



**CITY OF BOULDER  
PLANNING BOARD AGENDA ITEM**

**MEETING DATE: January 31, 2023**

**AGENDA TITLE**

Joint study session of the Planning Board, Housing Advisory Board, and Affordable Housing Technical Review Group in preparation for upcoming updates to the existing Inclusionary Housing (IH) program. Staff will provide an overview of the existing regulations, introduce the upcoming effort, and provide board members with an opportunity to ask questions. No board action or recommendations are necessary as part of this study session.

**REQUESTING DEPARTMENT / PRESENTERS**

Nuria Rivera-Vandermyde, City Manager

Housing & Human Services

Kurt Firnhaber, Director

Jay Sugnet, Senior Manager

Hollie Hendrikson, Housing Policy - Senior Project Manager

Michelle Allen, Inclusionary Housing Program Manager

Sloane Walbert, Inclusionary Housing Planner

**OBJECTIVE**

1. Staff presentation.
2. Board discussion, including questions of staff.
3. No action or recommendation required as part of the study session.

**SUMMARY**

The purpose of this item is to familiarize city boards and commissions on the Inclusionary Housing (IH) program, in preparation for upcoming code changes and updates to the program this year. It is anticipated that the Planning Board,

Housing Advisory Board (HAB), and Affordable Housing Technical Review Group (TRG) will have opportunities to consider options for changes to the program and make recommendations to City Council as part of the public process anticipated to occur in the third quarter of 2023.

Updating Boulder's Inclusionary Housing Ordinance was identified as a priority by City Council in 2022. The objective of this council priority is to encourage more permanently affordable middle-income housing in the city, incorporate program updates to address market conditions, and make changes to the Inclusionary Housing program in response to recent changes in state legislation. Council held a study session on the item on Oct. 27, 2022. The purpose of the council study session was: (1) to review how affordable housing is financed and produced in Boulder; (2) to review progress to date on the affordable housing goal; and (3) to provide feedback on the upcoming IH update, including potential changes to increase middle income ownership opportunities. The staff memorandum to City Council can be found [here](#), the study session summary can be found [here](#), and the recording of the meeting can be found [here](#).

Inclusionary Housing (IH) is a living program that should be updated regularly to address current housing challenges and goals. The 2023 work effort is intended to evaluate the IH program and propose updates including:

- 1) Program adjustments and incentives designed to encourage on-site for-sale affordable outcomes and create more middle income for-sale affordable units;
- 2) Modifications that will result in housing affordable to a wider range of household incomes;
- 3) Updates to the cash-in-lieu calculation and methodology, and potentially requiring increases for the construction of larger homes;
- 4) Potentially applying IH to homes that are demolished and replaced with larger homes;
- 5) Other code updates and clean-up items; and
- 6) Work with a consultant to analyze development trends, recommend best practices, and assist with evaluating alternatives.

Considering the complexity of the IH regulations, the joint study session is intended to familiarize board members with the elements of the current program, which will prepare and orient board and committee members for the conversation on potential code changes later this year.

## **BACKGROUND**

Half a century ago, Boulder recognized that housing affordability was an emerging issue and took bold steps to address those challenges. That history is summarized in **Attachment A**. Boulder's affordable housing programs have evolved over time into a nationally respected approach for addressing housing needs. The strengths of our

programs are how they work in combination with an ability to adapt to changing markets and changing community priorities. The proposed update will build on the 2018 IH update to address the need for middle income homeownership opportunities in the city. While the Inclusionary Housing (IH) program has not produced middle income homeownership housing directly, it is a key tool that generates the necessary funding to produce a broader range of homeownership opportunities, including middle income housing.

In 2000, Boulder became one of the first communities in the country to adopt Inclusionary Zoning as a strategy to address rising housing prices. Renamed Inclusionary Housing (IH), the program has undergone two major updates in 2009 and 2018. This successful program is often referred to as the “workhorse” in Boulder’s affordable housing tool kit and has resulted in the development of hundreds of affordable homes directly, and thousands indirectly, through leveraging of cash-in-lieu contributions. Communities throughout Colorado are following Boulder’s lead and adopting inclusionary housing programs. Other municipalities throughout the country regularly contact Boulder to learn from our IH program.

The IH regulations are codified in [Chapter 9-13](#) of the land use code (B.R.C. 1981). Administrative regulations have also been adopted to set forth the procedures for administration and implementation of the code provisions, which are adopted by the City Manager. The IH program requires that all residential development, regardless of size, contribute a percentage of new housing as permanently affordable; for developments with more than five units, the program requires 25% of new units to be permanently affordable. Smaller developments including single-family homes have a 20% requirement. IH can be satisfied by one or more of the following options:

- Provide the affordable units on-site (integrated within the development);
- Provide the affordable units off-site;
- Make a cash-in-lieu contribution (CIL);
- Dedicate vacant land for affordable housing development.

Because IH is a requirement of new residential development, the location, type, size, and other details of housing are dictated by the developers. The IH program is designed to “ride the market” and does not influence the tenure (ownership/rental), location, or any other characteristics of the resulting affordable housing in a new housing development.

- **IH Ownership Program Requirements.** The program is designed to encourage an outcome wherein homeownership developments provide half of the required permanently affordable units on-site integrated within the new development. The other half of the IH requirement may be met by any combination of the options in the bullet list above. If a developer does not want to provide any affordable units

either on- or off-site, the ordinance allows the requirement to be satisfied with 100% cash-lieu if additional community benefit (e.g., additional CIL) is provided.

- ***Affordability Requirement:*** 80% of the IH affordable homeownership units are priced for low- and moderate-income households, and 20% are required to be priced for middle income households.
- **IH Rental Program Elements.** Rental developments do not have an on-site requirement and may satisfy the inclusionary requirement through any of the options in the bullet list above.
  - ***Affordability Requirement:*** When affordable units are developed under IH, 80% are required to have rents affordable to households earning up to 60% of the area median income (AMI), and 20% of the units to households earning up to 80% of the AMI.

### **A Note on Inclusionary Housing and Rent Control**

Historically, inclusionary affordable units have not been incorporated into rental developments. Of the 30 rental developments constructed between 2013 and 2022, no affordable rental units were provided on-site. This is a result of a state law adopted in 1981 banning rent control. The law, interpreted by the Colorado State Supreme Court in 2000, commonly referred to as the Telluride Decision, seriously impaired the city's ability to work with developers to require affordable rental units in market-rate developments. Because of the statewide rent control ban, the only option for a developer to provide the necessary rental units was through a voluntary public-private partnership agreement with the housing authority or a similar agency. For market-rate developers, this partnership approach was undesirable as it required a permanent public-private partnership, which included: continuous governmental compliance monitoring, fewer willing lenders and investors, and complications to the future resale of the project. These complications present unacceptable risks to most developers and funders.

Last year, [House Bill 21-1117](#) amended state law to allow local governments to require affordable rental units in new developments that could be owned and operated without the public private partnership described above. The amendment requires that at least one other option is available to the developer (e.g., cash in lieu), and that local government adopt zoning and land use policies that are intended to increase the overall density and availability of housing. The passage of this law removed barriers for developers to provide affordable rental units within a development. Since the changes in state law, two new rental housing developments in Boulder are incorporating privately owned and operated affordable rental units. The on-site affordable rental units make the development eligible for federal dollars via a Low Income Housing Tax Credit (LIHTC) partnership. Since the passage of this law two developments have received approval to provide the necessary affordable units on-site:

- ***5801 Arapahoe Ave. (Weathervane).*** Currently under construction, contains 22 townhouse units and 295 apartments for rent. The developer is providing two

townhouse units and 78 apartments at affordable rents, dispersed throughout the development. In return for modest city funding, the developer has voluntarily agreed to provide additional community benefit of deeper affordability than required by the IH program, by including 10 units with rents affordable to 50% AMI households.

- **4775 Spine Road.** Planned for development, contains 224 rental units. The developer is proposing 59 affordable rental units on-site in four buildings to satisfy the IH program requirements.

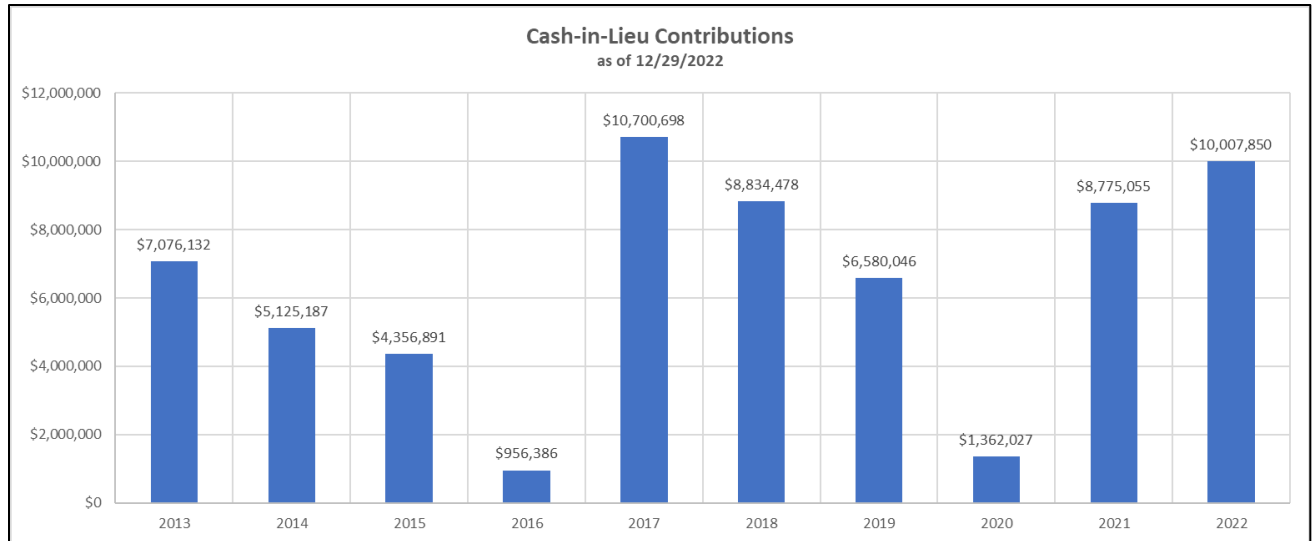
### **Outcomes**

Between 2013 and 2022, 159 developments with five or fewer dwelling units (primarily single-family homes), satisfied IH program requirements with a cash-in-lieu contribution. Forty residential developments with five or more units were subject to IH program requirements. Of these 40 developments, 33 satisfied IH with cash-in-lieu contributions. These numbers do not include residential development that were the result of annexation requirements.

The seven medium developments (5-20 units) and large developments (>20 units) that did not pay CIL were developed as follows:

- Three were affordable homeownership projects, providing a mix of on-site units and CIL.
- Four were rental projects: one provided a mix of on-site units and CIL, one dedicated vacant land, and two provided the affordable units off-site (i.e., at a different location).

Based on these data, the IH program is producing significant funds and very few affordable units directly. The chart on the following page includes details of the IH cash-in-lieu contributions between 2013 and 2022. Cash-in-lieu produced over \$63.7 million in funding to the city, which accounts for almost half of all affordable housing funding sources for the city.



### Consultant

Earlier this month the city hired Keyser Marston Associates, Inc. (KMA) to provide best practices research, and market and feasibility analyses to support updates to the IH program. The update is planned to include the following information and analysis:

1. **Best Practices Analysis.** What are the best practices or industry standards in inclusionary housing programs? Analysis should explore the following variables:
  - a. Cash-in-lieu methodologies and current levels.
    - i. Adding a CIL requirement for demo replacement of 1-4 units.
    - ii. Adding a CIL sliding scale for larger units.
  - b. Requirements for middle-income for-sale housing units.
2. **Market Analysis.** How are current development and real estate trends incentivizing/disincentivizing the on-site development of for-sale affordable units? Analysis should explore:
  - a. Potential changes to program to facilitate and incentivize for-sale on-site development.
  - b. Differences in pressures driving the development of rental units and homeownership units.
3. **Feasibility Study.** Are the current program metrics and requirements feasible for the long-term stability of the program? The study will explore the long-term feasibility of current and proposed program requirements for up to four sizes of development projects. Proposed program changes include lower required rent levels.

**NEXT STEPS**

The anticipated project schedule for the IH Update is below.

<b><i>2023 DRAFT PROJECT SCHEDULE</i></b>	
<b>Jan</b>	Study session with Planning Board, Housing Advisory Board, and Technical Advisory Group.
<b>Jan - Jun</b>	KMA market analysis, best practices, feasibility analysis and policy recommendations. Staff review of policy alternatives & potential code amendments.
<b>Jun - Jul</b>	Receive final documents from KMA. Staff refine updates and policy options. Obtain feedback from advisory boards and stakeholders (e.g., property owners, professionals, planning staff, other city staff) on policy alternatives and potential code amendments.
<b>Aug - Sep</b>	Public hearing before Planning Board on code updates to the land use code (Title 9). 1 <sup>st</sup> reading of ordinance with City Council. 2 <sup>nd</sup> reading of ordinance and public hearing before City Council.
<b>Oct - Nov</b>	Update administrative regulations, city manage adoptions of updates.

**Attachment**

Attachment A: Timeline of City of Boulder's Affordable Housing Efforts

## Attachment A: Timeline of City of Boulder Affordable Housing Efforts

### 1966

Boulder establishes the Housing Authority of the City of Boulder (dba Boulder Housing Partners), which becomes the primary provider of subsidized rental housing for low- and very-low income households, as well as special populations.

### 1973

Adoption of a moderate-income housing annexation strategy. The policy requires all new residential developments seeking annexation or requesting an out-of-city utility permit to commit at least 15% of such units to be low and moderately priced housing units.

### 1975

City begins receiving Community Development Block Grant (CDBG) funds, which have been used since to finance housing and community service projects for low income persons, including the homeless, seniors, and persons with disabilities.

### 1976

City adopts a formal growth management plan with a limit on the number of housing permits issued each year. A merit system based on points determined which developments would receive the limited allocations. The provision of low- and moderate-income housing earned the applicant extra points.

### 1980

Citizen initiative is passed in the city to impose rent control in existing buildings. In response, the Colorado State Legislature instituted a statewide rent control ban to ensure that no city or county in Colorado would, as a matter of law, be able to institute a rent control measure.

### 1982

- First Accessory Dwelling Unit (ADU) Ordinance is adopted that allows a second unit to be constructed in single family homes within low density residential zone districts. The intent of the ordinance was to provide a broader mix of housing choices for various ages and incomes, while preserving single-family neighborhood character; reduce the number of illegal and unsafe rental units constructed; and offer homeowners a way to offset the increasing cost of living in the area.
- The growth management plan is reworked, now referred to as the Residential Growth Management System (RGMS). A two percent growth rate is set on residential building permits. Allocations for residential building permits are given out on a first-



come, first-served basis until the number of permits reach a trigger point. Specific exemptions to the allocation system are intended to incentive low- and middle-income housing, including low income housing projects approved by the Housing Authority as well as the first 100 qualified moderate income rental units per year.

### 1985

- Moderate Income Housing Program (MIHP) is established, which is an inclusionary zoning program that generally required that 15% of the total units in a project be sold to moderate income households. Prices were not limited, only the incomes of eligible buyers. Resale restrictions remained in place for a period of 10 to 20 years, at which point the homes could be sold as market rate homes. Developers could earn “credits” by building more than the required number of MIHP, and these credits could then be sold to other developers to help meet MIHP requirements.
- City adopts a Mobile Home (MH) zoning district. The new zoning district serves the dual purpose of guiding development of new mobile home parks and reducing the risk of redevelopment and displacement of residents.

### 1990

Housing excise tax is adopted and levied on all new development on a per square foot basis. The excise tax establishes a modest source of funding to contribute to the provision of affordable housing. The funds are used to acquire, construct, or rehabilitate permanently affordable housing for households within 15 - 60% of the Area Median Income (AMI) defined as the “working poor” within the adopted ordinance.

### 1991

City convenes a working group to develop a new, affordable housing program. As a result, the mandatory MIHP from 1985 is discontinued and replaced with the Community Housing Assistance Program (CHAP). CHAP served as a local housing trust fund to provide subsidy funds for developers to acquire and build permanently affordable housing in the community. Property taxes and a housing excise tax on new development produces approximately \$1M per year that is used to fund housing for low income and special populations. The fund is still in place today, although the housing excise tax was repealed. This fund provides a simple, flexible, and locally administered funding source to increase the supply of affordable housing.

### 1992

- City begins to receive federal HOME Investment Partnerships Program (HOME) funds, a block grant for affordable housing. Boulder receives approximately \$650,000

per year in HOME funds which may be used for a variety of housing projects for low- and very-low income households.

- The Boulder Valley Comprehensive Plan (BVCP) is updated to include a housing goal to have 5% of the total housing stock as permanently affordable to low income households.

### 1993

City's First Home program is established. Initially, First Home was a shared equity loan program. The rapid increase in Boulder's housing prices led to a concern that insufficient funds would be recaptured from the shared equity proceeds to enable the city to replace units on a 1:1 basis. This led to the program being changed to a down payment grant in exchange for permanent affordability.

### 1995

- The Residential Growth Management System (RGMS) revised to cut the growth rate to one percent and reduce the number of available allocations on an annual basis. The update divided the annual allocations into three categories: market rate, permanently affordable, and restricted. The exemptions to the allocation system are intended to incentivize the types of housing identified as the most needed in the community. The permanently affordable allocations were deed restricted units for low income households and the restricted units were size restricted, owner-occupied units with initial prices set to be affordable to middle income households but with no ongoing resale or income restrictions. Projects which included at least 20% permanently affordable and 35% restricted units were able to receive the required RGMS allocations faster than those projects that contained market rate units exclusively. The policy objective was to ensure that new residential growth helped to meet the city's affordable housing goals. This was still a voluntary system. Given Boulder's rapidly escalating land values, it made more sense for someone to wait for an allocation for a market rate unit rather than produce an affordable unit.
- The Major Site Review process was established as part of the discretionary land use review process, which gave priority consideration to residential projects that contained at least 20% permanently affordable and 35% restricted units.

### 1996

- The city's first cooperative housing ordinance is adopted. Cooperative housing is a form of housing where unrelated individuals choose to share a dwelling unit and where each family or individual has rights commensurate with ownership. No co-ops were created under these strict code provisions.

- City began administering a down payment assistance program. The purpose of the down payment program was to provide gap financing to make up the difference between what the purchaser can afford as a down payment and the amount needed to make the financing work for the purchaser.
- City requires that all units assisted through the Housing Fund Program remain permanently affordable in perpetuity.

### 1997

- City establishes its first cash-in-lieu option for developers of projects that were in progress at the time the new RGMS was adopted. Approximately \$1.3M was generated from this option. These funds were used for low- and moderate-income housing projects.
- The housing policies of the Boulder Valley Comprehensive Plan were amended to reflect the city's goals for maintaining existing and integrating new affordable housing throughout the community and establishing the goal to have at least 10% of the total housing stock be permanently affordable to low- and moderate-income households.

### 1998

- The city begins work on the Comprehensive Housing Strategy. The Strategy, accepted by Council in 2000, is organized around five themes: managing density and growth; strengthening partnerships; holding and gaining ground on support for low- and very low income households; keeping moderate-income workers in Boulder; and helping special populations and seniors. The Housing Strategy included the objective of reaching the goal to have 10% of the total housing stock as permanently affordable within 10 years.
- City voters voted to increase the housing excise tax and market developments and to waive the development excise tax on permanently affordable housing projects.

### 2000

- The city's Housing Division establishes an Asset Management Program to ensure that the affordability requirements of all the city's affordable rental and homeownership units are met. This includes annual monitoring of permanently affordable rental units and an annual letter sent to permanently affordable homeowners to remind them of the program's requirements. The city also begins to expand its homeownership assistance program for moderate income households.

- City adopts the Inclusionary Zoning program. The Inclusionary Zoning program requires that 20% of all new residential development is permanently affordable for low and moderate-income households. The program provides options for meeting the Inclusionary Zoning requirement, including the option of paying a cash-in-lieu amount for the required permanently affordable units. Cash-in-lieu funds are combined with other city housing subsidy funds and used to rehabilitate existing affordable units, acquire market rate units, and convert them to permanently affordable units as well as construct new permanently affordable units and help make units permanently affordable to very low income households.
- The Residential Growth Management System (RGMS) is amended to remove the affordable housing components added in 1995. At the time the growth management system, as well as annexation policy, were the only methods of securing some affordable housing through development projects. However, the adoption of the Inclusionary Zoning program described above allowed the city to achieve the goal of affordable housing in a less cumbersome, more direct way than through growth management limitations. Additional exemptions were added to growth management allocations, including mixed-use developments, developments with a significant portion of affordable housing. These were housing types that the city, as a matter of policy, desired to encourage. The memo sent to City Council stated that this change “would have the effect of permitting more residential construction, more quickly” than the previous growth management system.
- Manufactured Housing Land Use and Policy adopted as part of the Boulder Valley Comprehensive Plan update. A policy titled *Preservation and Development of Manufactured Housing* is adopted and the Manufactured Housing (MH) land use category is established. The new policy recognizes the importance of manufactured housing as an option for many households and commits to preserving mobile home parks, developing new ones, increasing opportunities for resident ownership, addressing health and safety concerns in these communities, and helping to mitigate for the loss of housing through support for rehousing.

## 2004

The Residential Growth Management System (RGMS) is amended to add an exemption for land that has been rezoned from non-residential zoning district to a residential zoning district. The update was made in response to blanket rezonings done by the city to implement updates made to the comprehensive plan, including the rezoning of the 28<sup>th</sup> Street frontage road to high density residential zoning. This growth management system adopted in 2004 is still in place today.

## 2007

- The city forms a Regional HOME Consortium with Boulder County, the City of Longmont and the City and County of Broomfield. The Consortium has increased locally controlled funding for affordable housing and formed collaborative partnerships to address affordable housing concerns in the region.
- The Boulder County Homeownership Consortium and its sponsors support the Boulder County Housing Authority's HUD-approved Housing Counseling Program. Both the City of Boulder and the City of Longmont provide the program with financial support. Thistle Community Housing provides valuable in-kind training support through the NeighborWorks Training Institute.

## 2008

The city initiates the Affordable Housing Program Review which **consists** of three phases:

Council reaffirmed the existing goal to have 10% of the city's housing be permanently affordable including the income targets and homeownership rental mix. They removed the goal for some percentage to be acquired through acquisition and some through new development and adopted an additional goal of 450 units affordable to middle income households.

## 2010

In an update to Inclusionary Zoning, the program was renamed Inclusionary Housing (IH). The updated modified the annual adjustment for cash-in-lieu and mitigated the adjustment for smaller developments, applied IH requirements to redevelopment projects when the total number of redeveloped or newly constructed dwelling units equals five or more, and modified the land dedication option to clarify specific requirements for the dedicated land.

## 2013

- A community conversation commences to inform city housing goals and city efforts, refer to as Comprehensive Housing Strategy (CHS). The CHS provided the city with an action plan organized around five themes: 1) address housing as part of the Comprehensive Plan Update, 2) create a middle income housing strategy, 3) preserve existing affordable housing, 4) achieve our 10% goal, and 5) projects, partnerships, governance, and other.

- Affordable housing linkage fees are adopted, which apply to non-residential development in the city. The funds are used offset the impacts of new developments in the city and are an important funding source for affordable housing.

## 2015

- City establishes stiff penalties for interference with the sale of pre-1976 mobile homes, disallowing excessive home upgrade requirements by a mobile home park owner and clarifying that tree maintenance is exclusive responsibility of the park owners. Council also commits funding for legal services for mobile homeowners.
- Short-term home rentals (rented for 29 days or less at a time) are expressly permitted in the rental licensing code with specific regulations. The rental property must be the owner's principal residence; principal residence is defined as the dwelling unit in which a person resides for more than one-half of the year.
- A Housing Boulder Toolkit was developed as a compilation of ideas to begin a community discussion on housing. The Housing Boulder community conversation was brought to a close and rather than adopt a full housing strategy, Council chose to identify approximately 20 work plan items known as the Housing Boulder Action Plan.

## 2016

- Middle Income Housing Strategy (MIHS) adopted as a new component within Boulder's Comprehensive Housing Strategy. The strategy provides a housing policy framework, including community priorities for action and specific tools to help meet the adopted Housing Boulder goal to "Maintain the Middle."
- Affordable Housing Preservation Ordinance adopted, which was aimed at long-term preservation of affordable housing that would otherwise be lost over time. The ordinance enables permanently affordable properties to rebuild to the number of existing units in situations where zoning was changed after the property was built (legal nonconforming uses).

## 2017

- The 2015 Major Update to the Boulder Valley Comprehensive Plan (BVCP) strengthened housing policies and goals for middle income units were included. Council also adopted specific policies related to achieving additional affordable housing when the city grants additional intensity, height, or any other benefit to a developer.

- City's regulations on cooperative housing are substantially revised to facilitate the creation of new cooperative housing units and to legitimize existing illegal units.
- Code changes are made to support mobile home park residents, including the establishment of a homeowner's right to privacy, prohibiting retaliation by the park owner, and mandating mediation. The regulations are intended to "level the playing field" between homeowners and park owners.
- Updates made to the Inclusionary Housing Program to achieve three goals; create a middle income requirement, incentivize on-site units, and create a new design review process. To implement the middle income strategy, IH was updated to add a 5% middle income component consisting of three tiers of pricing: 80%, 100%, and 120% of area median income (AMI). The resulting standard IH requirement is 25% of all units as permanently affordable, with a pricing mix of 80% low/moderate income and 20% middle income. Incentives and a couple of disincentives were built into the program to encourage for-sale developments to provide the affordable units on-site.
- Housing excise tax is repealed and replaced with non-residential capital facility impact fee.

## 2018

- ADU regulations updated, which increased the maximum allowable saturation in a neighborhood area, increased the allowable area, loosened parking requirements, created exemptions for historic properties, and established an affordable ADU option. Newly created accessory units are unable to be used as short-term rentals.
- Affordable housing linkage fees, originally adopted in 2013, are increased on non-residential development in the city, increases the funds available for affordable housing development.

## 2019

Manufactured Housing Strategy and Action Plan adopted, which frames the city's approach to and understanding of Mobile Home Communities in Boulder into the future. The strategy and action plan encourages the preservation of existing mobile home parks and the development of resident-owned parks.

## 2020

Ordinance No. 8412 approved to support eviction prevention services. Excise tax was approved on dwelling units with rental licenses to be used to fund legal representation for

persons facing eviction proceedings and for rental assistance for persons that may be facing an eviction or need emergency rental assistance.

**2023**

*Proposed date for update to the Inclusionary Housing program to increase on-site and middle income outcomes and make other substantive program changes.*