



## OTTEN JOHNSON ALERT

# Colorado Inclusionary Housing Reform; Local Policy Takes Shape

November 2021 • [Diana Jenkins](#)

In May, Governor Jared Polis signed into law [HB21-1117](#), which allows local governments to require rental housing developers to provide affordable units in new development projects. As covered in our [earlier client alert](#), the law supersedes a 2000 Colorado Supreme Court decision that determined that some forms of inclusionary housing policies constituted forms of rent control, which is prohibited by Colorado law. Although many municipalities across the state have expressed interest in developing inclusionary housing policies in the past, the City and County of Denver is the first to release a draft policy proposal that responds to the new law.

On October 1, Denver published the [Expanding Housing Affordability Proposed Policy Approach](#) drafted by Denver city staff with input from an advisory committee comprised of stakeholders from both the public and private sectors. Denver's proposed policy details key considerations and findings that informed the policy approach, incentive structure, and timeline of changes. Denver's draft policy proposes addressing the inclusionary housing shortage in the following ways:

Mandatory inclusionary housing. The draft policy proposes a mandatory inclusionary housing requirement calculated upon the basis of area median income, or AMI, that would apply to all new residential development (both ownership and rental) of 8 or more units. Throughout the draft policy, requirements are differentiated across high-cost market areas and typical-cost

market areas. High-cost market areas are neighborhoods with the highest rents and land values in the City. These include: Central Business District, Union Station, Golden Triangle/Civic Center, and Cherry Creek. Typical-cost market areas are all other areas of the City.

The applicant may choose between two options to satisfy the on-site inclusionary housing requirement as follows:

		Staff On-Site Build Recommendations	
		Typical-Cost Market Area	High-Cost Market Area
<b>Option 1</b>	Rental Units	8% of units maximum 60% AMI	10% of units maximum 60% AMI
	Ownership Units	10% of units maximum 80% AMI	12% of units maximum 80% AMI
<b>Option 2</b>	Rental Units	12% of units average 70% AMI	15% of units average 70% AMI
	Ownership Units	15% of units average 90% AMI	18% of units average 90% AMI

Some exceptions apply for preexisting affordable housing commitments (such as, for example, projects that have entered into affordable housing agreements as a condition to rezoning prior to the enactment of the proposed ordinance), charitable entity association, government supported financing, and certain post-casualty reconstruction.

Alternative compliance. As required by HB21-1117, a fee-in-lieu option is available for development that would otherwise be subject to the mandatory inclusionary housing. The draft policy proposes fees as follows:

	Proposed Fee-In-Lieu	
	Typical-Cost Market Area	High-Cost Market Area
<b>Rental Units</b>	\$268,000 per affordable rental unit required (8% of units)	\$311,000 per affordable rental unit required (10% of units)

<b>Ownership Units</b>	\$408,000 per affordable ownership unit required (10% of units)	\$478,000 per affordable ownership unit required (12% of units)
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Additionally, the draft language allows for negotiated agreements in instances where alternative arrangements may be more beneficial and appropriate to satisfy key policy concerns.

The draft policy also proposes offering incentives for increasing affordable housing requirements beyond the minimum standards, such as building permit fee reductions, parking requirement reductions, increased building height allowances, vehicle parking exemptions, and expedited review processes.

As part of reviewing Denver’s overall approach to inclusionary housing in light of the new flexibility offered by HB21-1117, staff has also proposed an increase in linkage fees that the City has had [in place since 2016](#). The updated linkage fee will apply to all new commercial, industrial, and residential development of 1-7 units, as well as additions to said development. The linkage fees are proposed as follows:

	<b>Proposed Linkage Fees</b>	
	<b>Typical-Cost Market Area</b>	<b>High-Cost Market Area</b>
<b>Single Unit, Two-Unit, or Multi-Unit: 1,400 square feet or less per unit</b>	\$4 per square foot	\$4 per square foot
<b>Single Unit, Two-Unit, or Multi-Unit: More than 1,400 square feet per unit</b>	\$6 per square foot	\$6 per square foot
<b>Commercial, Sales Services &amp; Repair</b>	\$6 per square foot	\$8 per square foot
<b>Industrial, Manufacturing, Wholesale &amp; Agricultural</b>	\$4 per square foot	\$4 per square foot

Denver anticipates concluding the Expanding Housing Affordability Project in spring of 2022. The current draft proposal includes the following timelines for new projects wishing to be exempt from the new requirements:

For projects requiring Site Development Plan (SDP) review, applicants should

submit a concept SDP by June 30, 2022 and obtain final SDP approval by August 30, 2023. Staff may consider a longer window for SDPs subject to Large Development Review, Design Review, and/or other processes such as subdivision.

For projects requiring residential review, applicants should submit building permits along with all applicable plan review fees by June 30, 2022 and obtain building permits (approval and issuance) by December 30, 2022.

These deadlines are subject to change, however, as the proposal evolves.

Although Denver is the first city to release a comprehensive draft policy proposal reacting to the new law, several municipalities had adopted inclusionary housing ordinances prior to the passing of HB21-117, including:

Telluride's Land Use Code requires development of affordable housing concurrent with all single-family, duplex, multi-family, commercial, accommodations and other nonresidential new development. The minimum affordable housing requirements depend upon the predicted number of employees generated by the proposed development. The material provisions of Telluride's ordinance have been largely unchanged since enacted in 1994.

Boulder's current Inclusionary Housing Program requires developments of five or more dwelling units provide 25% and four or fewer dwelling units provide 20% of all new residential development (for sale and rental units) as permanently affordable housing.

Glenwood Springs adopted Ordinance 1-2021 this past March, which requires 20% of new units within residential developments to meet certain "community housing" standards and 10% of new units to be leased or sold at 100% of the area median income.

Longmont's current Inclusionary Housing Ordinance requires the provision, or the equivalent, of 12% of units, in new residential developments be affordable to low- and moderate-income buyers. Longmont defines affordable as at or below 80% AMI and units rented to households at or below 50% AMI.

Superior adopted Ordinance 0-18 in 2020, which requires 15% of new residential developments (with 10 or more units) be leased or sold at 80% of the area median income. Developments of less than 10 units have the option to pay a fee-in-lieu.

With concern about [Colorado's housing shortage](#) growing year by year, we would expect more local governments to follow suit in response to HB21-1117, especially those that have already implemented more limited (by the now-obsolete Telluride ruling) regulations or policy guidance aimed at increasing affordable housing stock, such as Aspen, Aurora, Broomfield, Fort Collins, Summit County, and Vail.

We will continue to monitor these and other local governments' activity in connection with this new legislation.

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