement of affordable homeownership restrictions. View Report

ACHIEVING LASTING AFFORDABILITY THROUGH INCLUSIONARY HOUSING

This paper analyzes a set of 20 inclusionary housing programs to highlight how long affordability periods, strong legal mechanisms, carefully designed resale formulas, dedicated program stewardship, and strategic partnerships can help preserve affordable homes. View Paper

VIDEO LEARNING SERIES: RESALE FORMULAS

Grounded Solution Networks' Video Learning Series offers an in-depth 60 minute course on developing an effective formula to preserve long term affordability for affordable homeownership units. View video