Boulder City Council
STUDY SESSION

Tuesday
February 23, 2016

6-7:30 PM
Report from Hillard Heintze, LLC
Independent Analysis of Police Data and Review of Professional Police Complaint Processes
(This memo will be available February 18)

7:30-9 PM
Middle Income Housing Strategy

Council Chambers
Municipal Building
1777 Broadway

Submit Written Comments to City Council, ATTN: Lynnette Beck, City Clerk, 1777 Broadway, P.O. Box 791, Boulder, CO 80306 or Fax to 303-441-4478 or E-mail: council@bouldercolorado.gov

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STUDY SESSION MEMORANDUM

TO: Mayor and Members of City Council

FROM: Jane S. Brautigam, City Manager
Mary Ann Weideman, Assistant City Manager
Greg Testa, Police Chief
Karen Rahn, Director Human Services
Tammye Burnette, Assistant to the City Manager

DATE: February 23, 2016

SUBJECT: Report from Hillard Heintze – Independent Analysis of Police Data and Review of Professional Police Complaint Processes

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I. PURPOSE

At the March 17, 2015 City Council meeting, several community members voiced concerns regarding the perception of safety in our community. City Council directed staff to follow up on the issues raised and a work plan was developed in support of the city's commitment to a safe and welcoming community. This memo addresses two of the items specifically outlined in the work plan:

1. Provide transparent information through an independent analysis of the Police Department's arrest and summons data, and
2. Ensure the structure and process of the Police Professional Standards Review Panel remains a best practice.

After a competitive, nationwide Request for Proposal process, the city entered into an agreement with Hillard Heintze on August 23, 2015. Hillard Heintze is a strategic advisory firm that specializes in evaluations of law enforcement agencies and practices. During the past few months, Hillard Heintze has worked under the guidance of the City Manager's Office with the Police Department, Human Services and members of the community to complete their independent review and assessment. The attached report (Attachment A) summarizes how Hillard Heintze approached the project as well as their findings and recommendations that highlight opportunities for the city to address and help ensure Boulder remains a welcoming, safe and respectful place.

II. QUESTIONS FOR COUNCIL

- Does Council have any questions or feedback about the independent analysis of Boulder Police Department data conducted by Hillard Heintze?
- Does Council have any questions or feedback about the evaluation of the structure and process of the Professional Standards Review Panel performed by Hillard Heintze?
- Does Council have any questions or feedback about the findings and recommendations in the Hillard Heintze report?
- Does Council have any questions or feedback about staff's response to the recommendations?
- Are there other information items staff may provide for Council consideration in support of our safe and inclusive community objectives?

III. NEXT STEPS

We anticipate that the information and insights gained from the Hillard Heintze report will guide city leadership and staff as priorities are set for future action items in regards to enhancing actual and perceived safety and inclusiveness in Boulder.

The Police Department, in partnership with the City Manager's Office, recognized the importance in having an independent analysis of the department's arrest and summons data and to ensure the structure and process of the Police Professional Standards Review Panel remains a best practice. Staff intends to continue to review and evaluate each recommendation made by Hillard Heintze as an opportunity to develop and improve our Police Department practices to ensure transparency and accountability to our community, and to help ensure Boulder remains a welcoming, safe and respectful place. Staff's response and information specific to each Hillard Heintze recommendation, including estimated timelines, are included in Attachment B.

Additionally, to further our understanding of community concerns, staff will be working on the development and implementation of a community perception assessment that will be a statistically valid and culturally appropriate means of gathering specific data from community members. The assessment will not be focused on any one area of city services, (i.e. the Police Department), but rather will look to determine the overall satisfaction level of the community as it relates to the city's and community's commitment to and protection of human and civil rights and social equity. Staff anticipates contracting with a consultant by the first week of March with work set to begin in early April.

Attachment A – Boulder Police Department – An Independent Analysis of Police Data and Review of Professional Police Complaint Processes

Attachment B - Staff Response and Information Specific to Hillard Heintze's Recommendations

BOULDER POLICE DEPARTMENT

Independent Analysis of Police Data and Review of Professional Police Complaint Processes

HILLARD HEINTZE®

February 18, 2016

February 18, 2016

Mr. Tom Carr
City Attorney
City of Boulder
1777 Broadway
Boulder, Colorado 80302

Ms. Jane S. Brautigam
City Manager
City of Boulder
1777 Broadway
Boulder, Colorado 80302

Dear Mr. Carr and Ms. Brautigam:

Please find attached our final report detailing the results of our objective and independent review of select areas of the Boulder Police Department's operations. Specifically, we analyzed and reviewed data on stops, arrests and summons, and conducted an evaluation of the Police Professional Standards Review Panel (PSRP).

We identified 16 key findings, ranging from deficiencies in the capture, availability and use of stop-related data, to validation of complaint-related processes and protocols. These findings are based on our review of data and interviews with police command, officers, City and court personnel and community stakeholders. The rest are from our review of the PSRP investigative process, as well as information we received during interviews with stakeholders inside and outside the Department.

Our team developed 12 recommendations, highlighting the most important opportunities for the City of Boulder and the Boulder Police Department to address in order to improve the quality of policing services, enhance relationships with Boulder citizens and communities, increase transparency and build a stronger foundation for sustainable public trust.

Thank you again for this opportunity to be of service. We take it as a special honor that you have chosen to place your trust in us on this matter.

Sincerely,

HILLARD HEINTZE LLC

Arnette Heintze

Arnette F. Heintze
Chief Executive Officer

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EXECUTIVE SUMMARY

Strategic Context: The Entire Country Has Become Focused on the Issue of Bias-Based Policing

As concerns continue to grow across the country following the outcomes of high-profile exchanges between police and the communities they serve, police departments across the nation are facing intense scrutiny to ensure they enforce the law equally across their jurisdictions and investigate complaints against their own officers in a thorough, fair, objective and transparent manner.

Local Perspective: The Boulder Police Department's Challenges Reflect National Trends

These challenges are also relevant for the City of Boulder and the Boulder Police Department (BPD). In November 2014 an article in the national newspaper *USA Today* suggested minorities receive disparate treatment in Boulder. The article generated new scrutiny from members of the community, as well as the media, regarding whether the BPD's enforcement stops and arrest statistics reflect a disparate impact on African Americans. To the credit of the City Manager, the Police Chief and elected officials, rather than simply ignoring these concerns or waiting for public clamor to die down, they proactively chose to initiate an independent review and analysis of the BPD's enforcement stops and arrest statistics to gain insight on how current policies and procedures could possibly be creating disparate impacts on minorities within the City of Boulder. These insights would guide any potential operational changes in keeping with the City of Boulder's commitment to continuous improvement. They also chose to include in this review and analysis the current policies and procedures for handling both internal and external citizen complaints against the Department.

Assignment and Authorization: What We Were Asked to Do

In order to address these issues directly – and in an independent manner – the City of Boulder conducted a competitive, nationwide Request for Proposal process to identify a firm to undertake an objective and transparent review of select areas of the Department's operations. On August 24, 2015, the City awarded the contract to Hillard Heintze and authorized the following:

1. **Analysis and Review of Data on Stops, Arrests and Summons**: An objective, transparent analysis and evaluation through an independent review of the BPD's contact, field interview, arrest and summons data for the past five years (2010 to 2015). Note, the data we reviewed included arrest data from 2011 through August 2015, and internal affairs data from 2010 to 2015.
2. **Evaluation of Police Professional Standards Review Panel (PSRP):** Recommendations to ensure the structure and processes of the PSRP meet current best practices for cities and police departments similar in size and complexity to the City of Boulder.
3. **Gathering Subjective and Anecdotal Information from Community Stakeholders:** To inform City leaders and the BPD on the perspectives of a number of key community stakeholders by conducting interviews of over 30 City and County leaders, local government officials, and leaders and representatives from the University of Colorado, local social service organizations, non-profit organizations and neighborhoods.

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Assessors: Overview of Team

The Hillard Heintze assessment team included nationally recognized law enforcement subject-matter experts in (1) community-oriented policing and collaborative reform, (2) constitutional patterns and practices and the protection of civil rights, (3) cultural transformation and change management, and (4) strategic planning, mission alignment and execution. These areas include, for example: procedural justice; use of force and complaint investigations; internal affairs; early intervention; training and supervision; staffing analysis for police departments; and governance, ethics and integrity in public policing.

Outcomes: Key Findings and Recommendations

The assessment team has drawn 16 key findings, ranging from gaps and deficiencies in the capture, availability and use of stop-related data, particularly with respect to race and ethnicity, to validation of complaint-related processes and protocols that, by and large, are thorough, fair and objective.

The team has also developed 12 recommendations that highlight the most important opportunities for the City of Boulder and the Boulder Police Department to address in order to improve the quality of policing services, enhance relationships with Boulder citizens and communities, increase transparency and build a stronger foundation for sustainable public trust.

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I. INTRODUCTION

PURPOSE: THREE PRINCIPAL OBJECTIVES

The three objectives supporting this engagement can be summarized as follows:

1. **UNDERSTAND:** Determine if disparate patterns are evident, particularly racial. Clarify the causes of any disparities identified and analyze why the data may differ from the resident demographics. Gain greater insight into the viewpoints and opinions of key community stakeholders who represent a variety of local interests.
2. **COMPARE:** Compare patterns identified in Boulder's data to available data from peer cities or similar municipalities.
3. **RECOMMEND:** Evaluate the structure and processes of BPD's PSRP and provide recommendations for the implementation of best practices that will ensure public trust and credibility as well as police accountability.

SCOPE: WHAT WE WERE ASKED TO ADDRESS

The **data analysis** included a review of the City of Boulder population (e.g., residents, workers, transients, visitors, students and the homeless); determination of true incident rates taking into account repeat incidents with BPD and whether there was a correlation between race and incident disposition; related factors such as time of day or location of incidents; and demographics and incident data from peer cities.

The **PSRP evaluation** included research on best practices by other U.S. cities to review allegations of police misconduct, including the structure of citizens' review boards or other form of civilian oversight; provision of data concerning possible differences in the structure and effectiveness of such review boards; evaluation of the Boulder PSRP; and recommendations for the City and Department based on this review.

ACTIONS TAKEN: HOW WE CONDUCTED THIS REVIEW

Based on the authorization, objectives and specified scope of work, the Hillard Heintze team:

1. Developed an understanding of the **Department's mission, vision and values** as well as its **history, organization** and **cultural environment**.
2. Requested, and reviewed numerous policies, procedures, general orders, training documents, annual reports, surveys, arrest data, officer contact reports, court records and other **data and documents provided by the City and BPD** and other community stakeholders.
3. Analyzed the **current social, political and economic realities** facing BPD – in light of the fact that law enforcement agencies in nearly all cities across the nation are being challenged to provide professional police services to increasingly diverse populations while budgets have decreased to historically low levels.

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4. Interviewed **police employees and command staff, City and community stakeholders** regarding their understanding of the scope of our assessment and gathered insights and information with bearing on the assessment's objectives.
5. Reviewed **BPD's contact, field interview, arrest and summons data** for the past five years (2011 to 2015).
6. Acquired, analyzed and compared **relevant data from other peer cities and police departments** to identify patterns that might prove helpful to the City and the Department.
7. Identified successful **civilian oversight and PSRP models** to validate best practices endorsed by the Department of Justice (DOJ), International Association of Chiefs of Police (IACP), and other agencies.
8. Researched and reviewed other **emerging national and state practices** in the areas related to the assessment goals including structural and practical methods for creating policies, procedures, processes, practices and training.
9. Developed **recommendations** and prepared this **final report**.

ASSESSORS: A TEAM OF NATIONAL EXPERTS

About Hillard Heintze

Hillard Heintze is one of this nation's foremost privately held strategic advisory firms specializing in independent ethics, integrity and oversight services – with a special focus on federal, state and local law enforcement agencies including police departments, sheriff's departments and internal affairs bureaus.

The firm provides the strategic thought leadership, trusted counsel and implementation services that help leading government agencies and institutions, corporations, law firms and major public service organizations target and achieve strategic and transformational levels of excellence in law enforcement, security and investigations.

The Hillard Heintze team included the following senior law enforcement subject-matter experts.

Arnette F. Heintze, Chief Executive Officer – Engagement Leadership

As Hillard Heintze's co-founder and CEO, Arnette Heintze has transformed a small high-performing cadre of senior experts into a globally recognized strategic law enforcement advisory and consulting firm with strong practices in law enforcement consulting, security risk management and investigations. Under his leadership, Hillard Heintze has emerged as one of the fastest-growing private companies in the United States. Heintze brings to our law enforcement clients over 38 years of experience in federal, state and local policing.

Kenneth A. Bouche, Chief Operating Officer – Executive Oversight

Over nearly two decades, Ken Bouche has established a career as an executive leader and senior advisor at the forefront of applying best practices in management, government, technology, information sharing and intelligence to the highly specialized needs of the law enforcement, homeland security and justice communities. In addition to serving as Hillard Heintze's Chief

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Operating Officer, Bouche provides executive oversight of the firm's support to the U.S. Department of Justice COPS Office's Collaborative Reform Initiative, which is responsible for independent assessments of police department operations; constitutional policing audits and biased-based assessments; development and application of crime-reduction strategies; collaboration, community partnerships and information-sharing; and community-oriented policing strategies. Bouche has great depth in the justice and homeland security space having served as a member the IJIS Institute's Board of Directors from 2009 to 2013. Bouche served for 23 years with the Illinois State Police.

Robert Davis, Senior Vice President – Practice Leader and Lead Project Manager

Davis is a highly regarded and innovative national leader and expert in policing and public safety with a special emphasis on ethics and integrity programs, as well as issues ranging from use of force policy to active shooter planning. He leads the firm's Law Enforcement Consulting practice. This responsibility has ranged from serving as a strategic advisor on a high-level engagement Hillard Heintze conducted in partnership with DHS's Homeland Security Studies and Analysis Institute to evaluate integrity and counter-corruption programs within U.S. Customs and Border Protection to advancing the firm's on-the-ground support to the U.S. Department of Justice COPS Office's Collaborative Reform Initiative for a growing list of cities across the United States as well as other DOJ initiatives. Davis has over 4,000 hours of experience over a 17-year period delivering law enforcement training for local police academies throughout California while working as a full-time police officer at the San Jose Police Department. This included designing and leading specialized training for the California Commission on Peace Officer Standards and Training (POST) and developing courses taught throughout California's police academies, and for POST-certified training programs at local police agencies. Davis earned several "Top Instructor" awards at the police academy in San Jose. Davis was the Chief of Police of San Jose, California for seven years and served as the President of the Major Cities Chiefs Association.

Marcia K. Thompson, Esq. Vice President – Subject-Matter Expert

Marcia Thompson is a Supreme Court of Virginia certified mediator and holds a coaching certificate awarded by the American Society for Training and Development. She has worked extensively with federal, state and local law enforcement, national and international corporations, as well as state and federal government agencies to help teach, coach and create better workplace environments and stronger working relationships built on trust and mutual respect. As a Hearing Officer for the Department of Justice, Office of Justice Programs, Thompson held delegated authority to review claims and conduct oral hearings throughout the United States; issue subpoenas; administer oaths; examine witnesses; and receive evidence to render a determination regarding a pending Public Safety Officers' Benefits (PSOB) claim. For more than 12 years, Thompson owned and operated her own firm providing a wide range of consultative services to public and private sector clients on conflict resolution and training. Her organization facilitated courses for the Department of Justice, Department of Homeland Security, State Department and other law enforcement and social, professional organizations. During this period, she provided and handled all forms of alternative dispute resolution, mediation and facilitation services. Additionally, Thompson also handled legal and collaborative representation and served as a contract civil prosecutor or attorney at the state and county levels.

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Dr. Alexander Weiss – Subject-Matter Expert

Weiss is a nationally prominent expert and specialist in public safety, law enforcement and police department operational and staffing analysis, Dr. Alexander Weiss brings more than 30 years of experience to the Hillard Heintze Senior Leadership Council. For nine years, Weiss was Director of the Northwestern University Center for Public Safety and Professor of Management and Strategy at the J.L. Kellogg Graduate School of Management. During that time he also served as a senior advisor to the Indianapolis Police Department. During his tenure with the Colorado Springs Police Department, he served as a field supervisor and director of operations analysis. Dr. Weiss has developed the most recognized police-staffing model in modern policing and is the co-author (with Dr. Jeremy Wilson) of A Performance-Based Approach to Police Staffing and Allocation, published by the COPS Office, U.S. Department of Justice.

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II. KEY FINDINGS

The first six key findings below are based on our review of data and interviews with police command, officers, City and court personnel and community stakeholders. The rest are key findings emerging from our review of the PSRP investigative process including a random sampling of internal affairs cases completed between January 2010 and November 2015, as well as information we received during interviews with stakeholders inside and outside the Department.

Key Finding #1:
Stop-Related Data Is Non-Existent

BPD officers do not gather any data when a vehicle is stopped and the driver is not cited. As a result, we cannot determine whether there was any bias in the decision to stop the vehicle because we are limited in our ability to evaluate the officer's conduct after the stop was initiated. This lack of information about vehicle stops is common in Colorado, but is a significant impediment in making assessments about bias.

Key Finding #2:
No Records Are Available on Investigative Actions During Traffic Stops

There are no records in the BPD database about investigatory actions during the traffic stop – such as whether a consent search was conducted. This is critical because once the traffic stop has been initiated we can presume that the officer has drawn a conclusion about the race of the driver, and we know from studies in other communities that consent searches often show evidence of racial bias.[1]

Key Finding #3:
Reporting and Data Capture on Race and Ethnicity Is Inconsistent

The race and ethnicity of persons contacted by BPD officers is not reported in a consistent manner. BPD permits officers to list a person's race as "unknown." In many records the area of the form relating to the race of the subject is simply left blank. The Field Interview Card has a block to list a person's race but not one for ethnicity. As a result, most people of Hispanic origin were listed as white on Field Interview Cards, rather than white of Hispanic origin.

Key Finding #4:
Bias Was Evident in BPD Traffic and Misdemeanor Citations

Despite data unavailability and inconsistency, we believe that an African American person is approximately twice as likely to be cited for a traffic or misdemeanor offense than we would expect based on community demographics.

Key Finding #5:
Inconsistency of Data Collection May Skew Contact Card Conclusions

It is possible that the overrepresentation of African Americans in the data is because officers are more likely to prepare a Field Interview Card for a black person than for a non-black individual.

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Key Finding #6:
Disparity of Data in Felony Arrests Not Indicative of Bias

On its face, the felony arrest data is the strongest evidence of racial disproportionality in arrests. However, most of the BPD arrests are for non-discretionary serious offenses and a substantial portion of the remaining data is based on status violations generated by the court or other agencies and not by BPD officers.

Key Finding #7:
BPD's Complaint Investigation Protocols Are Up-to-Date

The processes and tools the Professional Standards Unit (PSU) investigator and the Department employ to investigate complaints against BPD members or policies and procedures are based on protocols we consider to be up-to-date and consistent with those used by progressive police departments across the country.

Key Finding #8:
PSU Investigations Are Conducted Fairly and Objectively

The PSU investigators who investigated the cases we reviewed completed their work in a very timely and professional manner. These cases were also investigated in a thorough, fair and objective way.

Key Finding #9:
Findings and Recommendations Also Appear to Be Thorough, Fair and Objective

The Findings and Recommendations documented in these cases appeared to be thorough, fair and objective, as were the levels of discipline in the cases of sustained employee misconduct.

Key Finding #10:
Formal Reviews and Recommendations for Class I Cases Are in Good Order

The formal reviews of the Class I cases conducted by the Professional Standards Review Panel were thorough, fair and objective, and we believe the recommendations the panel members made for each of these cases were appropriate based upon the facts of each case.

Key Finding #11:
Few Community Members Interviewed Understood the PSRP Process

Although the City of Boulder solicits members of the community to serve as volunteer members of the Professional Standards Review Panel, the community members we interviewed were largely unaware of the process to apply for a position and unfamiliar with the selection process.

Key Finding #12:
The PSRP Member Selection Process Fuels Mistrust Within the Community

The process for selecting members of the Professional Standards Review Panel, in which mainly members of the Police Department conduct the initial interview of applicants and then provide a list of candidates for consideration to the City Manager for inclusion on the panel, creates some level of mistrust within the community. Questions have arisen regarding the objectivity of the initial applicant review process.

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Key Finding #13:
BPD Needs to Improve External Communication of Internal Affairs Investigations

There is no formal mechanism by which the BPD provides ongoing or annual public information regarding the internal affairs investigations it conducts or the general outcomes of those cases.

Key Finding #14:
Community Feedback on Internal Affairs Matters Is Not Captured

There is no formal process through which BPD proactively solicits or receives feedback from the community about the quality of the internal affairs investigations it completes.

Key Finding #15:
A Written Process Is Needed to Ensure Insights Gleaned from Complaints and Referrals are Captured in Training Curriculums

BPD has a documented process to analyze the complaints and referrals it receives to determine trends that would drive changes in training, policies and procedures. However, the PSU Sergeant and the training commander need to formalize a process to analyze the complaint data and update training curriculums and policies to ensure lessons learned from complaint investigations are put into practice.

Key Finding #16:
The BPD Website Provides Detailed Information Regarding the Internal Affairs Process But Should Be Translated into Other Languages

Our review and analysis of the BPD website indicated that BPD provides very detailed information indicating how citizens may make formal complaints against Department employees, policies and procedures. It does not, however, provide detailed information about its internal affairs investigations processes or provide copies of complaint forms in any language other than English.

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III. OVERVIEW OF THE BOULDER POPULATION

The City of Boulder is located 35 miles northwest of Denver, nestled in the foothills of the Rocky Mountains at an elevation of 5,430 feet and covers 25 square miles surrounded by greenbelt, city trails, open space and mountain parks. The City has approximately 100,000 residents, including 30,000 students from the University of Colorado. Despite Boulder's proximity to metropolitan Denver, the City has disproportionately fewer minorities than the rest of the State of Colorado in most categories, as shown in **Table 1**. Population data for this study is taken from the 2010 U.S. Census.[2]

Table 1

CITY OF BOULDER DEMOGRAPHICS – 2010

	City of Boulder	State of Colorado
Population Breakdown by Race and Ethnicity		
Total Population	**97,385**	**5,029,196**
White alone, not Hispanic or Latino	83%	70%
Black or African American alone (a)	1%	4%
American Indian and Alaska Native alone (a)	0%	1%
Asian alone (a)	5%	3%
Native Hawaiian and Other Pacific Islander alone (a)	0%	0%
Two or More Races	3%	3%
Hispanic or Latino (b)	9%	21%

(a) Includes persons reporting only one race
(b) Hispanics may be of any race, so also are included in applicable race categories

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The student population of the University of Colorado at Boulder represents a large percentage of the City's population as shown in **Table 2**.

Table 2

DEMOGRAPHICS FOR THE UNIVERSITY OF COLORADO AT BOULDER[3]

	2014	2015	2015 (%)
Total Headcount	**29,772**	**30,789**	
Female	13,048	13,559	44%
Male	16,724	17,230	56%
International	2,152	2,558	8%
Domestic (U.S.)	27,620	28,231	92%
U.S. Non-minority	**21,619**	**21,767**	**71%**
White	21,023	21,226	69%
Unknown	596	541	1.8%
U.S. Minority	**6,001**	**6,464**	**21%**
African American	643	693	2.2%
Asian American	2,024	2,158	7.0%
Hispanic/Chicano	2,797	3,025	9.8%
Native American	398	440	1.4%
Pacific Islander	139	148	0.5%

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IV. A BRIEF DISCUSSION OF BIAS-BASED POLICING

The City of Boulder is among a number of communities identified recently as a place where persons of color, and particularly African Americans are more likely to be arrested. In other words, the fact that data indicates blacks are over-represented among those arrested by the Boulder Police Department suggests the possibility that the Department engages in bias-based policing.

When indications like these emerge – from data, research or anecdotes based on one or several high-profile incidents – many communities express a range of reactions including surprise, indignation and concern. Communities often respond to this notoriety by proclaiming that their police department respects the rights of all individuals and its officers do not engage in any type of discrimination. Unfortunately, there is rarely data available to support these assertions.

THE EFFECT OF RACE ON DECISION-MAKING

The City of Boulder has determined that it is important for the community to determine the real relationship between race and police officer decision-making in the Boulder Police Department. To achieve this one must understand the underlying questions and methodology. For a number of years researchers and policy makers have sought to understand the effect of race on decision-making in the criminal justice system. Such concern is well placed.

According to the U.S. Department of Justice Office of Justice Programs: [4]

- Almost 3% of black male U.S. residents of all ages were imprisoned as of December 31, 2013 (2,805 inmates per 100,000 black male U.S. residents), compared to 1% of Hispanic males (1,134 per 100,000) and 0.5% of white males (466 per 100,000).
- Black males had higher imprisonment rates across all age groups than all other races and Hispanic males. In the age range with the highest imprisonment rates for males (ages 25 to 39), black males were imprisoned at rates at least 2.5 times greater than Hispanic males and 6 times greater than white males.
- For males ages 18 to 19 – the age range with the greatest difference in imprisonment rates between whites and blacks – black males (1,092 inmates per 100,000 black males) were more than 9 times more likely to be imprisoned than white males (115 inmates per 100,000 white males).

Of particular concern is the effect of race on decision-making by law enforcement officers. A recent study[5] has defined racial profiling as "...the use of race or ethnicity, or proxies thereof, by law enforcement officials as a basis for judgment of criminal suspicion."

The author further suggests that, "if police pay more attention to (are more likely to stop and/or search) members of some racial groups, then regardless of actual criminality or offending rates, those groups will bear a disproportionate share of sanctions." Moreover, racial bias by law enforcement officers may subject innocent individuals to stops, searches and arrests.

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UNDERSTANDING DISPROPORTIONATE ARREST RATES

There are a number of reasons that might explain why African Americans are disproportionately arrested. (See sidebar.) First, it may be the case that blacks offend at higher rates than others. While African Americans are clearly arrested and imprisoned more frequently, this may be a result of racial bias rather than offending, so we need to find another way to assess the distinction. Another way to look at this question is through the National Criminal Victimization Survey (NCVS).[6] NCVS is the nation's primary source of information on criminal victimization. Each year, data is obtained from a nationally representative sample of about 90,000 households, comprising nearly 160,000 persons, on the frequency, characteristics and consequences of criminal victimization in the United States. Each household is interviewed twice during the year. The NCVS provides the largest national forum for victims to describe the impact of crime and characteristics of violent offenders.

We refer often to arrest rates for African Americans. While we are interested in the effect of racial bias on other minority groups, most police arrest reports classify Hispanics as white.

In 2008, participants who reported having been victim of a violent crime perpetrated by a single individual were asked to identify the race of the offender. Respondents indicated that the offender was black 22.8 percent of the time. Among African American victims, the offender was identified as black 65 percent of the time. So while this survey suggests that blacks are over-represented among offenders (African Americans represent about 13 percent of the U.S. population), this difference is not enough to explain the different rates of arrest or incarceration.

At the same time, studies examining racial bias in traffic stops have found that minority drivers are more likely to be stopped than whites, even though very few studies have ever determined that whites and minority drivers offend at different rates. In his extremely rigorous study of the New Jersey State Police, for example, John Lamberth found that black drivers were disproportionally stopped on the New Jersey Turnpike, and that black drivers committing serious traffic violations were stopped more than whites committing similar violations. We refer often to arrest rates for African Americans. While we are interested in the effect of racial bias on other minority groups, most police arrest reports classify Hispanics as white.

THE POTENTIAL FOR OVER-POLICING

Another plausible explanation for evidence of disproportionality is what we might call "over-policing." Police departments normally deploy their resources based on demand. That is, they base staffing on citizen calls for service. In most cities, officers are assigned to the areas with the highest levels of crime and disorder, and there are likely to be higher numbers of officers per population in those areas.

Over-policing may have the unintended consequence of increasing disproportionality at an agency. Even when officers do not engage in racially biased policing, because there are more officers in minority areas relative to other areas the agency-level data may reflect disproportionality. Although there are areas that experience high levels of police activity in Boulder, these areas do not have concentrations of minority residents.

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Finally, we may conclude that at least some of the disparities identified result from racial bias in law enforcement. This bias has been demonstrated in scores of empirical studies and more recently highlighted by James B. Comey, the Director of the Federal Bureau of Investigation. Police "often work in environments where a hugely disproportionate percentage of street crime is committed by young men of color," Comey said. "Something happens to people of goodwill working in that environment. After years of police work, officers often can't help but be influenced by the cynicism they feel. A police officer, whether 'white or black,' has a different reaction to two young black men on the side of a street than he does to two white men, Comey said, because the black men 'look like so many others the officer has locked up'."[7]

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V. ANALYSIS AND REVIEW OF DATA ON STOPS, ARRESTS AND SUMMONS

METHODOLOGY AND APPROACH

Data Reviewed and Analyzed

Our examination of BPD activity focused on three sets of data:

1. All traffic and misdemeanor offenses involving issuance of a summons.
2. Field Interview Cards which are prepared by officers when they encounter an individual and believe it is important to make a record of the contact.
3. Felony arrests.

We examined data from 2011 to 2014 and the first eight months of 2015. All tables showing data for 2015 represent a partial year. As with any data set, there are limitations in the BPD data that make it challenging to answer questions about potential police bias. Among the more critical issues are the following:

- **BPD does not gather any data when a vehicle is stopped and the driver is not cited.** As a result, we cannot determine if there was any bias in the decision to stop the vehicle or if there were factors related to the stop that influenced the officer's conduct after the stop was initiated.
- **There are no records in this database about investigatory actions during traffic stops, including if a consent search was conducted.** If a vehicle search results in an arrest the information about the search will appear in the arrest report.This is critical because once the traffic stop has been initiated, we can presume that the officer has drawn a conclusion about the race of the driver, and we know from studies in other communities that consent searches often show evidence of racial bias.[8]
- **The race and ethnicity of individuals contacted by BPD is not reported consistently because the BPD allows officers to list a person's race as unknown.** Unlike the scenarios above, in which no information is collected, in many Field Interview Card records, the area of the form relating to the race of the subject is left blank. The Field Interview Card – unlike the citation – has a block to indicate an individual's race, but not one for ethnicity. As a result, we are unable to study police officers' decision-making as it applies to Hispanics for field interview cards.

Citation Data

Boulder Police Department officers can cite individuals in four ways:

1. Most traffic offenses are cited into municipal court.
2. More serious offenses (e.g., DUI, no insurance, driver's license violation) are cited into Boulder County Court.
3. Some non-traffic offenses are cited into municipal court, including offenses such as brawling, camping, certain marijuana offenses, public alcohol possession, trespassing and public urination.

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4. More serious misdemeanor cases are cited into Boulder County Court including assault in the third degree and some thefts.

Table 3 below compares the number of county and municipal citations issued by BPD from 2011 through August 2015 and are classified by race and ethnicity. We have excluded traffic citations that resulted from traffic accidents because they do not involve a traffic stop.

For example, in 2011, 12 percent of citations issued to Asian individuals were assigned to county court, and 88 percent were assigned to municipal court. All the citations ask the officer to indicate both the race and the ethnicity of the offender. In cases in which the defendant was classified as white (race) and Hispanic (ethnicity), we reclassified them as Hispanic.

During this period, 82 percent of citations were issued for appearance in municipal court. The data reflects the number of citations issued; however, it is possible to include several charges on one citation. In fact, 15 percent of citations included more than one charge. When there was more than one charge, we captured the first one on the record. Therefore if a person were issued two citations from one stop, it would appear as two stops.

Table 3
Citations Issued by BPD 2011 - August 2015

2011 Citations	American Indian	Asian	Blank	Unknown	Hispanic	White	Black	Total
Written to County Court	9	49	4	11	650	2,331	133	3,187
Percentage	20%	12%	15%	16%	30%	14%	32%	16%
Written to Municipal Court	36	364	23	58	1,492	14,808	287	17,068
Percentage	80%	88%	85%	84%	70%	86%	68%	84%
TOTAL	45	413	27	69	2,142	17,139	420	20,255
Percentage	0.2%	2%	0.1%	0.3%	11%	85%	2%	

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Table 3
Citations Issued by BPD 2011 – August 2015

2012 Citations	American Indian	Asian	Blank	Unknown	Hispanic	White	Black	Total
Written to County Court	20	36	3	17	552	2,589	99	3,316
Percentage	23%	9%	12%	22%	32%	15%	24%	17%
Written to Municipal Court	66	375	22	59	1,195	14,574	307	16,598
Percentage	77%	91%	88%	78%	68%	85%	76%	83%
TOTAL	86	411	25	76	1,747	17,163	406	19,914
Percentage	0.4%	2%	0.1%	0.4%	9%	86%	2%	

Table 3
Citations Issued by BPD 2011 - August 2015

2013 Citations	American Indian	Asian	Blank	Unknown	Hispanic	White	Black	Total
Written to County Court	9	42	3	12	596	2,350	100	3,112
Percentage	16%	16%	18%	23%	46%	16%	25%	19%
Written to Municipal Court	49	227	14	40	690	12,016	296	13,332
Percentage	84%	84%	82%	77%	54%	84%	75%	81%
TOTAL	58	269	17	52	1,286	14,366	396	16,444
Percentage	0.4%	2%	0.1%	0.3%	8%	87%	2%	

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Table 3
Citations Issued by BPD 2011 – August 2015

2014 Citations	American Indian	Asian	Blank	Unknown	Hispanic	White	Black	Total
Written to County Court	14	32	0	11	568	2,081	86	2,792
Percentage	27%	13%	0%	44%	48%	17%	27%	20%
Written to Municipal Court	38	216	1	14	618	10,004	238	11,129
Percentage	73%	87%	100%	56%	52%	83%	73%	80%
TOTAL	52	248	1	25	1,186	12,085	324	13,921
Percentage	0.4%	2%	0.0%	0.2%	9%	87%	2%	

Table 3
Citations Issued by BPD 2011 - August 2015

2015 Citations	American Indian	Asian	Blank	Unknown	Hispanic	White	Black	Total
Written to County Court	6	16	0	8	372	1,247	64	1,713
Percentage	14%	10%	0%	33%	42%	15%	27%	18%
Written to Municipal Court	38	147	6	16	510	6,988	174	7,879
Percentage	86%	90%	100%	67%	58%	85%	73%	82%
TOTAL	44	163	6	24	882	8,235	238	9,592
Percentage	0.5%	2%	0.1%	0.3%	9%	86%	2%	

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Racial Disproportionality in Citations

In our first look at the issue of racial disproportionality in citations we determined the percentage of citations issued to blacks and Hispanics. These are illustrated below in **Table 4**.

Table 4

Racial Disproportionality in Citations 2011 – 2015

Year	Total	Black	%	Hispanic	%
2011	**20,255**	420	2.07%	2,142	10.58%
2012	**19,914**	406	2.04%	1,747	8.77%
2013	**16,444**	396	2.41%	1,286	7.82%
2014	**13,921**	324	2.33%	1,186	8.52%
2015	**9,592**	238	2.48%	882	9.20%

A Closer Look at the Data

To more thoroughly understand this component of the analysis, it is imperative that we examine the data from **2014**, the last full year for which information was available. **Table 5** illustrates the distribution of citations by type and court.

Table 5

Citations for 2014

Description	Total
County Offense Summons	1,021
County Traffic Summons	1,771
Municipal Offense Summons	3,080
Municipal Traffic Summons	8,049
(Blank)	2
Total	**13,923**

Approximately 70 percent of citations were for traffic offenses. According to data from Boulder Police and Fire Dispatch, BPD made 19,312 traffic stops in 2014, suggesting that a substantial fraction of stops do not result in a citation, which means we have no information about who was stopped, why they were stopped and why they were not cited.

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Frequently Issued Citations

Table 6 illustrates the offenses that were cited at least 100 times in 2014. Note that we captured the first offense on the record, therefore the number of offenses listed below may not be accurate. It is shown for illustrative purposes. For example, in 2014, BPD reported 584 arrests for DUI.

Table 6

Offenses with a Minimum of 100 Citations

Offense	Citations
Speeding - 10 to 19 MPH over limit	3,230
Valid license plate required	1,254
Possession/consumption of alcohol in public	688
Stop at stop sign required	475
Obedience to turn device required	471
Possession/sale of alcohol by minors	374
U-Turn prohibited/hazardous	349
Drove vehicle license restraint	341
Trespassing	324
Disobeyed red signal light - left turn	316
Dogs running at large	315
DUI	252
Failed to present evidence of insurance	239
Obedience to turn-prohibited sign	227
Speeding - 5 to 9 MPH over limit	206
Drove on restricted street	202
Camping/lodging on property without consent	199
Theft under $50.00	163
Driving without valid license	157
Urinating in public	149
Disobeyed red signal light - straight thru	130
Theft $50 - $300	113
Speeding - 20 to 39 MPH over limit	111
Consumption of marijuana in public	110
Displayed expired number plates	105

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The information in **Table 6** reveals important issues:

- Most of these offenses present the opportunity to exercise officer discretion because most are low-level offenses.
- Twenty-five percent of all citations are for speeding.
- A number of offenses address public order including camping, urinating in public, public alcohol consumption and dogs running at large, which reflects the Department's commitment to order maintenance in public spaces.

Residency of Persons Cited

Table 7 shows the distributions of citations by race and by residency.

Table 7

Residency of Individuals Cited (2014)

	Non-Residents		Residents of Boulder	
	Count	**%**	**Count**	**%**
White	12,038	86.46%	7,525	87.79%
Minority	1,885	13.54%	1,047	12.21%
Total	**13,923**	**100%**	**8,572**	**100%**

The data suggests that residents and non-residents receive similar treatment.

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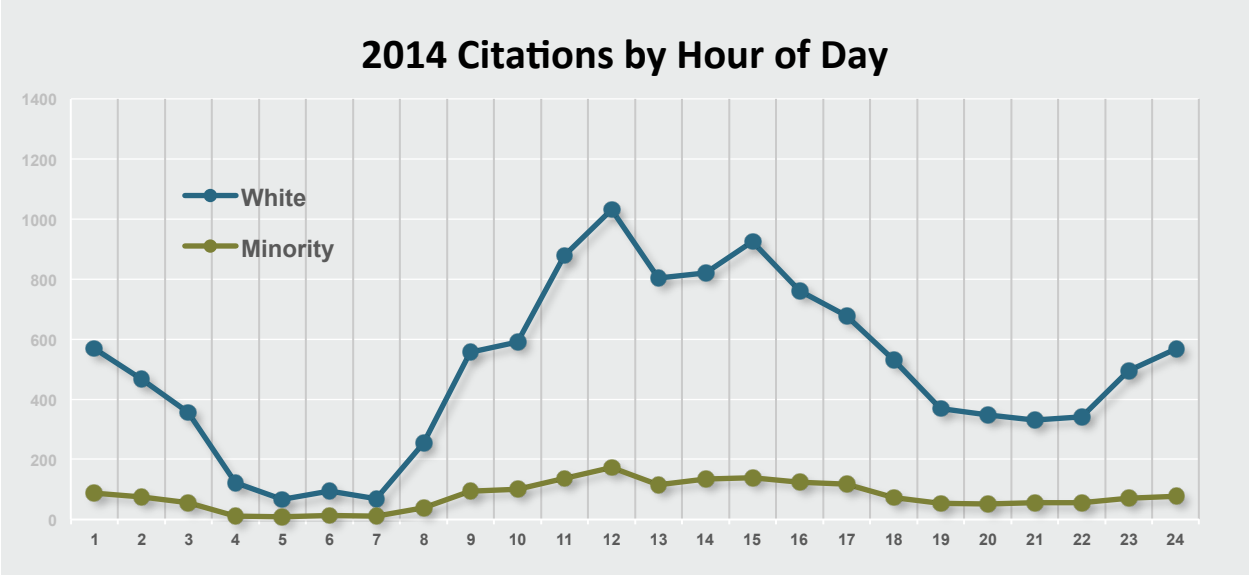
Citations by Hour of Day

Finally, we observe the distribution of citations by hour of day. The peak hour for enforcement is noon.



Field Interview Data

BPD General Order 305 states that "the [D]epartment recognizes that the field interview is a lawful and effective means of crime prevention and information gathering concerning persons who are believed to be associated with criminal activity." Field interview data is entered on a Field Interview Card that permits the officer to include information about four individuals, although the data file we used has a record for each individual. Since four individuals can be entered on each card, the sections on the form that ask about time and reason for the stop as well as whether an "intel" file should be created, apply to all those listed on the card. As previously mentioned, the cards have a section for race, but not ethnicity.

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Table 8 illustrates the number of field interviews conducted from 2011 to 2015 by race.

Table 8

Field Interviews by Race 2011 - 2015

	Asian	Black	American Indian	Unknown	White	Blank	Total
2011	25	78	7	27	2,125	60	**2,322**
2012	30	71	15	24	2,780	77	**2,997**
2013	36	110	8	32	2,579	77	**2,842**
2014	33	129	24	19	2,226	79	**2,510**
2015	25	82	22	32	1,623	53	**1,837**
Total	**149 (1.2%)**	**470 (3.8%)**	**76 (.6%)**	**134 (1.1)**	**11,333 (91%)**	**346 (2.8%)**	**12,508**

Of the 12,508 field interviews conducted, nearly four percent of the cards had the race listed as unknown (134) or was not filled out (346). **Table 9** displays the number of field interviews of black subjects.

Table 9

Field Interviews of Black Subjects 2011 - 2015

	Black	Total	%
2011	78	2,322	3.36%
2012	71	2,997	2.37%
2013	110	2,842	3.87%
2014	129	2,510	5.14%
2015	82	1,837	4.46%
Total	**470**	**12,508**	**3.76%**

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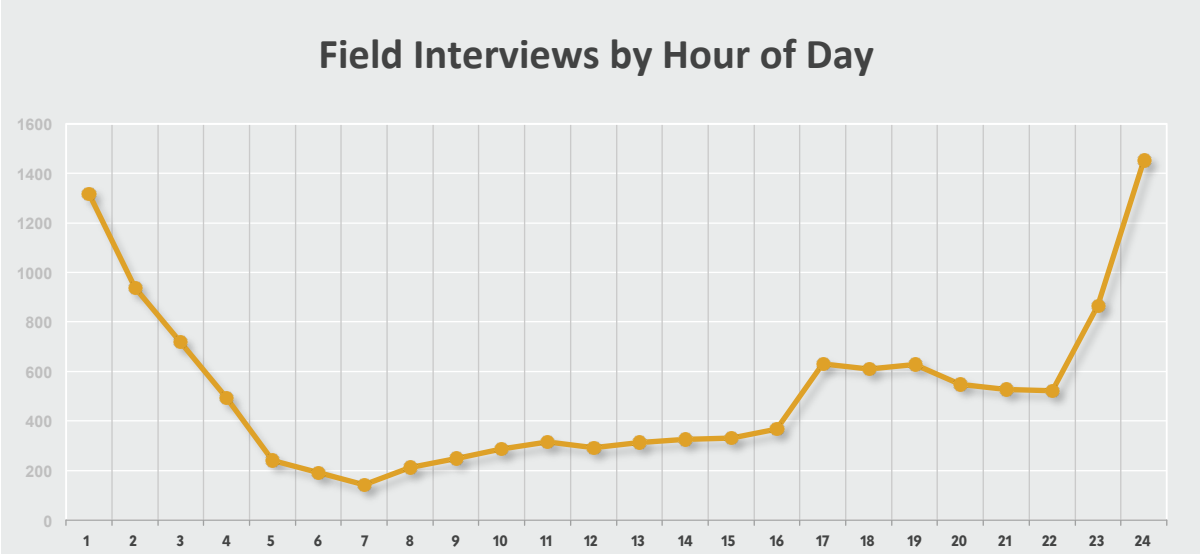
Below we observe the distribution of field interviews by hour of day for the study period.



The Field Interview Card has a section for the officer to enter the reason for the stop: suspicious, noise and other (indicate). Of the 12,508 field interview records, 96 percent list the reason as noise (3,427) or suspicious (8,622). While the vast majority of interviews were conducted on Boulder residents, places with more than 100 contacts over five years included Denver (159), Lafayette (115) and Louisville (188). Surprisingly, in 2,444 records the city of residence is blank. City ordinances require a warning to be issued prior to citations for noise violations. The Field Interview Card is used to document the warnings.

Intelligence Value

An officer has the option to indicate whether the contact information is of intelligence value, as seen in **Table 10**.

Table 10

Intelligence Value of Field Interviews 2011 - 2015

	No	Yes	Blank	Total
2011	130	10	2,182	**2,322**
2012	408	14	2,575	**2,997**
2013	249	2	2,591	**2,842**
2014	7	2	2,501	**2,510**
2015	11	0	1,826	**1,837**
Total	**805**	**28**	**11,675**	**12,508**

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Felony Arrests

The final component of our analysis is felony arrests, which are the most serious offenses that officers must handle. Suspects in felony cases are always arrested and held until they are released on bond or by the courts. BPD has two files that contain felony arrest data; the first lists each arrest for a felony. If one person is charged with three felonies, there are three records. The second file, and the one we used, lists all persons arrested for a felony offense. Because these files contain information about ethnicity, we can examine the felony arrest data for Hispanics. **Table 11** shows the number of persons arrested for a felony by BPD during the study period.

Table 11

BPD Felony Arrests 2011 - 2015

	Asian	American Indian	Unknown	Black	White	Hispanic	Total
2011	6	4	6	47	428	100	**591**
2012	3	7	5	32	461	127	**635**
2013	6	7	2	43	487	93	**638**
2014	10	5	7	45	514	99	**680**
2015	6	7	6	50	440	85	**594**
Total	**31**	**30**	**26**	**217**	**2,330**	**504**	**3,138**

For the total time period, blacks and Hispanics represented 23 percent of all individuals arrested for a felony.

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A Closer Look at Felony Arrests of Blacks

Table 12 more closely defines the data of felony arrests for blacks by year.

Table 12

Felony Arrests of Blacks 2011 - 2015

	Total	Black	%
2011	591	47	7.95%
2012	635	32	5.04%
2013	638	43	6.74%
2014	680	45	6.62%
2015	594	50	8.42%
Total	**3,138**	**217**	**6.92%**

Because each data record represents a person arrested for a felony, the number of arrests could be skewed if a person was arrested more than once in a year. In fact, one African American was arrested twice in 2013 and twice again in 2014. Another was arrested twice in 2014.

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Table 13 shows the types of felony offenses for which black suspects are arrested in Boulder for the study period. As previously mentioned, one arrest can result in one or more charges. Moreover, you can observe that a substantial number of these charges are for status offenses such as escape, failure to appear, failure to comply, failure to pay and fugitive from justice resulting in a warrant and mandatory arrest.

Table 13

Types of Felony Offenses of Black Suspects 2011-2015

Charges	Total
Accessory other felony	1
Aggravated motor vehicle theft	2
Arrest of probationer felony	9
At-risk adult/juvenile - 3rd degree assault	2
Attempt to influence public servant	3
Auto theft 1st /agg $20,000 or less	2
Burglary first degree	4
Burglary second degree of dwelling/drugs	7
Burglary second degree	11
Burglary third degree	2
Child abuse-know/reckless cause sbi	1
Conspiracy	1
Contribute to the delinquency of a minor	7
Criminal attempt: other felon	3
Criminal attempt: felony	11
Criminal conspiracy: specified felon	4
Criminal impersonation	19
Criminal mischief $1,000 to $5,000	9
Dangerous weapon-possession	2
Distribute/manufacture/sale 1 drug felony	11
Domestic violence	1*
Driving while license revoked	1
Endangering public transportation	1

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Table 13 continued
Types of Felony Offenses of Black Suspects 2011-2015

Escape attempt/felony charges pending	1
Escape from a DHS institution	1
Escape from class 1 or 2 conviction	1
Escape from felony conviction	3
Escape from pending felony	1
Failure to appear	17
False imprisonment	2
Felony menacing-weapon	19
Felony menacing-verbal	2
First degree assault	5
Forgery	2
Forgery possession of a forged instrument	1
Fraud and deceit	2
Fraud by check	1
Failure to comply	12
Failure to pay/comply	17
Fugitives from justice	10
Identity theft	12
Introduction of contraband	7
Marihuana-possession	1
Menacing	3
Offer false instrument or record	1
Other jurisdiction warrant	1
Parole violation	4
Pawnbroker-false information by seller	2
Perjury first degree	1
Possession of burglary tools	1
Possession of weapon by previous offender	3
Retaliation against victim/ witness	1
Robbery	5
Sale/transportation/dispensing mj	3

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Table 13 continued
Types of Felony Offenses of Black Suspects 2011-2015

Schedule II substance	2
Second degree assault sbi	1
Second degree assault	39
Second degree kidnapping	5
Selling distributing near school	3
Sex assault	11
Sex assault – physically helpless	2
Sex assault-submit-force/threat drug	1
Sex offender registration violent	4
Stalking	3
Tampering physical evidence	1
Theft $1000-20,000	3
Theft $2,000 - <$5,0000	3
Theft $20,000 - <$100,000	1
Theft $5,000 - <$20,000	3
Theft by receiving $1,000 to 20,000	2
Trespass first degree	21
Unlawful distribution	1
Unlawful possession of an identification document	1
Unlawful possession of controlled substance	25
Violation of bail bond	3
Weapon-possession/previous offender dangerous	1
Total	**392**

* In 2014, BPD made 72 arrests for domestic violence, an offense for which arrest is mandatory. The arrest, however, was identified not as domestic violence – for which there is no specific charge – but as charges such as assault.

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Table 14 shows whether a black suspect who was arrested was a resident of Boulder.

Table 14
Arrests of Blacks and Boulder Residency

	Felony Arrests of Blacks	Felony Arrests of Black Residents	Percentage	All Felony Arrests	Percentage of Felony Arrests of Black Residents
2011	47	31	65.96%	591	5.25%
2012	32	19	59.38%	635	2.99%
2013	43	22	51.16%	638	3.45%
2014	45	28	62.22%	680	4.12%
2015	50	22	44.00%	594	3.70%

COMPARISON OF INCIDENT DATA FROM COMPARABLE CITIES

It is instructive to look at BPD arrest data in comparison to other cities. The FBI Uniform Crime Reporting (UCR) Program (**Tables 15** and **16**) – the same data used by *USA Today* in its article on this subject on November 14, 2014 – counts one arrest for each separate instance in which an individual is arrested, cited or summoned for an offense. The UCR Program collects arrest data on 28 offenses, both felonies and misdemeanors. Because the UCR is a national data system, there is always some variation in the way in which agencies submit data. For example, in 2011 and 2012, BPD erroneously reported "ARC holds" (detox holds at Boulder's Addiction Recovery Center) as arrests under the NIBRS code 4299 (drunkenness). In mid-2012, they discovered the error. For consistency, they reported detox holds as arrests under 4299 for the remainder of 2012 and stopped reporting them for 2013. For 2011 and 2012, the data years used in the *USA Today* article, BPD over-reported a total of 2,721 arrests that were ARC holds out of a total of 8,869 adult arrests.

Removing the ARC holds from the BPD arrest data results in the following:

1. 2011 black arrests, 227; non-black arrests – 4,012
2. 2012 black arrests 187; non-black arrests – 4,443

Based on this data, the black arrest rate per 1,000 population for the period is 414. For non-blacks, the arrest rate is 87.7. Thus the ratio of black to non-black arrests is 4:7.

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In the following tables, we describe the arrest rates per 1,000 residents for blacks and non-blacks. These rates are based on FBI arrest data we reviewed for 2011 and 2012 and census data for 2010.[9] Note that this data comes from an interactive site hosted by *USA Today*. We did not independently verify the accuracy of the data submitted by the comparison cities to the FBI/UCR.

Table 15 compares Boulder to other communities in Colorado. **Table 16** illustrates the rates for several other communities with large universities.

Table 15

2011 – 2012 Arrest Data from Comparable Colorado Cities

City	Black Rate	Non-Black Rate	Ratio
Arvada PD	432.4	74.4	5:8
Boulder PD	**568.5**	**117.8**	**4:8**
Castle Rock PD	173.1	38.9	4:4
Broomfield	449.7	119.7	3:8
Denver	90.5	24.3	3:7
Boulder County SO	58.1	16.1	3:6
Fort Collins	264.4	74.8	3:5
Longmont	299.4	90.2	3:3
Westminster	410.0	125.3	3:3
Thornton	250.3	97.1	2:6
Northglenn	324.7	151.9	2:1
Greeley	238.5	135.7	1:8

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Table 16

2011 – 2012 Arrest Data from Comparable Cities with Large Universities

City	Black Rate	Non-Black Rate	Ratio
Palo Alto, CA	379.3	34.2	11:1
Lincoln, NE	614.0	98.6	6:2
Iowa City, IA	540.6	96.0	5:6
Columbia, MO	382.1	73.7	5:.2
Provo, UT	280.9	57.4	4:9
Boulder, CO	**568.5**	**117.8**	**4:8**
Ann Arbor, MI	125.2	27.6	4:5
Lawrence, KS	410.5	102.4	4:0
Cambridge, MA	62.8	15.6	4:0
Eugene, OR	513	130.2	3:9
Annapolis, MD	421.6	122.3	3:4
Tempe, AZ	405.5	120	3:4
New Haven, CT	281	100.8	2:8

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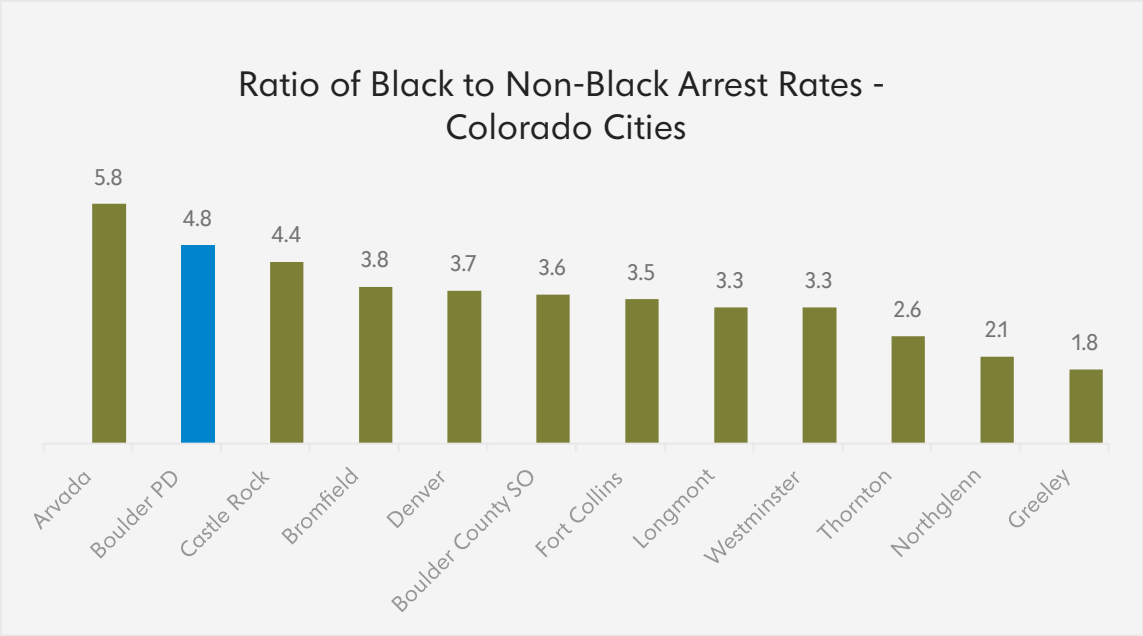
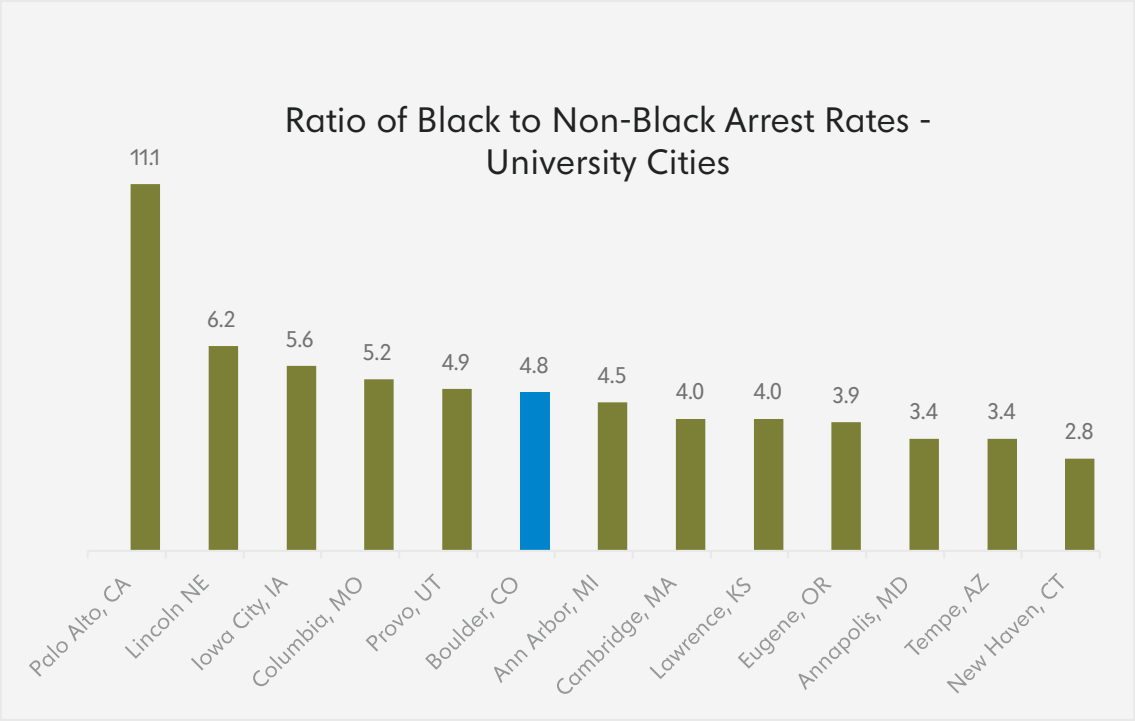
In these tables, we have included the ratio of black arrests to non-black arrests. The distributions for these ratios are illustrated below.





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HOW WE INTERPRET THE DATA

Any study of racial bias in policing must invariably face several challenges. First, like any statistical study, there will likely be alternative explanations for the same outcome. Second, there are no "pass" or "fail" scores in this domain – meaning, there is no level of disparity at which we can unequivocally announce that a result is good or bad. Finally, no statistical test can tell us exactly what was in the mind of an officer when an enforcement decision was made. Given these caveats, we can offer the following interpretation of the data.

1. Comparing Boulder's Arrest Rates

It is instructive to examine the FBI arrest rates. The arrest rate for African Americans and the ratio of arrests for blacks vs. non-blacks in Boulder is generally higher than the Colorado cities listed. However, when we compare Boulder to other university communities, a different pattern emerges - many of these communities also have very high arrest rates for African Americans.

This data is noteworthy. The offenses are generally minor and officers have significant discretion about what action they take. When we look at citations for traffic offenses and non-traffic offenses in Boulder, a relatively clear pattern emerges: for each year of our study at least two percent of these citations were issued to African Americans.

2. Benchmarking

One of the biggest challenges in constructing a rate is to properly define the affected minority population, as this serves as the denominator. In the subject area of racial bias in traffic stops, there has been significant debate, and even after nearly 20 years and scores of studies, no single well-accepted methodology has emerged. Perhaps the best indicator of the minority driving population comes from roadside surveys in which observers capture the race of drivers as they pass. Even this method is subject to observer error or bias, and moreover, it is particularly difficult to discern the race of drivers at night.

As a result, most studies rely on some modified benchmark based on population. In places like Boulder, population data can be particularly troublesome. There is a large daily, non-resident commuting population, a substantial homeless and transient community, and university students.

Nevertheless, every estimate we have seen places Boulder's African American population at less than one percent. Even if we were to include the 600 or so African American students at the University of Colorado, Boulder, (**Table 2**) there is still a relatively small percentage of blacks who were likely to have contact with the BPD. Note that the U.S. Census is designed to identify people who reside in a community on census day. As a result, the census count will generally include students living in dormitories and off-campus residences and persons in shelters.[10]

Based on our estimates, we believe that an African American person is about twice as likely to be cited for a traffic or misdemeanor offense than we would expect based on community demographics.

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3. Examining Field Interview Cards

During our examination, the field contact data proved problematic. As stated earlier, BPD officers are not required to complete a Field Interview Card; it is entirely voluntary. Moreover, the information on the cards is incomplete and of limited value for analysis. That said, the number of African Americans listed in the field interview data set ranged from 2.4 to 5.1 percent of all subjects. This imbalance is particularly troublesome given that officers are not required to complete these cards.

It is possible that the overrepresentation of African Americans in the data pool is because officers are more likely to prepare a Field Interview Card for a black person than for a non-black individual.

Of course, these field interview records are stored at BPD, and presumably used by investigators to follow up on cases. It is possible in these circumstances that an investigator looking for information will inquire about persons that might have been contacted at the time of an offense. If they do, there is a real chance that the field interview data may be misleading.

4. Taking a Closer Look at Felony Arrest Data

Finally, we look at the felony arrest data.

On its face, the felony arrest data is the strongest evidence of racial disproportionality in arrests. However, most of these are serious (non-discretionary) offenses and many are based on status violations and thus are not generated by BPD officers.

We do not believe that the felony arrest data is indicative of bias on the part of BPD.

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VI. EVALUATION OF POLICE PROFESSIONAL STANDARDS REVIEW PANEL

METHODOLOGY AND APPROACH

Over the course of assessing the internal affairs investigations processes and the PSRP, the Hillard Heintze team interviewed:

- Sergeant Pat Wyton, who is currently assigned to investigate citizen complaints and internal complaints at BPD
- Commander Kerry Yamaguchi, who preceded Sergeant Wyton as the Internal Affairs Investigator
- Current and former members of the PSRP
- Members of the community, including representatives from throughout the criminal justice system in Boulder; leaders of local government agencies; leaders of some local nonprofit agencies; members of the community and staff at Colorado University; a representative from the ACLU; and members of various activist groups in Boulder (including two citizens who filed complaints with the BPD; four other law enforcement and public safety representatives from surrounding jurisdictions in Colorado; nine members of the Boulder advocacy community; five legal and judicial professionals; six citizen representatives from the PSRP; four human resources and/or community relations professionals; and five representatives from University of Colorado at Boulder.
- The current Boulder Chief of Police Greg Testa
- Former Boulder Chief of Police Tom Koby

We also (1) performed a review of a random sampling of 25 percent of the Class I cases the PSU investigators handled between 2010 and October 15, 2015, and (2) conducted research on BPD's internal affairs investigation processes and any civilian oversight mechanisms at five cities in the nation that are comparable in size and demographics to Boulder and have a large university located within the City limits.

BPD'S PROCESS FOR INVESTIGATING AND DOCUMENTING CITIZEN COMPLAINTS

BPD's current process for investigating complaints against Department members is similar to those used by progressive police departments across the country. To facilitate a comparison between the processes in Boulder and those of other cities, the following provides a general overview of the software programs BPD uses to track complaints against Department members as well as a detailed description of BPD's complaint investigation process.

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Complaint Receipt and Monitoring: BPD uses IA Pro, a program management software tool, to document the receipt of complaints against personnel and to monitor the subsequent investigative process for handling the complaint from beginning to end.

- A subcomponent of the IA Pro software is a database program, Blue Team, that is accessible to all BPD supervisors and command officers.
- Supervisors typically use IA Pro to document details about an employee's work performance, noting areas of concern with an employee's performance as well as any commendable work, thus allowing BPD to address any work-related issues for members as well as to ensure that excellent work is brought to the attention of command officers for the purpose of rewarding Department members.
- IA Pro and Blue Team are both commonly used to accomplish police management tasks by numerous police departments throughout the country.

Complaint Submission: Any complaint or concern may be directed to the Department as follows:

- Filing directly with the Sergeant in the PSU at the Department.
- Filing online on the BPD website.
- Calling an investigator at PSU.
- Sending an email or mailing a letter to the investigator in the PSU or to another BPD official.
- Contacting the Community Advocates Program, which is not part of BPD, by calling the City's Office of Human Rights.

In some situations, the complainant may be afraid of filing a complaint. In these cases, the complainant can call the City's Office of Human Rights to file the complaint. A volunteer is then assigned to help the complainant process the paperwork, and, if desired, accompany them during any PSU interviews.

BPD clearly explains the complaint process to the public on the PSU section of the BPD website and includes answers to common questions a complainant may have. BPD goes well beyond a typical police department's efforts to be transparent about the complaint investigation process by providing access to the following items:[11]

- A PDF version of BPD Gen. Order 120 in its entirety, which outlines in detail the official policies and procedures for the investigations of complaints against Department personnel.[12]
- A PDF form to file a complaint against a Department member or to make a commendation.[13]
- The name, telephone number and email address for the Sergeant in PSU responsible for investigating and coordinating all complaints against the Department.
- A PDF entitled, *"What Do the Results of the Investigation Mean?"*[14]
- A PDF entitled, "*What Happens When I File a Complaint?*"[15]
- A PDF entitled, "*What If I Am Afraid to Make a Report?*"[16]

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Complaint Categories

Upon receiving the complaint or concern, BPD breaks down complaints against BPD personnel into four main categories:[17]

- **Class 1 Professional Standards Investigation:** The allegation is serious in nature, may cause great concern to the community and serious discipline may result if the allegation is sustained. Typically, PSU conducts the investigation.
- **Class 2 Professional Standards Investigation:** The allegation is non-serious in nature and any resulting discipline may not exceed a permanent letter of reprimand. Typically, the investigation is conducted by the affected member's immediate supervisor (see Gen. Order 121, Supervisory Reviews).
- **Referral:** The allegation is not based on a member's intentional misconduct, but rather is a complaint of a minor performance or protocol issue. A formal investigation is not conducted; however, the affected member's immediate supervisor is notified and makes the appropriate decision on disposition.
- **Inquiry:** Questions as to the propriety of Department policy and procedures or issues with regulations or actions of other agencies that are resolved by appropriate referral and not subject to a professional standards investigation, supervisory review or referral.

Complaint Process by Category

Once a complaint has been received and categorized, there are different investigative procedures depending upon the type of complaint.

Class I Complaint Process

Due to the seriousness of misconduct alleged in this type of complaint, the Sergeant assigned full-time to PSU typically handles the investigation personally and reports to the Chief of Police. The investigator will interview the complainant, the subject member and any witnesses to the alleged act of misconduct, documenting their statements in written form and placing them within a confidential investigative file. The investigator will then gather any necessary evidence to determine what occurred. At the conclusion of the investigation, the Sergeant prepares a formal memorandum summarizing the details of the investigation and forwards it to each supervisor in the subject's chain-of-command, beginning at the lowest level of supervision, and ending with the Chief of Police. Each supervisor reviews the case personally and determines which one of the following six dispositions best describes what each believes should be the outcome in the case prior to forwarding the case folder up to the next level in the chain-of-command. These six dispositions are similar in nature to dispositions used by numerous police departments across the country:

- **Exonerated:** The incident occurred as reported, but the individual's actions were justified, lawful and proper.
- **Exonerated with Commendation:** The incident occurred as reported, but the individual's actions were justified, lawful and proper under cases of exceptional circumstances.
- **Unfounded:** The complainant admits to false allegations; the charges were found to be false; the Department member was not involved, or the complainant has voluntarily

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withdrawn the complaint prior to the conclusion of the investigation, and the Department elects to end the investigation.

- **Not Sustained:** An allegation is not supported by a preponderance of the evidence.
- **Sustained:** An allegation is supported by a preponderance of the evidence.
- **No Finding:** Cases when a Department member resigns and the Department elects not to continue the investigation.

When everyone in the subject officer's chain-of-command has reviewed the investigative file and made a disposition, along with a recommendation for potential discipline, if appropriate, the PSU Sergeant then contacts all members of the PSRP to schedule a time when they can each individually go to the Department to review the investigative case folder. The PSRP members have access to the entire investigative case file that was reviewed by all of the subject member's supervisors and command officers, with the exception of the memorandum, which outlines what disposition and potential recommendation for discipline each of those Department members documented. This is done so PSRP members may review the case with complete objectivity.

After all PSRP members have reviewed the case individually, the PSU Sergeant schedules an evening meeting where they gather with the BPD Personnel Commander to discuss the case and whether they believe the internal investigation was thorough, fair and complete. The official Document of Finding the panel prepares indicates what the group and individual members believe should be the formal disposition for the case. Once the Chief of Police reviews the Document of Finding from the PSRP, the Chief makes a formal decision about the disposition in the case, along with the discipline that will be given to the subject employee if the case is sustained.

Class II Complaint Process

The process for investigating a Class II Complaint is similar to that for an investigation for a Class I Complaint, with the exception that the PSRP does not review the case.

Referral Complaint Process

Because referrals are considered minor employee performance issues that do not typically result in any formal discipline, they are handled by the subject's immediate first-line supervisor. This supervisor is able to provide the additional training needed to correct future performance and assist the employee in understanding the reasons the policies and procedures exist. If the full-time Internal Affairs Investigator receives a complaint that could be classified as a referral, the investigator enters detailed information about the referral into the Blue Team software, and routes this information electronically directly to the officer's supervisor. If a referral comes directly to an employee's supervisor, the supervisor initiates action on the referral, including documenting the event in the Blue Team system and notifying the Sergeant in PSU.

The officer's supervisor is required to address the issues in the referral and prepare a memorandum outlining the steps taken to investigate the complaint, detail conversations with the complainant, and address any issues of concern with the individual involved. The supervisor then routes the memorandum through the chain-of-command to the appropriate command officer. The memorandum is then transmitted to the Internal Affairs Sergeant, who ensures the documentation is entered into the IA Pro system so the Department is able to track the number of referrals any given

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employee may receive, as well as assist in determining whether there is a need for greater Department-wide training for any given issue.

Although this process for referring and documenting complaints up the chain-of-command is sufficient, our assessment revealed that the PSU Sergeant and the training commander should formalize a process to analyze the complaint data in order to identify opportunities to update training curriculum and policy to ensure lessons learned from complaint investigations are put into practice.

Inquiry Complaint Process

Typically, complaints that are determined to be inquiries are forwarded to the PSU Sergeant, who makes personal contact with the complainant to learn about any additional details surrounding the event that initiated the inquiry. The Sergeant explains the reasons why BPD has the particular policies and procedures in place, even though the complainant may not understand or disagree. Having a discussion with the complainant gives the PSU Sergeant an opportunity to hear the complainant's perspective on any given policy or procedure, and pass this information up the chain-of-command to the Chief of Police.

CURRENT STRUCTURE OF THE BPD PROFESSIONAL STANDARDS REVIEW PANEL

In 1993, the City of Boulder initiated a form of civilian oversight for BPD by selecting a group of individuals to sit on the Professional Standards Review Panel (PSRP), which is responsible for reviewing the Department's completed internal affairs investigations to ensure they are fair, thorough and complete. Our assessment team gathered details about this process after interviewing the current Internal Affairs Unit investigator, the previous investigator and several current members of the PSRP, as well as those who have served over the last few years.

PSRP Membership

The PSRP is comprised of 12 individuals, six of whom are community members not employed by the City of Boulder.[18] Community members are invited to apply to sit on the Panel for up to two two-year terms. Typically, the City has advertised open Panel positions in the local media. Applicants must be able to meet the following objectives:

1. To maintain the integrity of the Department by reviewing complaints of member misconduct.
2. To protect the community from member misconduct.
3. To protect Department members from false or malicious allegations.

Individuals applying for a position on the Panel must also meet the following qualifications:

- Be a United States citizen.
- Have been a resident of the City of Boulder for the past three years.
- Be 21 years of age or older.
- Have no felony convictions.

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- Have no misdemeanor convictions for the past five years.
- Submit to a criminal history check.

In addition, applicants who reflect Boulder's diversity are encouraged to apply as are Colorado University community members. Once candidates submit the application forms, they are interviewed by a panel of City employees as designated below, who then submit recommended candidates' names to the City Manager's Office. This initial panel consists of the following individuals:

- Management-level staff member of BPD
- Boulder Police Officer's Association (BPOA) member
- Boulder Municipal Employees Association (BMEA) member
- Supervisor of BPD's Professional Standards Unit
- Appointee from the City Manager's Office

The applicants are then interviewed by the City Manager's Office, and the City Manager or an appointee makes a final selection of six of the panel's 12 members. In 2013, the City Manager began to participate in the interviews of the individuals submitted to her office. The remaining six Panel members are appointed by the Chief of Police, with input from the BPOA and the BMEA. These six individuals consist of a sergeant, three police officers and two non-sworn members of the Department. While the Department avoids having sworn members on the Panel who are also serving as officials of the police union, the two non-sworn members are usually representatives of the union representing non-sworn employees.

Once selected, community members on the Panel attend a one-day training course presented by the Sergeant assigned to the Professional Standards Unit, the BPD Armorer and a representative of the Boulder City Attorney's Office. The training covers the following topics:

- Introduction to the Department
- Values, philosophies and ethics of law enforcement
- BPD's professional standards and discipline process
- BPD's use of force General Order 120
- Legal issues
- Taser overview
- Defensive tactics
- Officer safety and survival
- Firearms training
- Use of deadly force
- A tour of the Department

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PSRP's Role in the Complaint Process

When an internal affairs investigation is completed for a Class I complaint, the PSU Sergeant contacts each member of the PSRP so they can review the completed investigative case file before they meet as a group to discuss the case. The Internal Affairs Unit Sergeant notifies the Panel members of the date and time of the meeting, and ensures there is a private room available at the Department where members can review the case file individually. As previously mentioned, the Panel members have access to the completed investigative file, but are unable to see the discipline recommendations that each member of the officer's chain-of-command have made.

The meeting, facilitated by the Commander of the BPD Personnel Unit, begins with the Commander reviewing the disciplinary outcome of any recently reviewed cases. The Internal Affairs Sergeant is also present at the meeting and is available to answer any questions the Panel may have from their review before discussing the case as a group. When all questions have been answered, the Internal Affairs Sergeant leaves the room so the Panel can have an impartial discussion regarding the investigation, with the Personnel Commander acting as the group facilitator. When it appears that all Panel members have had the chance to express their opinion, the facilitator then asks for a motion to vote on potential recommendations.

According to our interviews, the vote is often unanimous, but does not need to be in order to reach a decision. One of the Panel members acts as a scribe, and then completes a standard form indicating whether they believe the investigation was fair, thorough and complete. All Panel members participating in the meeting are then asked to sign the document indicating whether they agree or disagree with the group's recommendation. This document typically lists the reasons why the group came to the conclusion it did, but any Panel member may also provide a dissenting opinion in writing, as well as an additional written opinion in support of the recommendation.

The completed form goes into the investigative file, which is then forwarded to the Chief of Police. Having already reviewed the file prior to the panel meeting, the Chief reviews the findings and decides the level of discipline warranted and the final disposition finding. Depending on the seriousness of the discipline, coordination may also take place between the Chief of Police and representatives of the City Attorney's Office and the City's Personnel Department.

RANDOM SAMPLING REVIEW OF INTERNAL AFFAIRS INVESTIGATIONS

To assess the quality of the internal affairs investigations PSU investigators completed over the last five years, we conducted a random sampling of 25 percent of the cases that occurred between January 1, 2010 and November 9, 2015. The main focus of our assessment included a review of data points that were both qualitative and quantitative in nature, including the following:

- Types of misconduct allegations involved
- Whether the complaint was initiated from within the Department (DI) or whether a citizen made the complaint (CI)
- Rank of the employee(s) involved
- Number of days for the PSU investigator to complete the investigation of the complaint

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- Whether the investigation was thorough, fair and complete
- Degree of cooperation the involved personnel provided throughout the investigation
- Time required from completion of the investigation until the Panel was able to review the case, meet as a group and provide findings, and whether the findings of the Panel appeared to be thorough, fair and objective
- Ultimate disposition of the case
- Level of discipline levied in sustained misconduct cases
- Time required from case opening to closure

We found that the two PSU investigators who completed the investigations were extremely efficient and thorough – they wasted no time once they received the cases and launched the investigations. It was clear they were managing the investigative process well in the way they notified subject employees about the cases, scheduled necessary interviews with Department members and citizens, conducted the interviews, sought out and reviewed evidence, documented their investigation, and forwarded these cases on to the command staff for findings and recommendations. They were also very prompt in reaching out to the members of the Panel once the cases were ready for review. Our assessment of the professionalism and efficiency of these two investigators was supported by some positive comments from current and former Panel members.

The efficiency of the investigations was also evident by time it took the Department to complete the investigation from opening to closure. The following data is based on the 12 cases we reviewed:

- Average time it took to complete a case: 53.83 days
- Median time to complete a case: 54 days
- Shortest time to complete a case: 8 days
- Longest time to complete a case: 109 days

Most of the cases were completed in less than two months, which falls well below the mandatory time period many states require, which is commendable given that some of the cases involved parallel criminal investigations.

Five of the 12 PSU cases involved BPD officers, three involved sergeants and four involved non-sworn members of BPD, showing that the Department does initiate and follow through on PSU cases regardless of the rank of the individual involved. Our assessment indicated that the formal discipline BPD meted out to subject officers in sustained misconduct cases appeared to be both merited and consistent with the level of discipline that would be meted out in similar cases within progressive police departments around the nation. In some cases, the subject officers readily acknowledged the errors they had made and said they were willing to receive any formal discipline. In fact, in one of these cases, members of the Panel were complimentary of BPD members who took responsibility for the errors they had made.

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Progressive Discipline: A Definition

Progressive discipline holds that, when punishment is warranted, it is most effective to mete it out in increasing levels of severity based on reoccurrences. Less serious forms of misconduct and those that are first offenses do not always deserve or require severe punitive actions. They can often be dealt with effectively by verbal reprimands or counseling, among other possible alternatives. In other words, the discipline must fit the misconduct, or be appropriate to the misdeed at hand.[19]

We saw no indication of any hesitancy on the part of the Chief of Police or others within the command structure of the Department to hold back on the level of discipline that we believe was required. There was also no indication that the internal affairs investigation process at BPD was in any way inconsistent with the concept of progressive discipline.

Although our review of the manner in which BPD investigates both internal and external complaints conforms to what we consider to be best practices, we learned of what may be one potential area of concern. During our interviews with some community stakeholders, we heard anecdotal examples of individuals who actually contacted BPD to file a complaint, but were discouraged from taking any formal action as it could impact an officer's career. We were told that BPD members expressed to these individuals that the issues of concern could be addressed with the subject officers without taking a formal approach. Based on our conversations, we believe that these may not be isolated incidents, and that it requires some attention from BPD leadership to ensure that if such incidents are true, the concerns are addressed.

INTERVIEWS OF CURRENT AND PAST PANEL MEMBERS

We interviewed each current Panel member and a select sample of past members to learn their perspectives on how the Panel functions, including the solicitation, application and selection processes. We also learned about the training and the review processes.

Overwhelmingly, the answers from current and past members of the Panel were positive. The police and community members both felt the overall process was supported and that there was not any animosity from the Department when reviewing files or when matters were adjudicated. Many members of the Panel wanted to stay on the Panel beyond the allotted time period if they were allowed to do so. Many members reported that they were involved in the process because they believe officers and employees of the Department should be held accountable for misconduct in a fair and impartial manner, and they feel this process provides that vehicle and were proud to be a part of it.

The internal members all described the process for applying for the Panel and selection criteria consistently as did the external community members as it related to seeing a newspaper announcement for vacancies. By all reports, they completed the application and were offered an interview with members of the Department and ultimately with members of the City Manager's Office before being selected for the panel.

We discussed with each member the actual process of reviewing a Class I Complaint and how the Panel is convened and run internally. Almost every member described the process the same way and had no major complaints regarding how the Panel was run or facilitated. No one felt they were

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not given adequate time to review the files. They were all provided access to the complete file and all attachments, and the Department tracks which members have reviewed the file prior to the Panel meeting for discussions. None of the individuals we interviewed felt any undue influence during the deliberations. Both civilian and police members complimented one another on the differing perspectives they bring to the discussion and how each balances the other in certain scenarios.

The Panel felt its role in reviewing the thoroughness of the investigative process conducted by the Department was respected by the command staff and that if there were concerns raised about a case, the Panel felt the Chief and Internal Affairs staff would and do take those concerns seriously. All of the current and past members we interviewed felt that their critiques and concerns were addressed. They stated that they were able to voice their concerns in writing if they did not agree with other Panel members.

During our interviews, Panel members suggested the Panel processes might be improved through measures such as the following:

- Provision of additional and on-going training on topics that may be relevant to the Panel and timely to the climate regarding internal oversight.
- Integration of more advocacy or community topics into the initial training and having the sworn members participate in that aspect of the training so new Panel members have an opportunity to meet existing and new members, and engage the community.
- Increased communication when Panel members are not being used, so they feel involved while waiting for a case to review.
- Assignment of the Panel to review other matters that currently do not meet the minimum threshold for convening a Panel to help with case-load reduction and to use the Panel as another level of oversight for more categories of complaints.

INTERVIEWS OF BPOA AND OTHER UNION MEMBERS

We had an opportunity during our interviews to speak with employees of the Department who were representative of both sworn and non-sworn members of local unions. During those discussions, no major concerns were raised related to the current internal affairs or professional standards review process. BPD has a well-documented process for the overall involvement and representation of union input in the professional standards process and by all accounts, it adheres to those policies in its general orders. The Department actively involves union representatives and leadership in policy developmentand the Department's operational decisions, which appears to be more comprehensive and inclusive than we have seen in other police organizations.

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INTERVIEWS OF COMMUNITY STAKEHOLDERS, ADVOCATES AND COMMUNITY MEMBERS

During three on-site visits in September, October and November, and through phone interviews, our team interviewed community stakeholders including City Council members, City Manager's Office Staff, the Mayor, Human Relations staff, Boulder Coalition on Race members, Campus Police and other campus offices and representatives, ACLU representatives, District Attorney's Office representatives, judicial representatives, legal advocacy groups and other community members and stakeholders. These interviewees were generally asked about their understanding of the *USA Today* article and the allegations or concerns raised regarding disproportionate contacts with minority residents in Boulder. They were asked to discuss their understanding of the Panel and its processes, and to provide any data they may have collected in their professional capacities.

Many of the parties interviewed were aware of the *USA Today* article and the reason for our assessment. Many of these stakeholders were surprised by the disproportionate numbers and statistics mentioned in the article, but acknowledged that similar concerns have been raised previously in Boulder. Several stakeholders were aware of a small investigation and study conducted by the Human Relations Commission in 2001[20] regarding racial profiling. The report did not find any instances of racial profiling; however, we found that the perception of the police targeting the vulnerable, unhoused and minorities continues to exist within the community. Many stakeholders speculated that this perception is prevalent, but were reluctant to attribute racial temperament towards BPD, instead suggesting that the broader Boulder culture is responsible.

Implicit Bias: Key Examples

However, among many of the advocates, legal community and other community stakeholders we interviewed, there was more of a direct concern about the police and their interactions with minorities in the community including the unhoused, Colorado University athletes and other students of color. One of the themes was that BPD officers "may not be aware" of how they treat the unhoused and minorities within the community, and that their actions were the result of implicit bias, not overt racial animus. Several stakeholders provided anecdotal information about minority residents who they were personally aware of who had negative interactions with BPD including being arbitrarily stopped in their vehicles, being stopped and questioned while they were walking, and being arrested for offenses that other non-minorities engaged in were not arrested for. Many of the incidents described involved African American residents and students who were perceived to have been treated more harshly during encounters with police, and if they were arrested, the force necessary to affect the arrest was beyond that used on other non-minorities similarly disposed. Although the scope of our review and analysis did not include verifying the accuracy of these reported incidents, we found the information provided to be valuable in that it serves to inform Boulder officials about some of the concerns that exist among a number of community groups.

One particular incident widely shared and fairly well known throughout the community was an incident in February 2015 involving college students and fraternity members at multiple party locations. Community stakeholders raised concerns about perceived bias in how the incident was handled and arrests were made. However, we were informed that many of the incidents described were not filed as complaints with BPD, and therefore could not be addressed as such. Some stakeholders shared concerns that minorities within the Boulder community do not feel their concerns are taken seriously and fear possible retaliation because they cannot anonymously file a

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complaint. Some stated that parties who have reported complaints felt they were being dissuaded by the police during the initial filing process and that their complaints were regarded as untrue.

National Common Concerns

The types of concerns shared by citizens and stakeholders during our interviews are not unlike those raised in other cities and municipalities across the U.S., including ensuring that: (1) the internal affairs process is welcoming and accessible by all segments of the community, (2) multiple mechanisms for reporting are available, and (3) more community education on the complaint filing process is provided. Although many of the stories shared were through secondary sources or observations of unreported incidents, some of the same types of sentiments raised were documented in a six-month report filed by the Bias Incident Hotline Project in 2008,[21] specifically involving the police and other Boulder city services. Although the project was short in duration, the hotline received more than 50 calls and captured concerns regarding bias in the Boulder community, specifically with police and other service providers.

Consistently, those interviewed agreed that Boulder has a very limited diversity, which does not allow many opportunities for the community or the police to interact with people from diverse backgrounds and cultures on a regular basis. Boulder is universally believed to have a well-educated, wealthy population and in turn, possibly an isolated population that has not personally had negative interactions with police and, therefore, a limited capacity to appreciate what the more vulnerable citizens in Boulder are experiencing. Stakeholders speculated that many BPD officers are college educated and have never policed in diverse communities, and therefore, do not realize how their responses to diverse community members are perceived.

Community Involvement

We found that some of the stakeholders we interviewed held the opinion that BPD failed to help counteract some misconceptions and implicit biases they and the broader community may have and how it impacts the minority community. Some efforts have been made recently to address some of the national concerns about social and racial justice.

One of the advocacy groups arranged a facilitated conversation including the police and community to engage the community and police in a meaningful dialogue and promote problem-solving strategies. However, by all accounts, the meeting was not as impactful as it could have been because the structure of the meeting did not allow for meaningful discussion, as community members with similar backgrounds were grouped together instead of having a diverse mix of people, including police representatives, mingle next to each other to discuss community topics such as race-based concerns. The meeting was not planned or hosted by the BPD, rather the Department was invited to send representatives. Hence, some of these concerns were not the direct responsibility of BPD.

Some parties we interviewed acknowledged that BPD has been attending more community events recently and attends events when invited; however, they believed this has been a recent occurrence. They felt the Department has lacked basic community policing principles for years – and has not made it a priority.

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A recurring theme of the interviews was the lack of proactive engagement by BPD to meet and address concerns when they are raised. Many stakeholders shared that they have had meetings in the past and worked on committees with various levels of the Department, including the current and former chiefs, and they do not feel the administration is sincere when it comes to issues raised by the community, advocates or stakeholders.

- Some of the community stakeholders we interviewed felt that when issues of race are brought up, BPD often dismisses it without trying to address the underlying concerns on how to eliminate the perceptions within the community, even if the Department does not support the notion of biased officers.
- The perceived reluctance by the Department to address the concerns historically raised regarding race have caused factions within certain stakeholders where there could be positive synergy and collaboration to reach populations who may be reluctant to work with the Department.

Although we heard numerous community stakeholders express concerns that BPD has not done enough community outreach in the past, we learned that there have been some significant efforts since Chief Testa took office to increase the engagement between BPD officers and the community. The following are some examples of those efforts:

1. In October 2015, approximately 30 BPD members organized a soccer match between themselves and approximately 50 youth from the local Hispanic community. BPD arranged for a local restaurant to donate food for the event. The event was the first of its kind in Boulder.
2. In 2015, BPD started an Explorer program to provide an opportunity for Boulder youth to learn about policing.
3. BPD developed a community policing survey for residents to complete to provide input on community policing and the Department. The Department designed both hard copy and electronic forms of the survey in English and Spanish. Access to these forms was provided on the BPD website. Over 500 surveys have been completed so far.
4. For several weeks, the Department set up canopy tents at local recreation centers in the morning and late afternoon. During this time, they served food and beverages as they spoke with residents about the BPD and how it is doing. Community policing survey forms were available for the residents to complete.
5. The Department designated some officers to serve as Hispanic liaison officers, and they routinely walk neighborhoods to build relationships by conversing with residents.
6. Neighborhood Impact Officers have walked neighborhoods on University Hill and knocked on doors to introduce themselves, discuss neighborhood problems and leave business cards for residents. These conversations center on neighborhood issues of concern.
7. Chief Testa attended the movie *Selma* with community advocates and at the conclusion of the film, participated in a community conversation to discuss police, community and race issues.
8. For several years, BPD has participated actively in the Special Olympics program, including having a Sergeant serve on the board.

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BPD has taken some significant steps to improve the level of community-oriented policing services it provides, but at the same time, key community stakeholders continue to express concerns about what they believe is a lack of effort on BPD's part in this area. It is apparent that there is still a need for increased transparency and collaboration between the BPD and the community. Because this is still a pressing concern, it will be vital to the success of any potential changes BPD makes to its policies and procedures to include input from the community if the changes are to receive the requisite community support.

Many of the community stakeholders we interviewed were not personally aware of the role of the PSRP or how it functions. Some were unaware that it even existed until our assessment. Some of the advocates who were aware of the existence, however, were reluctant to give it much support because they felt there is a lack of transparency in the process.

The advocates stated that there was a lack of information including data on the outcomes of complaints reviewed by the panel on the website. In early 2015, the ACLU raised concerns about the impartiality of the PSRP due to its current make-up and suggested a panel consisting only of civilians. However, the interviewed stakeholders seemed more concerned about the representation of the community members on the panel and how they represent the broader Boulder community.

Unfortunately, this is not a new concern. In the 2001 investigation and report, several recommendations focused on improving education and awareness of procedures, policies and resources for parties who felt they were profiled and providing support to decrease fear of filing complaints among other policy and procedural reviews.[22]

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VII. OVERVIEW OF CIVILIAN REVIEW PROCESS FOR COMPARABLE CITIES

NATIONAL CIVILIAN REVIEW PROCESSES

A common theme within the law enforcement community is that a department must have internal affairs processes that not only address misconduct, but also ensure that ethical behavior and police accountability are modeled internally and externally within the community it serves. Naturally, the processes and mechanisms each department uses will vary from city to city.

Over 120 cities across the country have integrated some form of civilian review process into their internal affairs or professional standards process.[23] The most common forms of integration are: [24]

- **Citizen Review Board:** A panel of citizens handles every aspect of the citizen complaint continuum.
- **Police Review/Citizen Oversight:** The police department handles every aspect of the complaint continuum, but citizens review those actions and determinations.
- **Police Review/Citizen-Police Appeal Board:** The police department handles every aspect of the complaint continuum, but the complainant may appeal the outcome to a board comprised of officers and citizens.
- **Independent Citizen Auditor:** The police department handles every aspect of the complaint continuum, but a citizen serves as an auditor to review the process for effectiveness and accuracy, making recommendations to improve the process as necessary.

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AN OVERVIEW OF COMPARABLE CITIES

As part of our assessment, we compared the type of civilian review process already in existence in Boulder with the processes of departments with similar personnel and population sizes, as well as those with a college in the area they serve. We took note of the fact that Boulder was a leader in the establishment of such a civilian review process, with former Chief Koby having developed BPD's civilian oversight process in 1993 and implementing it in 1994. This was a progressive step that was not taken by most agencies up to that time, and it was done in the spirit of strengthening the relationship between BPD and the Boulder community. **Table 17** shows the information for each of the comparable cities and Boulder.

Table 17

Comparison of Police Departments

City	Department Size	Population Served[25]	Oversight	Year Adopted
Eugene, Oregon	190 Officers	160,561	Auditor (F/T) /CRB	2005[26]
Fort Collins, Colorado	200 Officers	156,480	Citizen Review Board	1998[27]
Palo Alto, California	91 Officers	66,955	Auditor (Contractual)	2007
Provo, Utah	105 Authorized	114,801	City Ombudsman	30+ years
Santa Cruz, California	100	63,364	P/T Independent Auditor	2003
Boulder, Colorado	179[28]	105,112	Civilian Review Panel	1993

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EUGENE, OREGON

Police Auditor and Civilian Review Board

The Eugene, Oregon Police Department has approximately 190 sworn officers to address and respond to 100,000 annual calls for service, provide police services and protect a population of 156,000 including several campus communities, such as the University of Oregon.[29] The Department has an Office of Professional Standards commanded by a lieutenant with the assistance of two sergeants, a civilian internal affairs management analyst and a program coordinator who investigate internal and external complaints and report commendations filed by citizens.[30] The Department has a link on its internal affairs web page that goes directly to a complaint and commendations form on the site of the Independent Police Auditor that can be completed and filed directly with the auditor.

In 2005, the Office of Police Auditor was created in Eugene for citizens to have an independent place to lodge complaints against the police that is isolated from the political process used by the City, which is often seen as an impediment to independence in police oversight. The position, funding and staff allocations were created by City ordinances and outline the reporting mechanisms, independence of the Auditor, protocols of the office and authority of the auditor as it relates to receiving complaints and investigating allegations of police misconduct. The ordinances provide the following information on the role and structure of the auditor's office:

> "The office of the police auditor is established to provide an independent location to lodge complaints involving police employees, monitor internal investigations to ensure objective, thorough and high quality investigations, and develop recommendations to improve police services. The ordinances include approval for a full-time professional police auditor who is hired by and accountable to the City Council."[31]

The auditor in Eugene has a great deal of autonomy and is central to receiving and classifying complaints lodged by citizens while helping monitor the investigative process of the allegations being made and making recommendations to the City and Department as a result of analyzing the same. The auditor has the authority to oversee investigations and participate in interviews of parties involved, in addition to requesting additional information to help with ensuring the police conduct a thorough investigation. The City website states that the auditor has three broad mandates:[32]

- Receive and classify complaints of police misconduct;
- Audit the investigations based on these complaints; and
- Analyze trends and recommendation improvements to police services in the City.

The auditor is actively involved in the early intervention process of the Department, has access to the IA Pro data and can review and raise concerns proactively if the auditor identifies trends from the data as it relates to an individual officer or Departmental protocols. The auditor – in line with established protocols – responds on site for critical incidents and is involved in use of force review boards. The auditor has the authority to determine if a complaint is appropriate for mediation or a facilitated dialogue, and if the parties involved agree to mediation, it can be used to resolve the issues of the complaint and investigation.

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The auditor can categorize a complaint as "community impact cases," which may have additional review and oversight by the Civilian Review Board (CRB). Community impact cases are complaints that involve allegations of excessive force, bias, disparate treatment or implicate other constitutional protections. The auditor determines if the case should be considered by the CRB for an additional level of review before and after the matter has been investigated, and provides feedback and recommendations.

Part of the auditor's power and duties outlined in city ordinances involve serving as a liaison and providing staff support to the civilian review board and in coordination with the CRB, do the following:

- Establish policies, procedures and operating principles of the CRB.
- Conduct education and outreach to inform the community about filing complaints and commendations.
- Develop and distribute information and forms regarding the process for handling complaints and the review system.

The Civilian Review Board is an additional oversight component created by City ordinances and codes, and is integral to the overall police accountability process within Eugene.[33] The CRB is comprised of up to seven volunteers interviewed and appointed by the City Council to serve up to three years on the board.[34] The CRB serves several key oversight functions; however, the primary goals are to increase transparency and confidence in the police complaint process, and review the work of the Auditor and the police investigative process. The CRB's mission is as follows:

> "...to provide fair and impartial oversight and review of internal investigations conducted by the City of Eugene Police Department involving allegations of police misconduct, use of force and other matters. The Board will strive to build trust and confidence within the community and to ensure that complaints are handled fairly, thoroughly and adjudicated reasonably. The Board will encourage community involvement and transparency in order to promote the principles of community policing in the City of Eugene."[35]

The CRB has several primary duties and functions as established by ordinances:

- Establish protocols and procedures for the CRB in conjunction with the auditor.
- Review completed investigations and adjudications against sworn officers upon request.
- Review a random selection of closed cases.
- Conduct a comprehensive review of matters classified as community impact cases and provide recommendations.
- Review trends and statistics and develop recommendations for improvements.
- Evaluate the work of the auditor's office.
- Provide the community with another forum for lodging complaints and raising concerns.
- Hold regular meetings allowing for public involvement and comment.
- Provide a written annual report.

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The combined approach of having a full-time independent police auditor and a civilian review board has an impact in Eugene on how the community perceives the police and the mechanisms for accountability of officer misconduct. One of the key factors for developing an independent auditor office was to remove the concern of political and undue influence that could be perceived if the auditor reported to city officials. The position was created with transparency, community outreach and education as being integral to the success of the position. Both the auditor and the CRB are mandated to provide annual written reports, which often summarize trends, statics and recommendations. The auditor and the CRB may draft other reports upon request, as needed or as deemed appropriate and within their scope and authority.

The City Auditor's website has helpful resources such as relevant city ordinances, protocols, procedures, mechanisms for filing a complaint or commendation, and annual reports. For CRB members, the website provides upcoming meeting times and locations, resources, forms and direct links to review cases.

Key Distinguishing Oversight Factors:

- Full-time Auditor and Civilian Review Board
- Complaints filed outside the Department
- Active auditor involvement with investigations
- External review of early intervention systems and trend analysis
- Community impacts the case review
- Regular meetings with stakeholders
- Public meetings and discussions
- Public annual reports
- Weekly auditor newsletter
- Regular CRB training topics

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FORT COLLINS, COLORADO

Citizen Review Board

The Fort Collins, Colorado Police Services has approximately 200 sworn officers to address and respond to approximately 97,000 calls for service and protect a population of over 150,000 including the Colorado State University campus community.[36]

In 1998, the City of Fort Collins, Colorado adopted an ordinance to create the Citizen Review Board (CRB) to provide oversight and guidance that instills confidence that law enforcement is effective, professional and has the best interests of citizens, and to facilitate continued excellence in police services within the City of Fort Collins.[37] The CRB serves a critical function within the City in regards to oversight on serious allegations involving use of force and instills confidence in the investigative process. The CRB can have up to seven volunteer members who are nominated and selected from diverse sections of the community.[38] Once appointed by the City Council, each member may serve up to four years. The CRB has several duties and functions as established by ordinances:

- Makes recommendations to the City Manager or the Chief of Police concerning the interpretation of police policies and procedures.
- Reviews certain internal investigations conducted by the Office of Police Services and provides observations and recommendations.
- Upon written request, reviews any decision of the Chief of Police regarding the merits of an investigation for which a review has not been conducted by the board.
- Reconsiders any review previously conducted if the board determines that significant new information has become available.
- Completes file reviews in 45 days, unless an extension is requested.
- Upon the request of any other public law enforcement within the City, reviews the internal investigations of such entity.
- Provides written annual reports to the City Council and City Manager concerning the activities and recommendations of the board.
- Meets regularly allowing for public involvement and provides minutes from the meeting.[39]
- Provides training annually.
- Provides a written work plan for the upcoming year.

A citizen can file a complaint with the Department's Internal Affairs Office. Most complaints are given directly to the immediate supervisor of the accused officer. A complainant must complete a complaints packet, which is available at various locations throughout the city, and submit it in person, by mail or by phone.

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In early 2000, the CRB set a goal of establishing a liaison program with the Human Relations Commission to assist citizens in navigating the internal affairs process.[40] This initiative was in line with the community aspect of the original ordinances that stated the following:

- Develop a citizen liaison program to assist individual citizens who wish to file such complaints and appoint members of the public to serve as citizen liaisons.
- Solicit aid from other social agencies in educating the public.
- Communicate with other similar commissions in order to share experiences and become more sensitive to potential problems.

The City of Fort Collins Police Services website has links to relevant documents such as the Department policy manual and the complaints and commendations page, which details the process for filing a complaint, the classification and levels of complaints, and what happens after a complaint is filed. The website also lists contact information for the Internal Affairs Office and the CRB.

The CRB page on the City's website has copies of the CRB's agendas, minutes, work plans, bylaws and annual reports dating back to 1999.[41] A citizen can also find the CRB member application, upcoming meeting details and contact information for current members, along with their term limits.

Key Distinguishing Oversight Factors:

- Regular public meetings
- Written annual reports and yearly work plans are publically accessible
- Regular topical training throughout the year
- Community liaison and community education mandate
- Video overview of the CRB and internal affairs process
- Access to the entire police department policy manual

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PALO ALTO, CALIFORNIA

Independent Police Auditor

The Palo Alto, California Police Department has historically had over 90 sworn officers to address and respond to an average of 60,000 calls for service annually, provide police services and protect a population of approximately 67,000 citizens. The commuter population, made up of the Stanford University campus and daily business populations, increases the approximate population to 125,000.[42] [43]

The Department's basic process for investigating a complaint is summarized in a handout accessible on the website. Citizens can fill out an online reporting form to file commendations and complaints, making it easy for the Chief of Police[44] to oversee and review every complaint filed. However, citizens can also file a complaint in-person or by phone. The website has many resources such as monthly and annual statistics for calls for service and a direct link to the Independent Police Auditor page.

Approximately eight years ago, as a result of the community and the City Council, the Office of the Independent Auditor was launched to oversee police interactions and provide oversight and transparency. The Independent Auditor, a contractual position solicited through a competitive request for proposal process, has remained filled by the OIR Group since this report was drafted. The role and authority of the Auditor is as follows:

> "The Independent Police Auditor45 has the authority to review and assess for objectivity, thoroughness and appropriateness of disposition citizen complaint investigations of misconduct and internal affairs investigations associated with the Police Department and makes recommendations to the Police Chief."

Per the contract terms, the auditor provides written reports semi-annually of all completed investigations and the disposition for those matters.[46] The auditor identifies trends and policy recommendations as a result of the review, and discusses the findings with the City Manager and Chief of Police, providing any recommendations for policy or training improvements. The auditor is responsible for reviewing all cases when a TASER is deployed to ensure the use of the TASER was consistent and in line with Department policy and procedures. The auditor also makes recommendations for policy and training as needed.

The essential functions and duties of the auditor include:[47]

- Receiving citizen complaints directly.
- Reviewing and assessing for objectivity, thoroughness and appropriateness of disposition.
- Making recommendations to the Chief of Police regarding further investigation, processes and dispositions.
- Formally meeting with the City Manager and Chief of Police once per quarter to discuss any issues.
- Formally meeting with the City Council twice per year to discuss issues.

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All auditor reports and semi-annual reports since 2007 are available online.[48] As a result of concerns about racial bias, the auditor conducted an independent study regarding the police department's conduct related to the allegations of insensitivity and bias-based policing.[49] The report made recommendations to the City and Department on how to address the results of study.

Key Distinguishing Oversight Factors:

- Written public reports provided semi-annually (very descriptive of allegations, investigations and dispositions)
- Regular meetings and discussions regarding identified trends and recommendations on policies and training
- Independent review of every TASER deployment
- Unbiased review and public reporting of controversial or nuanced issues raised by the community

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PROVO, UTAH

Ombudsman

Provo, Utah is a city with an estimated population of 114,801 residents.[50] The demographic breakdown of Boulder is very similar to that of Provo, with the overwhelming majority of the population comprised of Caucasians, 84.8 percent. Hispanics in Provo represent 15.2 percent of the population and African Americans represent 0.7 percent. Like Boulder, Provo is home to a very large university, Brigham Young University, with a student population of nearly 27,000.[51]

The Provo, Utah Police Department (PPD) has an authorized strength of 105 sworn positions, but currently has 102 officers. The Department member responsible for PPD's internal affairs investigations holds the rank of lieutenant. In addition to his internal affairs responsibilities, this lieutenant is responsible for overseeing special events in Provo, as well as the Department's training and firearms programs.

There are a variety of ways in which the lieutenant receives both internal and external complaints. Individuals can make complaints in-person, by phone, through the Department's website and through the office of the City's ombudsman. Although the Department has a form complainants may use to document the details of their complaint, it is not necessary.

PPD categorizes complaints into two categories: Category I and Category II. Category I complaints are more serious in nature and could lead to formal discipline. Category II complaints are the remainder of the complaints and are less serious in nature. We learned during our outreach that they receive an average of two cases per month.

The process for handling Category II complaints is very similar to that of BPD's process for handling Class II complaints and referrals, in that upon receipt of such a complaint from a community member, the PPD Internal Affairs lieutenant contacts a watch commander to advise him or her of the incident. The watch commander then works with the staff to interact with the subject employee to determine what happened. This information is then relayed back to the lieutenant, who writes the report and forwards it up the chain-of-command. A determination is then made regarding what to do in terms of any discipline or training for this lower-level complaint. For more serious complaints, the lieutenant conducts an investigation and report that includes findings and recommendations. This report is then forwarded up the chain-of-command to the Chief of Police, who has the final say in disciplinary outcomes.

Although Provo does not have a formal citizens review board, it has a full-time City employee serving as the City ombudsman, a position that has been in place for the past 35 years. The ombudsman is responsible for handling any complaints regarding any City employee, including complaints from individuals who choose not to file the complaint directly with the Department. The current ombudsman also serves as the City's property manager, reporting directly to the City Manager. However, because the Mayor appoints the ombudsman, they report directly to the Mayor when in the role of ombudsman.

The ombudsman handles approximately two complaints per month from citizens who have contacted the Internal Affairs Unit but are not satisfied with the result, who are uncomfortable appearing in-person, who only speak Spanish, or who are unable to fill out the complaint forms on

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their own. The ombudsman contacts the lieutenant to inform him of the complaint and forwards the written complaint document. Our review of the process for handling complaints in Provo revealed that a very positive working relationship exists between the ombudsman and the Department.

The ombudsman is not involved in making findings and recommendations for complaints against police officers, nor does the ombudsman make recommendations for discipline in sustained cases of misconduct. However, the ombudsman attends a weekly meeting coordinated by the Department in which representatives from a variety of local law enforcement agencies and other social service organizations come together to discuss real-time problems within the City. These groups include the Department's community policing staff, representatives from the county's adult probation office, representatives of the Utah State Parole office, staff from the local agency handling low-income housing, and community representatives who provide food and housing to those in need. What is learned in this task force-type meeting, as well as through receiving citizen complaints directly, is tracked by the ombudsman to identify ongoing trends of things that may be generating complaints both for the Department and for other city agencies. This is then relayed to the appropriate City staff so the issues can be addressed through training or other means.

The Chief of Police coordinates a Citizen Advisory Board that regularly meets with the Chief to address any ongoing community concerns regarding the Department, but it is not tasked with reviewing officer complaints. The Department's annual report to the community outlines the number and basic details of all of the complaints filed with the Internal Affairs Unit.

Key Distinguishing Oversight Factors:

- Ombudsman Office
- Chief provides oversight and review of all complaints
- Chief regularly meets with informal citizen review board

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SANTA CRUZ, CALIFORNIA

Independent Police Auditor

Santa Cruz, California is a coastal city with an estimated population of 63,364 residents.[52] The demographic breakdown of Boulder is comparable to that of Santa Cruz, with nearly three-quarters of the population comprised of Caucasians, 74.5 percent. Hispanics in Santa Cruz represent 19.4 percent of the population and African Americans represent 1.8 percent. Like Boulder, Santa Cruz is home to a large university, the University of California at Santa Cruz, with a student population of nearly 17,200 students.[53]

The Santa Cruz Police Department (SCPD) has an authorized strength of fewer than 100 sworn positions. The Department member responsible for SCPD's Internal Affairs investigations holds the rank of sergeant and reports directly to a deputy chief. Like most agencies, complaints against members of the SCPD may be filed directly at the Department. A complaint form, referred to as a Citizen Comment Form, is also available online in both English and Spanish.[54] The form can be mailed to the Department, sent by email or dropped off at the City Clerk's Office. However, it is not mandatory that a complainant completes this form to file a formal complaint with the Department.

The Internal Affairs Sergeant receives and investigates all cases, which are classified as: (1) a formal or Class I case, (2) an informal or Class II case, or (3) an Inquiry. Informal cases are those that if sustained, would result in a level of discipline no higher than documented oral counseling. However, if the investigation of an informal case indicates the complaint involves employee conduct of a more serious nature, the case is bumped up to a formal Class I case, which includes allegations of employee misconduct that would rise above the level of formal documentation of oral counseling. Class I and Class II cases are tracked through a numbering system, which allows the Department to track whether the complaint was filed by a citizen or generated internally. It was estimated that the Department handles approximately 10 Class I complaints and 50 Class II/Inquiry complaints each year.

SCPD has a system in which supervisors in the field are made aware of an officer/citizen interaction that could become a complaint. They write a memorandum detailing the issues surrounding the incident and forward it to the Internal Affairs Unit, where it is kept in a temporary informational file in the event that a formal complaint is subsequently filed. This allows the Department to be proactive not only in gathering important information that may be needed to complete a potential complaint investigation, but also allows the Department command staff to be aware of issues that may require additional staff training, whether a complaint is ever filed.

Once the SCPD Internal Affairs Sergeant completes an investigation, the written report is forwarded up the chain-of-command to the Chief of Police. However, unlike many Internal Affairs Units in the country, in which the cases are simply forwarded to the appropriate chain-of-command for follow-up without any indication of a potential finding, the SCPD Sergeant includes recommended findings in the report. The deputy chief who supervises the process ensures the case is complete and then forwards it to the Chief of Police, who makes the final decision after consulting his command staff.

The City of Santa Cruz implemented a CRB in the mid-1990s; however, our review found that stakeholders believed that it was becoming too focused on political issues rather than focusing on helping the Department conduct thorough, fair and objective internal affairs investigations. In

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approximately 2003, the then-City Manager and members of the City Council terminated the process. In its place, the City created the office of the Independent Police Auditor (IPA) and tasked that individual with the responsibility of reviewing all complaints the Department investigated to ensure the cases were handled in a thorough, fair and objective manner.

Once the Chief of Police has made a determination of the case, the entire investigative file is forwarded to the IPA, who communicates with the Chief of Police and the Internal Affairs Unit as to whether he agrees with the outcome of the investigation and the level of discipline that was given to a subject employee. The IPA completes an audit report for the City Manager for each case he reviews indicating whether he believes the case was handled in a thorough, fair and objective manner and whether he agrees with the outcome of the case. The IPA also provides any feedback he feels is appropriate, including whether there is an indication that Department-wide training may be appropriate to address the issues that led to the complaint. The IPA forwards a copy of this audit letter to the Chief of Police. The Department then moves forward with the implementation of any formal discipline indicated in the case.

Due to the relatively low number of complaints the Department receives, the IPA position is a part-time responsibility, funded through a negotiated contract. The current IPA is the same individual who was appointed at the beginning of the IPA process, having now served for approximately 12 years. The IPA is an attorney who also serves as a part-time IPA for two other California cities.

To ensure the ongoing quality of the process, the IPA is required to meet with a subcommittee of the City Council at the end of each year, presenting both a written report and an oral presentation of an overview of the types of cases handled during the year, and hold a discussion about the quality of the internal affairs process. Any recommendations for changes to the process are made during that meeting. After the IPA's presentation, the Deputy Chief who oversees the Internal Affairs Unit answers any questions the committee members may have regarding information they learned during the IPA's presentation.

The SCPD does not produce an annual report of its own outlining the cases handled on an annual basis, preferring to allow the IPA to report the statistics to the subcommittee of the City Council to help ensure objectivity and transparency.

Representatives of the SCPD appear to have a very professional working relationship with the IPA that is built upon mutual trust, given that they do not always agree on any given case. However, to illustrate the trust that exists between the Department and the IPA, the Department routinely invites real-time feedback from the IPA about cases that it is currently investigating. This is unusual, as many police departments that have an IPA do not have much interaction during the investigation of a case, with the possible exception of an IPA who is able to sit in on the interviews. Most police departments simply interact with the IPA at the end of the investigation when the IPA provides feedback for a completed case.

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Key Distinguishing Oversight Factors:

- Thorough complaint classification system allows ease of tracking status
- Because of the trust that has been developed between the IPA and SCPD staff, at times, the IPA is invited by the Internal Affairs Sergeant to provide real-time input for an ongoing investigation
- SCPD Sergeant includes recommended findings in the report
- IPA provides recommendations for how the entire Department can improve when there is a complaint
- Annual meetings with the City Council

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VIII. RECOMMENDATIONS AND CONSIDERATIONS

NEXT STEPS: THREE OPTIONS, ONE STRATEGIC OPPORTUNITY

Faced with the type of information revealed in our report, agencies typically respond in one of three ways:

1. Some continue to deny the possible existence of implicit bias on the part of their officers and cite, for example, the lack of citizen complaints.
2. Others make some incremental changes such as revising policy or requiring officers to attend a cultural awareness course.
3. Well-led, progressive agencies, however, view the information as a real opportunity for reform. Toward that end, we present the following recommendations.

RECOMMENDATIONS: ACTIONS THAT WILL MAKE A DIFFERENCE

Recommendation #1: Adopt New Policy and Procedures for Data Collection during Traffic Stops

Many states and communities collect data on every traffic stop, even those in which no citation is issued. The Colorado legislature has debated requiring such data, but this legislation has not yet passed. BPD could be viewed as a leader in the field by adopting this approach.

The data to be collected should include, at minimum:

- Date and time of stop
- Location of stop
- District
- Duration
- Officer's name and ID number
- Information about driver (e.g., address, gender, race, date of birth)
- Information about vehicle
- Reason for stop
- Outcome (e.g., warning, citation)
- Was a consent search requested, and was permission granted?
- Was the search conducted?
- Was contraband found during the search?

Recommendation #2: Conduct a Comprehensive Review of the Field Interview Process

BPD should reassess how it uses the field interview stop and when a Field Interview Card should be completed. The Field Interview Card should include, at a minimum:

- Date, time and location of stop
- Demographics of person stopped
- Officer name and identification number
- Circumstances that led to the stop
- Was the person frisked? Why?

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- Was the person searched?
- Were weapons or contraband found?
- Was physical force used?

BPD supervisors should take more care in reviewing Field Interview Cards and citations to make certain that they are complete and accurate.

Recommendation #3: Capture Stop-Related Information from Citizens

The City of Boulder should institute frequent randomized independent surveys to ask questions designed to capture information about traffic or pedestrian stops.[55] The goal of this inquiry is to obtain feedback from individuals stopped by the police.

These questions might include:

- Location of stop
- Demographics (e.g., age, race, city of residence, gender)
- Outcome of the stop (e.g., search, citation, arrest)
- Whether the person thought the stop was legitimate
- Whether the officer acted properly
- If force was used, was it appropriate?

Another approach to obtaining this information is to send a card or letter to individuals who have had a contact with BPD and ask about the nature of the contact.[56]

Recommendation #4: Revise BPD Policy on the Use of Race as a Proxy for Criminality

General Order 200 states, "Actions are not based solely on reasons of race, ethnicity, gender, manner of dress, or other subjective criteria commonly referred to as "profiling." Although this sounds like a policy that discourages racial profiling, it is not. In reality, no officer takes enforcement action "solely" on race. Even in the most egregious cases of racial discrimination, the officer can always cite some violation of criminal law as justification. As a result, policies like this one are meaningless. Consider the new policy for federal law enforcement officers:

> "In making routine or spontaneous law enforcement decisions, such as ordinary traffic stops, Federal law enforcement officers may not use race, ethnicity, gender, national origin, religion, sexual orientation, or gender identity to any degree, except that officers may rely on the listed characteristics in a specific suspect description. This prohibition applies even where the use of a listed characteristic might otherwise be lawful."[57]

It is important to consider that even when data suggests otherwise, police officers may not be consciously involved in biased policing. As Professor Lorie Fridell has pointed out:

> "The 'fair & impartial policing perspective' reflects a new way of thinking about the issue of biased policing. It is based on the science of bias, which tells us that biased policing is not, as some contend, due to widespread racism in policing. In fact, the science tells that

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even well intentioned humans (and thus, officers) manifest biases that can impact on their perceptions and behavior. These biases can manifest below consciousness.

"Social psychologists have shown that 'implicit' or 'unconscious' bias can impact what people perceive and do, even in people who consciously hold non-prejudiced attitudes. Implicit bias might lead the line officer to automatically perceive crime in the making when she observes two young Hispanic males driving in an all-Caucasian neighborhood or lead an officer to be 'under-vigilant' with a female subject because he associates crime and violence with males. It may manifest among agency command staff who decide (without crime-relevant evidence) that the forthcoming gathering of African-American college students bodes trouble, whereas the forthcoming gathering of white undergraduates does not."[58]

Recommendation #5: Make Police Ethics and Accountability a Key Public Message

The Department should identify some new or improved methodologies for communicating to the community of Boulder and the Colorado University community the value of police accountability and the importance BPD places upon addressing allegations of BPD misconduct.

Recommendation #6: Keep Website Complaint-Filing Instructions Up-to-Date

Continuing to improve the information on the Department's website will help community members learn how to file a complaint and understand how it will be processed. It would be best to provide this information in Spanish. Consider posting any written documents that may be created in the future regarding the internal affairs process, and consider posting other key policies that would help inform the community and ensure transparency in department operations.

Recommendation #7: Consider Providing More PSRP-Related Information on the Website

Providing more specific detail about the exact process members of the panel use to review the internal affairs investigations will help increase public transparency and buy-in.

Recommendation #8: Solicit Public and Private Partners in "Getting the Message Out"

The Department should work with private organizations and other public agencies to distribute or otherwise make written information available within the community explaining how complaints may be made and how they are processed.

Recommendation #9: Cast a Wide Net in Announcing Upcoming PSRP Vacancies

A number of actions could help improve the community's trust in the selection process for members of the PSRP. Consider changes to the initial interview process that would require more participation directly from the City Manager and the community at large concerning those who will be recommended to the City Manager to become members of the PSRP. Ensure media releases announcing upcoming vacancies in the PSRP are distributed not only in the mainstream media, but in media markets commonly used in the Spanish-speaking community.

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Recommendation #10: Consider Creating a Community Advisory Panel

To enhance ongoing two-way communication with the Boulder community, consider creating a Community Advisory Panel with its membership comprised of key Boulder stakeholders who would include, at minimum, members of the diverse communities within Boulder, local representatives of the business communities, leaders of local religious organizations, representatives from Colorado University responsible for student affairs, representatives from the City's and County's social outreach programs, and local representatives of advocacy groups. This advisory panel would provide advice and guidance to the BPD command staff on community and police matters.

Recommendation #11: Expand Training on Critical Policing Concepts

Have the BPD training staff, under the direction of the Chief of Police, continue to explore new ways to enhance Department-wide training addressing the concepts of bias-free policing, implicit bias, procedural justice and constitutional-based policing, as well as other training topics highlighted in the recent Police Executive Research Forum (PERF) report *The President's' Task Force on 21st Century Policing.*[59]

Recommendation #12: Leverage the PSRP in Other Areas

Because of the relatively low number of internal affairs complaints BPD handles on an annual basis, consider, for example, having the PSRP review some of the Class II investigations involving topics of concern the community has raised.

FINAL CONSIDERATIONS: A BRIGHT, CLEAR PATH AHEAD

There is no "one-size-fits-all" or "cookie-cutter" form of civilian oversight for police departments that is universally recognized as representing the best model. In every single case, the most effective form of civilian oversight is specifically tailored to meet the needs of each local community.

BPD voluntarily initiated one of the nation's first civilian oversight programs, and the Department has over 20 years of experience working with some form of civilian oversight. Some of the advantages of BPD's current system are:

- The City of Boulder and BPD provide an opportunity for any member of the public to apply for the Professional Standards Review Panel.
- Those selected to serve on the PSRP receive training in BPD policies and procedures and in police internal affairs investigation protocols prior to their service on the panel.
- BPD provides each PSRP member access to the files of each internal affairs case that is pending the panel's review before the panel meets, which gives each member an opportunity to spend the requisite time to become familiar with the facts of the case.
- When a PSRP meeting convenes, the Internal Affairs Sergeant provides details from the completed investigation and then leaves the room so the panel members can have an open discussion for a thorough, fair, objective and complete review of each case.

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- If there are disagreements among panel members about what recommendations should be made to the Chief of Police in any given case, individual members have the ability to write a formal rebuttal outlining why they disagree with the group's decision.
- Our review of the PSRP process indicates that the Chief routinely accepts the recommendations of the PSRP.
- By limiting PSRP panel members to a maximum of two consecutive two-year terms, an opportunity is provided for additional community members to sit on the panel.

Although there are many positive aspects to the current PSRP process in Boulder, we believe there are a number of enhancements to the current process that BPD could consider to strengthen the effectiveness of the PSRP, as well as its credibility within the community, which include the following:

- The PSRP could be asked to review Non-Class 1 cases when a case involves any particular issue of community concern.
- Greater efforts should be made to provide proactive outreach to Boulder residents from neighborhoods and community groups who have not traditionally been represented on the PSRP to encourage their application and selection.
- The City Manager and Chief of Police could consider inviting key community stakeholders to participate in the selection process of those community members applying for a position on the PSRP, allowing them to make recommendations for the selections.
- BPD policies and procedures could provide enhanced and regular reporting on some of the basic details and outcomes of the cases the PSRP reviews, as well as for the cases not reviewed by the PSRP.
- Although for the purposes of the current PSRP selection process Colorado University students may not be recognized as residents of Boulder, consideration could be given to including a student representative on the PSRP panel.
- PSRP members could be invited to host some form of regular community outreach programs in which they could help educate the larger Boulder community about the BPD Internal Affairs processes and the role the PSRP plays in the process. Such an effort could provide the PSRP with an opportunity to educate individuals about the steps that need to be taken to file a complaint.

However, notwithstanding this list of potential enhancements to the current civilian oversight process in Boulder, we advise the City of Boulder and the Boulder Police Department to undertake a close review of our formal recommendations and the information provided in this report describing the internal affairs processes at five cities with similar demographics and large university populations. This information can be used to determine which additional components Boulder may consider adding to its own local form of civilian oversight of police complaint investigations to enhance the effectiveness of the process and the trust the Boulder community has in it. If the City and Department do so, these actions will enhance the effectiveness of BPD internal affairs investigations and professional standards oversight, improve police accountability and build public trust for years to come.

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ENDNOTES

1 The Disproportionate Risks of Driving While Black. *The New York Times* October 24, 2015.

2 http://quickfacts.census.gov/qfd/states/08/0807850.html

3 http://www.colorado.edu/pba/div/enrl/

4 E. Ann Carson, Ph.D. Prisoners in 2013, U.S. Department of Justice Office of Justice Programs, Bureau of Justice Statistics Revised September 30, 2014.

5 Jack Glaser. *Suspect Race: Causes and Consequences of Racial Profiling*. New York: Oxford University Press. 2015.

6 http://www.bjs.gov/content/pub/pdf/cvus0802.pdf

7 http://www.washingtonpost.com/world/national-security/fbi-director-acknowledges-hard-truths-about-racial-bias-in-policing/2015/02/12/023c6c6e-b2c6-11e4-854b-a38d13486ba1_story.html35

8 The Disproportionate Risks of Driving While Black. *The New York Times*. October 24, 2015. See also: http://wunc.org/post/can-vehicle-search-consent-forms-diminish-racial-bias-ask-fayetteville-nc#stream/0

9 http://www.usatoday.com/story/news/nation-now/2015/01/20/arrest-rate-interactive/22049927/

10 https://www.census.gov/population/www/cen2010/resid_rules/resid_rules.html

11 https://bouldercolorado.gov/police/professional-standards-unit

12 https://www-static.bouldercolorado.gov/docs/go120-1-201505281016.pdf

13 https://www-static.bouldercolorado.gov/docs/Commendation_&_Complaint_Form-1-201307121344.pdf

14 https://bouldercolorado.gov/police/what-do-the-results-of-the-investigation-mean-2

15 https://bouldercolorado.gov/police/what-happens-when-i-file-a-complaint-2

16 https://bouldercolorado.gov/police/what-if-i-am-afraid-to-make-a-report-2

17 https://www-static.bouldercolorado.gov/docs/go120-1-201505281016.pdf

18 https://www-static.bouldercolorado.gov/docs/go120-1-201505281016.pdf

19 Employee Disciplinary Matrix: A Search for Fairness in the Disciplinary Process." Police Chief Magazine. International Association of Chiefs of Police, Oct. 2006, Web Nov. 2015.

20 Investigation of the Presence of Racial Profiling in the Issuance of Tickets by the Boulder Police Department, Human Relations Commission, 2001

21 The Bias Incident Hotline Project, 6 Month Report, 2008

22 Investigation of the Presence of Racial Profiling in the Issuance of Tickets by the Boulder Police Department, Human Relations Commission, 2001

23 National Association of Civilian Oversight of Law Enforcement (NACOLE) List of US Oversight Agencies (2015)

24 Building Trust Between the Police and the Citizens They Serve, DOJ/COPS/IACP Publication, 2009

25 Population data taken from the 2014 U.S. Census.

26 Council Ordinance Number 20435, effective September 11, 2009

27 Bylaws of the Citizen Review Board, City of Fort Collins, CO, 2011

28 Boulder RFP (32-2015)

29 http://www.eugene-or.gov/index.aspx?NID=592

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30 http://www.eugene-or.gov/index.aspx?nid=577

31 http://www.eugene-or.gov/index.aspx?nid=1039

32 http://www.eugene-or.gov/index.aspx?nid=1039

33 Eugene, Oregon City Ordinance 20374

34 http://www.eugene-or.gov/index.aspx?nid=88

35 http://www.eugene-or.gov/ArchiveCenter/ViewFile/Item/3705

36 http://www.fcgov.com/police/general-info.php

37 Ordinance Number 76, 1998 – City of Fort Collins, Colorado

38 Ordinance Number 225, 1998 – City of Fort Collins, Colorado

39 Bylaws of the Citizen Review Board, Amended 2011, City of Fort Collins, Colorado

40 Memorandum Regarding Citizen Review Board Activities dated January 7, 2000

41 http://www.fcgov.com/cityclerk/citizen-review.php

42 www.cityofpaloalto.org/gov/depts/pol/info/stats.asp

43 http://www.cityofpaloalto.org/gov/depts/pol/default.asp

44 http://www.cityofpaloalto.org/civicax/filebank/documents/35032

45 http://www.cityofpaloalto.org/gov/depts/pol/auditor.asp

46 City of Palo Alto Contract Number: C10133537, Exhibit A, Scope of Services

47 http://www.cityofpaloalto.org/gov/depts/pol/auditor.asp

48 http://www.cityofpaloalto.org/gov/depts/pol/auditor.asp

49 http://www.cityofpaloalto.org/civicax/filebank/documents/18904

50 http://quickfacts.census.gov/qfd/states/49/4962470.html?cssp=SERP

51 http://yfacts.byu.edu/Article?id=143

52 http://quickfacts.census.gov/qfd/states/06/0669112.html?cssp=SERP

53 http://www.ucsc.edu/about/facts-figures.html

54 http://www.cityofsantacruz.com/departments/police/how-do-i/obtain-a-citizen-comment-form

55 For example, Police Behavior during Traffic and Street Stops, 2011. Bureau of Justice Statistics

56 See Results from the Police Community Interaction (PCI) Survey1; Dennis P. Rosenbaum, Justin Escamilla, Gina Enciso, Thomas Christoff and Susan M. Hartnett University of Illinois at Chicago. National Police Research Platform.

57 Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity. U.S. Department of Justice, December 2014.

58 http://www.fairimpartialpolicing.com

59 http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf

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Staff Response and Information Specific to Hillard Heintze's Recommendations

Recommendation #1: Adopt New Policy and Procedures for Data Collection During Traffic Stops

The Police Department is currently in the process of replacing the records management system and is in the contract negotiation stage with the vendor selected. The new records management system has a data gathering module that is designed to be completed by officers in the field. Staff is working with the vendor to determine what data the module will collect. Implementation considerations include the need for an electronic system that will collect required data, facilitate the ease of data entry, and supports a robust reporting capability. Development of department policy and training is also needed for implementation. Ascertaining the race and ethnicity of an individual contacted by an officer can be a sensitive issue. As part of implementing a data collection system, staff will investigate best practice methods for collecting reliable and accurate information on race and ethnicity during traffic stops and implement as part of the new policy and procedures.

Timeframe: Contract negotiations are scheduled to be finalized in March 2016. Staff anticipates full implementation of the records management system within nine months of signing a contract with the vendor. In the third quarter, staff will return to council with policy and best practice recommendations for ascertaining race and ethnicity during traffic stops.

Recommendation #2: Conduct a Comprehensive Review of the Field Interview Process

An internal Police Department policy discussion on the value and merit of field interview cards is needed, including a review of current department policy. If the decision is made to continue with a field interview card process, policy revisions and training will be developed with a goal of fair, impartial and consistent application, and documentation of data. As part of implementing a data collection system, staff will investigate best practice methods for collecting reliable and accurate information on race and ethnicity during traffic stops and implement as part of the new policy and procedures.

Timeframe: This effort will coincide with the implementation of the records management system, nine months after signing a contract with the vendor, which is the database used to record, store and retrieve field interview data. Obtaining race and ethnicity data from an individual contacted by an officer can be a sensitive issue. In the third quarter, staff will return to council with policy and best practice recommendations for ascertaining race and ethnicity during traffic stops.

Recommendation #3: Capture Independently Gathered Stop-Related Information

Staff will explore ways to obtain feedback from individuals stopped and contacted by the police, including using existing survey methods or new means to facilitate this recommendation.

Time frame: Six months

Recommendation #4: Revise BPD Policy on the Use of Race as a Proxy for Criminality

The police department will review current department policy and modify language to develop a stronger statement to provide direction consistent with the Hillard Heintze recommendation.

Time frame: Within 90 days

Recommendation #5: Make Police Ethics and Accountability a Key Public Message

The police department will continue to look for new or improved methodologies for communicating with the Boulder community, including the University of Colorado, the value of police accountability and the importance the department places on addressing allegations of employee misconduct. This should include revisions to the Police Department's website, community messaging, publishing a Professional Standards annual report and on-going community engagement.

Timeframe: On-going and yearly publication of a Professional Standards annual report

Recommendation #6: Keep Website Complaint-Filing Instructions Up-to-Date

The Police Department will continue to look for ways to improve the information contained on the website, and available to the public, to facilitate understanding of the complaint process for all who may access it. Currently, the Professional Standards department policy, in PDF form, is posted on the website. Complaint forms are available in both English and Spanish, in hardcopy and in electronic copy on the website. Hardcopy complaint forms are incorporated into an informational brochure and located at the main police department building and at the Pearl St. and Hill offices. In addition, the website includes specific information on the following topics:

- What happens when I file a complaint?
- What if I am afraid to make a report?
- What do the results of an investigation mean?
- How to commend an employee or file a complaint about an employee?
- Information about the Professional Standards Review Panel and a photograph of panel members.
- Two videos which provide general information on the Professional Standards Review Panel

Time frame: On-going

Recommendation #7: Consider Providing More PSRP-Related Information on the Website

Police Department staff will continue to look for ways to provide enhanced information on the website about the Professional Standards Review Panel. The Professional Standards Policy is posted on the website; however, a summary of pertinent information about the PSRP can be developed including a "Frequently asked Questions" document.

Timeframe: Within 90 days and on-going

Recommendation #8: Solicit Public and Private Partners in "Getting the Message Out"

Staff will work on collaborating and partnering with both public and private entities to distribute and message information explaining the Professional Standards process and specifically how complaints are made and processed.

Timeframe: Six to nine months

Recommendation #9: Cast a Wide Net in Announcing Upcoming PSRP Vacancies

In 1994, Boulder implemented a civilian review process where community members and employees partnered to review and make recommendation on allegations of serious employee misconduct. This partnership is a tenet of community policing and the Department's mission statement: Boulder Police - Working with the community to provide service and safety. Boulder was a leader in the establishment of a civilian review process, during a time when few law enforcement agencies took this progressive step.

The current process, which has included issuing press releases, a radio interview and the development of Channel 8 videos will be enhanced to include more robust messaging, not only to the mainstream media but to include the University of Colorado and the media markets commonly used in the Spanish speaking community. Community stakeholders and key individuals will be engaged to facilitate messaging.

Timeframe: Is based on tenure of current panel members, approximately 12 to 18 months.

Recommendation #10: Consider Creating a Community Advisory Panel

Community members and staff partnering to dialog and solve problems is a valuable process. Police department staff has begun meeting with community members and service providers to discuss homeless issues and the development of a Homeless Outreach Team.

Staff will explore best practices to implement a Community Advisory Panel to enhance communication, develop trust and provide meaningful input on police services in Boulder. Membership will be comprised of key Boulder stakeholders representing diverse communities within Boulder, local representatives of the business community, leaders of local religious organizations, representatives from University of Colorado responsible for student affairs, representatives from the City's and County's social outreach programs, and local representatives of advocacy groups.

Time frame: Six to nine months

Recommendation #11: Expand Training on Critical Policing Concepts

In 2015, all employees of the police department participated in cultural awareness and implicit bias training presented by an outside trainer. In addition, newly hired officers also receive training on these topics from Intercambio. City Human Resources continues to provide city staff with training on diverse and progressive topics.

Police department training staff will continue to explore new ways to enhance department-wide training on the concepts of bias-free policing, implicit bias, procedural justice, and constitutional-based policing, as well as other contemporary training topics.

Timeframe: On-going

Recommendation #12: Leverage the PSRP in Other Areas

Police Department staff will explore using the PSRP in other ways, with consideration given to the nature of Class II investigations, timeliness of resolution, discipline and accountability to the employee and community.

Timeframe: Six to nine months

STUDY SESSION MEMORANDUM

TO: Mayor and Members of City Council

FROM: Jane S. Brautigam, City Manager
David Driskell, Executive Director, Planning, Housing + Sustainability
Jeff Yegian, Housing Division Manager
Susan Richstone, Deputy Director for Planning
Lesli Ellis, Comprehensive Planning Manager
Jay Sugnet, Project Manager
Crystal Launder, Housing Planner

DATE: February 23, 2016

SUBJECT: Middle Income Housing Strategy

EXECUTIVE SUMMARY

The purpose of the study session is to request council feedback on the development of a Middle Income Housing Strategy (MIHS) as a new component within Boulder's Comprehensive Housing Strategy. The strategy is expected to provide a housing policy framework, including community priorities for action and specific tools to help meet the adopted Housing Boulder goal to "Maintain the Middle."

Specifically, this memo and study session will:

- Summarize findings from the recently completed *Middle Income Housing Study* undertaken to better understand how the market is currently performing in relation to housing products and choices for middle income households in Boulder;
- Provide an overview of current trends and projections for new housing development under current land use and zoning, from now through 'build out' (i.e., what we will likely get under current policies, regulations and market trends) and summarize relevant input from the recently completed community survey;
- Present draft "areas of focus" of the strategy for Council feedback;
- Provide an overview of potential interventions based on consultant input, working group discussions, and a review of middle income housing approaches from other cities; and
- Outline proposed next steps toward developing a Middle Income Housing Strategy for Boulder, including the coordination of analysis, community engagement and policy direction with the Boulder Valley Comprehensive Plan.

Why a Middle Income Housing Strategy?
Like the deed-restricted units created through the city's affordable housing program for low and moderate income households, middle income housing helps provide socioeconomic diversity in the community, and reduces in-commuting by members of the city's workforce (for purposes of this discussion, "middle income" is defined as approximately 80 to 150 percent of Area Median Income, which for a three-person household currently translates to annual income of between $68,200 and $134,250).

The shrinking of the middle class is a nationwide trend, but is more pronounced in Boulder. Since 1989, middle income households have declined from 43 percent of Boulder's households to 37 percent. Lower income households have remained relatively steady due in large part to efforts by the city and its affordable housing partners, while higher income households are replacing middle income households within an environment of escalating home prices.

As highlighted in the Middle Income Housing Study, the parts of the housing market where affordability has eroded the most for middle income households is in for-sale detached single family housing, where only 17 percent of home sales in 2015 were "middle income affordable." Attached homes (such as townhomes, duplexes and condos) are more within reach for middle income buyers, with 67 percent of 2015 sales being in the affordable range. Rental housing in Boulder, by comparison, continues to be affordable to middle income households, despite recent increases in rent levels. The study shows that 99 percent of market-rate rentals in Boulder are affordable to middle income households. New rental developments are primarily larger complexes oriented towards young professionals and "empty nesters."

The overall erosion of affordability in Boulder is the source of considerable community concern, as expressed in the recently completed community survey for the Boulder Valley Comprehensive Plan (BVCP), last year's Housing Boulder community engagement process, and the continuing debates around growth and development in Boulder.

What Can the City Do?
The *Middle Income Housing Study*'s results provide a foundation on which to develop a meaningful strategy that helps expand and sustain housing choices for middle income households in Boulder in a manner consistent with community values.

Boulder is not alone in terms of eroding middle income affordability. Other cities with high housing costs in North America are taking action by setting ambitious goals to increase the share of middle income housing stock. To achieve these goals, several cities adopted regulations requiring middle income units with new development (e.g., inclusionary zoning), created additional funding sources (e.g., linkage fees), changed land uses to encourage middle income housing, and provided incentives (e.g., density bonuses and fee reductions).

To maintain housing in Boulder for middle income people, the city will need to pursue a combination of new goals and policies, regulations and incentives, programmatic interventions, and funding mechanisms. A list of potential interventions is provided later in this memo, many of which were discussed and prioritized last year by the "Maintain the Middle" working group in

the Housing Boulder process. Analysis and strategy development work in the coming months will explore the potential interaction between these interventions, and—importantly—integrate the analysis of potential land use changes and other policy initiatives within the work of the Boulder Valley Comprehensive Plan (BVCP). This work will also look at affordable housing issues more broadly, including how current policies and regulations—including land use—support the city's continued effort to create permanently affordable housing outcomes for low and moderate income households.

Proposed Process and Next Steps
Staff proposes the following steps to create a Middle Income Housing Strategy:

Clearly Define the Problem We Are Trying to Solve

- ✓ Determine **what the market is currently producing** to serve middle income households and how unit size and location affect pricing over time (*Middle Income Housing Study*).
- ✓ Within the context of the BVCP update, analyze **what housing types the market is likely to produce in the future** based on our current regulatory framework and land availability *(preliminary analysis completed; additional analysis forthcoming*).
- ✓ Define **key areas of focus** to guide further analysis and the development of appropriate strategies and interventions (*draft areas of focus presented in this memo*).

Evaluate and Prioritize Policies, Strategies and Interventions

- Identify and evaluate **potential interventions and their relative effectiveness** in response to the key areas of focus.
- As part of the BVCP, prepare **land use and policy choices or scenarios** that could support middle income housing outcome as well as the city's broader affordable housing goals, and how each scenario might perform in relation to other potential interventions (land use and policy, regulatory, and funding/programmatic) to produce desired middle income housing types.
- Based on analysis, define **priority policies, strategies and interventions**, incorporating them as appropriate in the BVCP policy and land use changes and in the draft Middle Income Housing Strategy (MIHS) as well as other Housing Boulder strategy initiatives.
- Define **metrics of success** for maintaining and expanding opportunities and choices for middle income households, establishing quantified targets where appropriate.
- Work with the BVCP process subcommittee to develop an **integrated public engagement** plan for the MIHS work within the overall BVCP process.

Develop the Draft MIHS as part of the city's Comprehensive Housing Strategy

- Prepare the **Middle Income Housing Strategy** based on analysis, community input and direction from boards and council, including priorities for implementation in the two-year Housing Boulder Action Plan.
- As appropriate, update other aspects of the city's **Comprehensive Housing Strategy and two-year Action Plan** to guide work in support of low and moderate income housing as well.
- Develop a methodology to **monitor key market indicators** to provide better 'real time' information on developing trends in the local and regional housing markets, measure the success of city- and partner-led interventions, and inform potential next steps.

Questions for City Council

1. Does council have questions or input on the Middle Income Housing Study (**Attachment A**) or the analysis of future housing outcomes based on current policies and market trends (**Attachment B**)?
2. Does council have feedback on:
    - the proposed "areas of focus" to guide development of the Middle Income Housing Strategy;
    - the approach to analysis, including the evaluation of potential land use changes as part of the BVCP; and,
    - potential regulatory interventions, funding approaches, and other interventions to be explored?
3. Does council have questions or input related to the proposed process and timeline?

I. BACKGROUND

Since adoption of Boulder's 1999 Housing Strategy, the community has made significant progress toward achieving the city's adopted housing goals, resulting in thousands of permanently affordable housing units for low and moderate income households and placing Boulder in the forefront of housing policy and action nationwide. However, Boulder's housing market continues to be strong, and housing affordability challenges have continued to grow, particularly during the recent economic recovery.

In response, City Council set in motion a policy initiative in 2013 to define Boulder's "next generation" housing strategy that would build and continue the successes of the past while expanding the city's toolkit to respond more effectively to new and emerging challenges. Subsequent work efforts have included the Boulder Housing Market Analysis and the Boulder Housing Choice Survey and Analysis; development of the Toolkit of Housing Options; Council adoption of the Housing Boulder goals; and a substantial community outreach and engagement effort that included a town hall meeting, a panel discussion of invited experts from other parts of the country, goal-focused working groups, sub-community meetings, and the piloting of new online engagement tools. In total, well over 1,500 people participated in the community conversations and events since January 2015, building on the 3,000+ participants in the initial survey work which resulted in the presentation of Preliminary Themes that could form the basis of an updated strategy, and subsequently Council approval of the Housing Boulder Action Plan for 2015 and 2016. The action plan approach was developed in response to community contention around some aspects of the strategy development process, and the perception by some that finalizing the full strategy could not be completed until conclusion of the BVCP update. The action plan has since been updated, and was discussed with Council at its January 2016 retreat. The updated action plan can be found here.

Most relevant for this particular effort, work in 2015 included a Working Group focused specifically on the "Maintain the Middle" goal approved by Council. This group spent several months discussing the topic in depth. A Maintain the Middle Fact Sheet was created as a basis for the conversation and a summary of the group's discussions is available as **Attachment C**. The group recommended changes to the Maintain the Middle goal, as well as specific tools worth additional study that are incorporated into later sections of the memo.

The working group's recommendations as well as other input gathered in the 2015 engagement activities will be carried forward as part of the current analysis, and working group members will be invited to review and comment on materials as the strategy development process proceeds.

A complete summary of the Housing Boulder process to date, including access to all related materials, can be found on the project website at www.HousingBoulder.net.

This study session memo will be discussed with the Planning Board on Feb. 18 and board feedback will be presented at the council study session.

II. ANALYSIS

A. Middle Income Housing Study Summary

BBC Research and Consulting (BBC) was contracted to provide a detailed market analysis of middle income housing (**Attachment A)**. In addition to the market study, BBC met with developers to discuss market demand for housing; the types of products missing in Boulder; and recommendations for how the city could facilitate development of housing attractive to middle income households (**Attachment C**). Finally, staff conducted research on what other communities are doing to encourage middle income housing (**Attachment D**).

Recommendations from BBC for potential areas of city action as well as results from the review of best practices in other cities are incorporated in later sections of this memo. Following are some of the highlights from the recently completed market study:

- The share of Boulder's **middle income households has declined 6% since 1989**, offset by an increase in high income households.
- It is increasingly difficult for middle income families to find housing in Boulder. **Housing prices have risen 31% in the past two years** alone.
- **Middle income households can afford 99% of city's rentals**, but only 67% of attached homes and 17% of detached homes for sale in 2015; therefore, the main gap in middle income housing products is for-sale.
- The **inventory of homes affordable to middle income households has decreased over the last fifteen years**, with just 72 single-family detached homes affordable to middle income buyers in 2015 compared to 239 in 2000, and 262 attached homes affordable to middle income buyers in 2015, compared to 515 in 2000.
- **Attached homes maintain affordability better than detached homes**.
- Attached units maintain a lower price even in high-demand areas in Boulder and are less likely to expand in size.
- The 2014 Housing Choice survey revealed that 53% of in-commuters surveyed would consider moving to Boulder in the future. To live in Boulder:
    - Half would be willing to live in a townhome;
    - One-third would live in a duplex/triplex/fourplex.

B. Analysis of Current and Future Trends

Policy Basis for Residential Land Use

The land use pattern in the Boulder Valley is well established after decades of guidance from the Boulder Valley Comprehensive Plan (BVCP) and thoughtful growth. The plan reflects community core values, including a compact community with a defined urban edge and protection of the natural environment.

The BVCP is considered "an integral link in the community's housing strategy." The land use plan identifies desired locations, densities and types of housing planned for Boulder. Housing policies include a goal for low and moderate income housing (but not middle income). The plan also promotes a "mixture of housing types… to meet the housing needs of the full range of the Boulder Valley population" (Policy 7.06), preservation of existing housing stock (7.07), diversity of housing (Policy 7.09), and balancing housing supply with employment (7.10), to name a few.

Since the 1970s, the city and county have worked together to plan for urban development where it can be served by urban services and restrict residential sprawl, and they have undertaken zoning or regulatory changes or other measures to implement the plan. While the community sees many benefits of its regional land use growth policies such as efficient and sustainable provision of services, open space conservation, and predictability, it also means that city land available for future housing is limited. Almost no vacant parcels lie within city boundaries (those that do remain vacant are either significantly constrained or the focus of community controversy), and most of what can or may be built in the future will rely on redevelopment or retrofit of existing buildings.

Addressing needs of established and stable neighborhoods, preserving the affordability of existing housing, and identifying opportunities for additional housing will be key aspects of a Middle Income Housing Strategy (as well as other efforts to create new affordable housing opportunities in Boulder). As was highlighted in the controversies of last year, community goals for 'preserving neighborhood character and quality' and goals for creating new affordable housing opportunities can often be seen as being in conflict. Developing strategies to address and resolve those real and perceived conflicts will be essential; but so too will be strategies that can potentially create new residential neighborhoods where none have existed before, as has been the case in the Boulder Junction area; introducing housing as a use within existing commercial, mixed use and light industrial areas; and transforming public or institutional land into new housing opportunity sites (as in the case of the Boulder Community Health sites on Broadway and Mapleton Hill).

Analysis of Current Trends and Residential Potential

As part of the BVCP foundations work last year, staff analyzed potential for future housing and jobs within city limits and Area II eligible for annexation. The 2040 Projections and assumptions can be found here. In sum, by 2040, the city has capacity for about 6,760 new housing units (including almost 1,400 units projected by CU), and approximately 19,000 new jobs based on existing zoning. While it is anticipated Boulder will reach capacity for housing at or before 2040, current zoning provides capacity for employment growth past 2040.

To prepare for the February study session and upcoming scenario preparation and analysis, staff prepared a finer grained study of the GIS-based housing projections using field verification and assessing what recently has been built in comparable zoning districts. This analysis helps with

understanding the real potential for additional housing under current zoning, and what types of changes to the land use plan and policies may lead to more attainable housing for middle income buyers as well as renters.

The *Middle Income Housing Study* combined with analysis of the projections using GIS and field analysis suggests that the current land use and capacity trends combined with continuing increase in housing prices, will lead to continued loss of affordable middle income housing options in Boulder. A summary of the current trends analysis is included in **Attachment B**, which includes quantitative information by subcommunity. In sum:

- Adjusting the 6,760 additional housing units projected under the current comprehensive plan and zoning to remove units under construction or receiving permits since the projections were prepared (902), units planned by the University of Colorado (1,372), units that will not occur until Phase II of Boulder Junction and the properties are rezoned (987), and units that are owned by religious institutions or private schools (474) reduces the residential capacity by approximately half, leaving 3,025 potential new units.
- The availability of land for new housing units is significantly less than what the projections imply.
- Remaining housing capacity is generally located along corridors, downtown, and in mixed use areas. It is not in neighborhoods, though these places are sometimes adjacent to neighborhoods. The subcommunities with the most housing potential are Crossroads, Central Boulder, and North Boulder.
- Many of the projected units are on sites dispersed throughout the city and are based on redevelopment of existing buildings and sites, which may or may not occur.
- Attached products have trended toward rental apartments, not for-sale units, and only in limited quantities other attached housing types such as townhomes. Additionally, the amenities and style of many recent multi-unit buildings are oriented toward single or younger professionals rather than families (e.g., no playgrounds or limited green space).
- The mixed use districts are currently trending toward non-residential office (e.g., in DT or BT districts), so the residential estimate may be high in these areas.
- Detached single family homes are trending toward larger houses (in new construction as well as through demolition and reconstruction, or significant additions), making them increasingly unaffordable to middle incomes, as noted in the BBC report.
- The few remaining large sites planned and zoned for housing tend to have constraints and face neighborhood opposition, environmental concerns, and/ or other concerns (e.g., Hogan Pancost, Twin Lakes, Waterview, MacKenzie Junction), which makes them reliant on extensive review processes with unpredictable outcomes.
- The city's current regulatory requirements (Inclusionary Housing) assure additional permanently affordable housing units for low and moderate income households. The city's current regulations do not require units affordable to middle income households. Annexation policies do secure permanently affordable middle income housing, however very few additional sites remain eligible for annexation. While current market trends are resulting in market-rate rental units affordable to middle income households, that is not the case for ownership units.
- The analysis does not account for public parcels that are changing to private use, nor does it presume any residential development in industrially zoned areas even though the code contains some provisions allowing residential units in industrial zones.

Demographic Trends
While the Middle Income Housing Strategy will be vision driven (seeking to be the community we want to be, rather than letting market forces alone shape our future), it is critical that it be data informed. Future demographic trends, while not summarized here, will be an important consideration as the strategy begins to take shape. For example, the trend of an aging population suggests that the need for housing for middle income seniors will increase, particularly as older people seek to move out of their current homes but wish to remain a part of the community. The strategy may wish to consider setting specific goals by age group, household type, and/or other areas of need, as was done in Boston's strategy.

Community Survey Responses

> *"The accelerating pace of housing cost will limit the diversity of housing choice which will, in turn, limit how welcoming and diverse we can be."*
>
> *The (large houses) are "dwarfing the neighborhoods that had such character. They are using the entire yard to building onto the present houses. I would like to see the trend of smaller homes."*
>
> Respondents to BVCP Survey, 2015

The BVCP survey conducted in fall 2015 helps shed light on the importance of this issue to the community. Affordable housing was a major theme across several questions in the weighted and unweighted responses. Survey results can be found here. In particular, open ended comments provided thoughtful insights into community members' concerns about housing and neighborhoods.

- When asked about community values in greatest need of increased attention, respondents thought "a diversity of housing types and price ranges" topped the list (63% for top 3 priorities and 56% for top 2 priorities).
- When asked how Boulder should address future housing (increase, maintain, or reduce current potential), most respondents think Boulder should increase (43%) or maintain (39%) the current potential, while a more modest share would prefer to reduce the potential for additional housing (12%).
- 43% think the city should maintain its system of limiting the rate of housing growth (no more than 1% per year on average).
- In written comments, respondents also noted the increasing importance of housing attainable to low and middle income groups while others expressed concerns about government involvement and neighborhoods.

III. DEFINING THE PROBLEM AND FOCUSING THE RESPONSE

What's the Problem We're Trying to Address?
As shown in the study results, housing in Boulder is increasingly unattainable to middle income homebuyers. In particular, detached single-family homes are already out of reach for most middle income households, and for-sale attached housing—such as townhomes, duplexes and condos—while relatively more affordable, are increasingly out of reach as well. As existing

middle income households age and reach the point of selling their current home, the trend of eroding middle income housing options will continue and potentially accelerate.

Fortunately, rental housing remains affordable for the middle income, although the range of choices for those seeking to live within neighborhoods, rather than in larger complexes, is static. Recent developments in particular are focused on working professionals (where there is significant need and demand) but are less oriented towards families.

This situation is compounded by limited land for new residential development. Opportunities for detached housing that could serve middle income households are extremely limited, and even opportunities for creating new attached housing are less than previous broad-stroke analyses have indicated.

Without intervention, these trends will continue to erode middle income housing opportunities in Boulder.

How Can and Should We Respond?
Staff would like feedback from council regarding the following proposed areas of focus for development of a Middle Income Housing Strategy. Importantly, some of these areas of focus will also help advance the city's goals in relation to lower and moderate income housing choices. Council feedback will help focus the process and community discussion.

1: **Focus on homeownership opportunities for middle income households.**
Since rentals are largely affordable, the city should explore and adopt tools that support provision of for sale housing that is affordable to middle income homebuyers.

2: **Focus on attached housing types.**
The *Middle Income Housing Study* found that only 17 percent of detached homes for sale in 2015 were affordable to middle income households. The median detached home sales price in 2015 was $750,000 while the median sales price for attached homes was $305,500. The total costs, driven by land costs, of building detached products, even very small units, make it unlikely that detached products could fill the middle income housing need without very high levels of per-unit subsidy. The study also found that attached homes retain affordability better than detached homes. This suggests that Boulder should support the provision of a greater variety of attached housing that appeals to middle income households (e.g., townhomes or courtyard cottages with access to a small yard).

3: **Focus on the preservation of existing middle income housing where cost effective.**
The *Middle Income Housing Study* shows that a significant percentage of the city's middle income households today live in single-family detached housing throughout the city. As these homes turn over at current market prices, they will be replaced with higher income households. To "maintain the middle," it is essential to look at ways to preserve the affordability of the existing housing stock.

Other cities addressing middle income housing deploy a variety of tools, but few provide direct subsidies to create new units. Currently, Boulder subsidizes the creation of low and

moderate income housing units by its partners through both new construction and the acquisition of existing housing. The level of subsidy ranges between $35,000 (when other non-city subsidies are leveraged) and $92,500. Staff is currently working with the Development-Related Impact Fees study consultants to estimate the subsidy to make housing types that are attractive to middle income households. The Housing Boulder Maintain the Middle working group discussed this issue and was split as to the value of publicly subsidizing middle income housing, particularly if it is at the expense of the low and moderate income housing program.

The strategy should evaluate the tradeoffs between tools that could help preserve middle income affordability in existing housing, but with careful consideration of the "bang for the buck" of potential investments in relation to other community housing needs. Direct city investment may be best targeted at the preservation of middle income affordability in attached housing, not detached housing.

4: Create community and support neighborhoods.
The *Middle Income Housing Study* notes that some of the most affordable units are in places that are less desirable or were not built to preferred standards. As the process evaluates potential tools and interventions, such as land use changes in transitional or changing areas, strong consideration should be given to how they can strengthen these communities and neighborhoods. Additionally, opportunities for "gentle infill" (such as accessory units, house-behind-a-house, and duplexes) in established neighborhoods can help create middle income housing opportunities in these areas that will, over time, become predominantly if not entirely high income.

5: Expand the potential for residential development, and ensure that most new housing is affordable to low, moderate and middle income households.
With limited opportunities and little remaining capacity for residential development (approximately 3,025 residential units), most new housing produced in Boulder would need to be attainable to low, moderate and middle incomes if the city is to retain anything close to its current income diversity. If some areas that could be suitable for higher density development are designated for medium density housing types that are more attractive to middle income homebuyers (such as townhomes and duplexes or triplexes) then the overall number of potential units may decline further unless offset by changing land uses in other areas from commercial or light industrial to residential and/or mixed use.

IV. RANGE OF POTENTIAL INTERVENTIONS

Potential interventions are organized under the categories of Land Use and Policy, Regulatory, and Funding/Programmatic. For each category, an initial discussion of potential options is provided drawing on the Housing Boulder Toolkit of Housing Options as well as consultant recommendations, staff's review of approaches in other cities, and input from the Maintain the Middle working group.

Additional analysis, community engagement and discussions with Council and boards will be needed to evaluate each category and option and determine which, if any, should be adopted. The process for doing so is briefly outlined under "Next Steps."

Land Use and Policy Interventions
Potential land use and policy interventions will be evaluated as part of the BVCP process, as outlined in the "Next Steps" section of this memo.

- Land Use and Zoning Designations – As part of the BVCP, assess ways to modify land use descriptions or land use on the map (with subsequent potential changes to zoning and zoning district regulations) to encourage or require housing attractive to middle income households (e.g., smaller attached building and units with better design and amenities). Seattle and Boston, two communities profiled in **Attachment D**, plan to use land use policy followed by zoning changes to introduce desirable housing types for middle income households. The approach can be combined with a "value capture" or "incentive zoning" mechanism to help ensure that any density increase is accompanied by the provision of affordable housing and/or defined housing types. This intervention is relevant for all of the city's affordable housing goals, not just middle income, though the design of the intervention may vary based on whether it's intended to drive permanently affordable housing for low and moderate income versus non-subsidized market rate units intended to serve middle income households.

  In survey results, "providing permanently affordable housing" was selected as the first priority for developer requirements. Second by a small margin, was limiting height and protecting views, suggesting that design and location are important. Linking height modifications in selected areas with incentive based zoning mechanisms for affordable housing can help ensure the desired additional community benefit in return for increasing density.

- Annexation Policies – Consider increasing the requirement for middle income housing as a condition of annexation. The city's current policy calls for 40 to 60 percent of the units to be permanently affordable to low, moderate and middle income households.

- Balancing Housing with Employment – As part of the BVCP scenarios, explore changes to the land use plan to encourage residential potential in certain industrial/commercial and public/institutional zones or "areas of change" to improve the imbalance between future residential potential and future job-creation potential. When doing so, focus on opportunities for housing to meet the needs of low, moderate and middle income households. Survey results suggest general support for increasing residential potential while maintaining a slow growth rate.

- Neighborhood Amenities and Improvements – As part of the BVCP, assess and put in place policies to strengthen neighborhoods in conjunction with the preservation of middle income housing opportunities and the creation of new opportunities. In particular, improve transitional residential areas that have affordable housing but lack organized community structures and amenities. Incentive zoning mechanisms or legal/financial tools should be linked to improvements to avoid making housing unaffordable, as they likely will increase property values and thus housing costs.

- Mixed Use Affordable Housing – Survey results suggest that people generally support mixed use but are concerned about the design, type of mix, and the lack of "on site" affordable units in recent developments. Design of features, such as parking and open space, are also important, especially relative to location. Evaluation of potential interventions should assess the relative increase of residential uses in mixed use areas as well as overall housing and transportation costs (factoring in location efficiencies that help reduce overall living expenses) and other benefits such as reduced greenhouse gas emissions.

Regulatory Interventions

A number of regulatory changes or incentives could improve housing options for middle income people. Currently, the only path to create permanently affordable middle income housing units is through annexation. The following interventions would expand current requirements or change the city's regulatory structure to encourage or require housing types not currently provided by the market, but which would better serve middle income housing needs.

- Middle Income Inclusionary Housing Ordinance – Require a certain percentage of all new units to be deed restricted. This would be similar to the current Inclusionary Housing requirement for 20% of units affordable to low and moderate income households (e.g., New York City allocates required affordable units in three categories: 20% low; 30% moderate; and 50% middle-income). Inclusionary housing is the most widely used tool in other cities to secure middle income housing with long-term affordability.

- Middle Income Housing Density Bonus – Restructure existing zoning districts or create new districts that provide for increased density based on proportional increases in deed restricted middle income units (or affordable units more broadly, including middle income). This would be similar to the bonuses currently offered for affordable housing in the Mixed Use 1 (MU-1) and Residential - Mixed 2 (RMX-2) Zone Districts. Several communities (New York City, Roseville, CA, and San Diego) have affordable density bonus programs. A density bonus could also be offered to incentivize developers to provide specific housing types (micro-units, townhomes, du-, tri-, and four-plexes). The Maintain the Middle working group discussed this tool and agreed that it should be explored in more detail.

- Fee Reductions, Expedited Review Process, and/or Modification of Standards – Similar to the Affordable Housing Benefit Ordinance included in the Housing Boulder Action Plan 2016/17, consider special fee and process accommodations for developments that provide a certain percentage of middle income units. Both Boston and Seattle have included actions around streamlining the review process in their middle income housing strategies.

- Unit Size Regulations – Although smaller units are more affordable, development regulations and market factors often drive the development of larger and more expensive housing units (**Attachment C**). Explore incentives and/or regulations to encourage new homes to be smaller and/or to preserve existing smaller homes and their relative affordability. This type of intervention could also explore regulations and/or disincentives to limit or even prohibit the construction of very large homes and/or the replacement or major expansion of existing smaller homes. At a minimum, it could review the city's zoning and development regulations to ensure that they drive desired unit sizes. San Francisco, Seattle, Boston and New York

specifically encourage micro-units as part of an overall middle income housing strategy (though obviously these unit types only serve individuals or two-person households).

- Regulatory Barriers – Assess regulatory barriers to affordable housing and potential to modify. The most common regulatory barrier identified in other cities and by area developers are minimum parking requirements. Two communities' affordable housing strategies include components around comprehensive parking reform (Seattle) and targeted parking reductions for desired housing types (New York City).

The Housing Boulder Maintain the Middle working group identified additional regulatory tools worth consideration: raising or eliminating ***occupancy limits***; raising ***height limits*** in specific areas of the city (included in the preceding list); and encouraging more ***accessory dwelling units and owner's accessory units*** (**Attachment E**). In addition, several cities profiled in **Attachment D** emphasized accessory units in their efforts to provide middle income housing.

Developers interviewed on how the city could facilitate development of middle income housing (**Attachment C**) identified regulatory barriers, high permitting fees, code complexity, lengthy review processes, and an overall high risk environment as factors pushing the market to develop larger, more expensive housing units (most of these are included in the preceding list of potential interventions). Many developers did agree that smaller units, incentives and an overall culture change would promote the production of more middle income housing units.

Funding / Programmatic Interventions

Funding would be the primary tool to preserve existing middle income housing units, but could also be used for new construction. Some funding currently used by the city (from federal sources) is restricted to low and moderate income housing, but the city could expand the income levels served in how it spends local funds. To not divert current funding sources from current goals related to low and moderate income housing, additional funding sources could include:

- Tax for Affordable Housing – Create a new or raise existing taxes to fund middle income housing units (e.g., occupational tax, hotel/accommodations tax, general sales tax, and property tax). Sales tax is one of the funding sources for Aspen's Housing Development Fund.

- Commercial Linkage Fee for Middle Income Housing – Expand the current affordable housing linkage fee on nonresidential development to address middle income housing needs. This is being considered as part of the Development Related Impact Fees and Excise Taxes study. Pitkin County, Roseville, CA, and San Diego, CA have commercial linkage fees that support middle income housing programs and production; however other communities like San Francisco strictly target low to moderate income households with their commercial linkage fee programs.

Funding could be used to expand the city's current down-payment assistance program to include middle income households. In exchange for the subsidy, the homeowner would agree to 1) a deed restriction to maintain permanent affordability to middle income households, 2) share the home's appreciation through repaying a loan that would revolve, or 3) a combination of both.

Boston, San Diego, San Francisco and New York City are all examples of cities with homeownership programs with down-payment assistance that serve middle income households.

In addition, the Toolkit for Housing Options identified employer assisted housing as a tool. Employers could assist individual employees in the form of mortgage subsidies, down-payment assistance, and relocation payments. Some employers in mountain communities purchase housing directly for employees as part of an overall recruitment strategy. Other cities also assist employers with matching funds for various employer assisted housing programs.

V. BVCP AND NEXT STEPS

A successful middle income strategy will need a combination of policies (setting specific goals), land use changes, regulatory changes (e.g., incentive zoning) and potentially funding (e.g., linkage fees). Based on Council feedback, staff will proceed to refine the process and schedule for developing a Middle Income Housing Strategy, and work with the BVCP process committee to explore options for an integrated community engagement process. A follow-up study session for the Middle Income Housing Strategy is planned for the third quarter of 2016 to review an initial draft strategy and recommended interventions. The adoption of a final strategy is currently anticipated for early 2017.

Analysis of Scenarios through the Boulder Valley Comprehensive Plan

Since the middle income housing strategy preparation coincides with the update of the BVCP, the community will have opportunities in the coming months to assess how land use or policy changes to the plan might support middle income housing as well as other affordable housing outcomes as well as community objectives related to climate action, transportation, resilience, and jobs:housing balance. As noted above, the BVCP is an integral part of housing policy.

Materials shared with City Council for the Dec. 15 memo and the BVCP Phase 3 diagram illustrate how staff will work with the community to blend different objectives into scenarios and do the parallel work of policy integration and public request analysis.

Scenarios will be designed around objectives such as to:

- Identify areas of change and established areas, and test concepts in the transitioning areas;
- Achieve more diverse housing types to achieve middle income housing objectives as well as other affordable housing outcomes;
- Better balance future housing and jobs;
- Reduce Green House Gas emissions, miles traveled, cost for community services, and other impacts of development and growth and achieve community benefits; and
- Improve services, amenities, and placemaking for transitional places (e.g., parks, sidewalks, neighborhood serving retail).

Scenarios and analysis results will be presented using 3D visual maps, descriptions of what they are and what it would take to accomplish them, and analysis of their benefits and impacts.

The process may result in changes to the BVCP in the Built Environment chapter's character maps and descriptions; the Land Use Designation map; the land use definitions (e.g., new or

modified categories, including community benefits to achieve); and/or policies relating to housing, growth management, built environment, and neighborhoods.

A BVCP update often precedes regulatory changes (e.g., to the Land Use Code, to fees, or to enact other implementation tools). However, not all near-term regulatory changes need to wait for the update to be finished since the BVCP currently provides guidance on housing. Legislative approaches may be appropriate (e.g., accessory dwelling unit ordinance). Land use policy alone will not accomplish the challenge of housing affordability, and will need to be followed by regulations, incentives, funding or programmatic changes. As the case studies show, many communities use a mix of tools and strategies to accomplish middle income housing outcomes.

Council will have opportunities to see BVCP scenarios at a study session in April following community input earlier in April.

Next Steps
In addition to the scenario analysis undertaken as part of the BVCP update, staff will:

- Summarize input from the study session and refine the areas of focus and proposed analysis process accordingly;
- Work the BVCP process committee to define an integrated approach to community engagement in the strategy's development;
- Evaluate potential interventions and their relative effectiveness in response to the key areas of focus;
- Based on analysis, define priority policies, strategies and interventions, incorporating them as appropriate in the BVCP policy and land use changes and in the draft Middle Income Housing Strategy as well as other Housing Boulder strategy initiatives;
- Define metrics of success for maintaining and expanding opportunities and choices for middle income households, establishing quantified targets where appropriate;
- Return to Planning Board and Council later this year with the outline of a draft Middle Income Housing Strategy, based on analysis and community input;
- As appropriate and based on the outcome of the BVCP analysis and evaluation of other interventions, propose updates to other aspects of the city's Comprehensive Housing Strategy and two-year Action Plan to guide work in support of low and moderate income housing as well.

For more information, please contact Jay Sugnet at sugnetj@bouldercolorado.gov, (303) 441-4057, or www.HousingBoulder.net.

ATTACHMENTS

A. Middle Income Housing Study – *BBC Report*
B. Current Trends
C. Developer Discussions Memo
D. Middle Income Housing Approaches from Other Cities
E. Housing Boulder: Maintain the Middle Working Group Summary

BBC RESEARCH & CONSULTING

Middle Income Housing Study

City of Boulder

Final Report

Final Report
January 4, 2016

Middle Income Housing Study

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SECTION ES.

Executive Summary

EXECUTIVE SUMMARY.

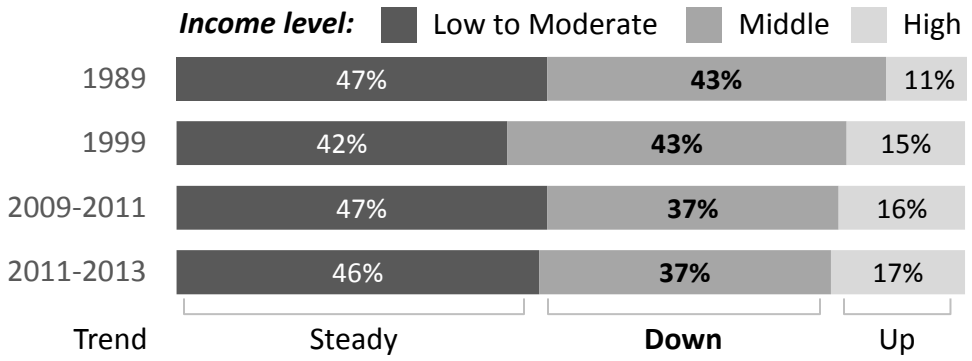
WHY A MIDDLE MARKET FOCUSED STUDY?

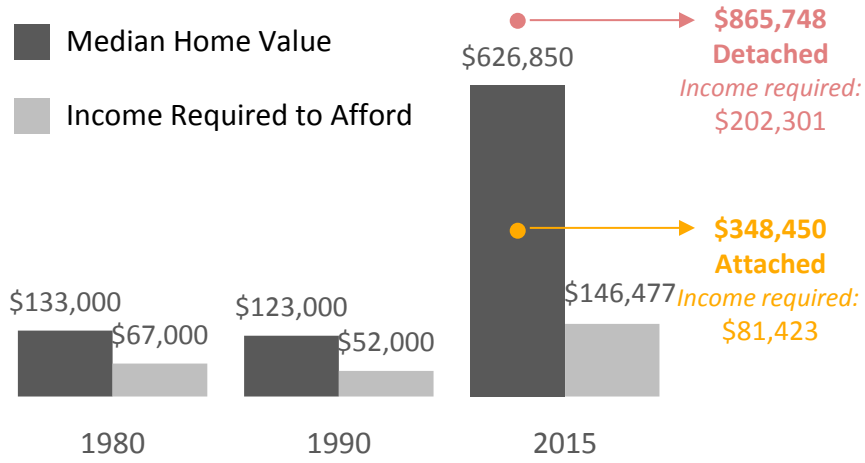
The share of Boulder's middle income households has declined from 1989, offset by an increase in high income households.

It is becoming increasingly difficult for middle income families to find housing in Boulder. Housing prices have risen **31%** in the past two years alone.

Middle income households have been an important part of Boulder's community historically—and are a critical part of the city's workforce.

Providing middle income housing options helps achieve numerous city goals: **Sustainability, Carbon Reduction, Economic Diversity.**





Middle income jobs include:
accountants, architects, librarians, veterinarians, and web developers.

EXECUTIVE SUMMARY.

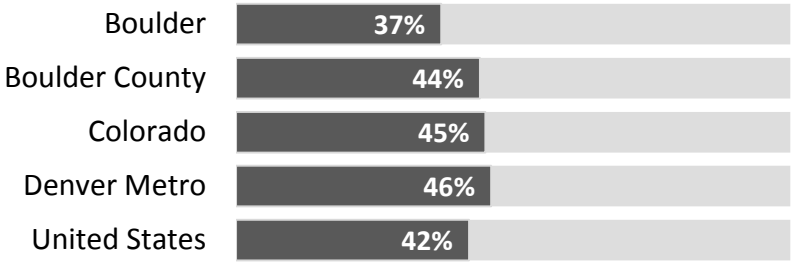
WHO IS THE MIDDLE MARKET?

80-150% of Boulder Area Median Income (AMI)

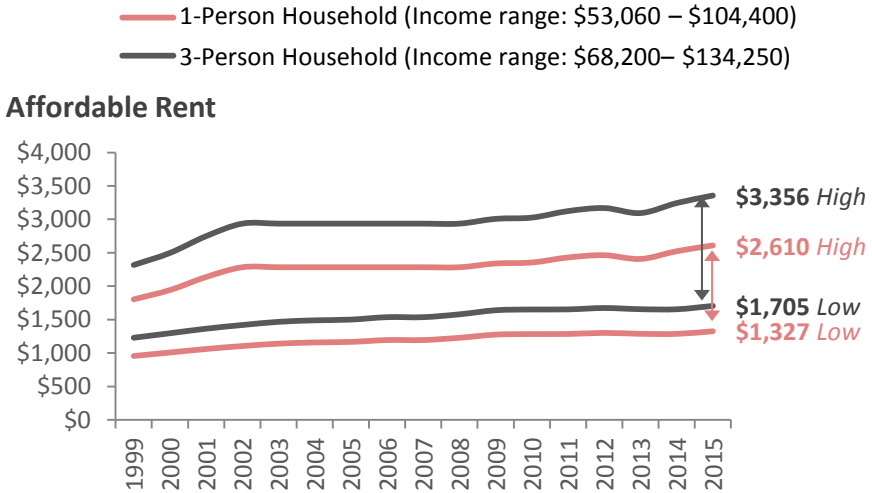
1-person households earning $53,000-$104,000

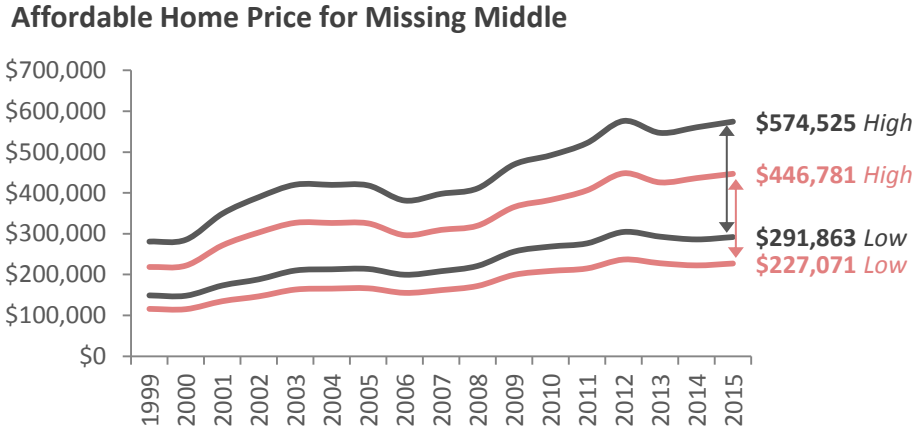
3-person households earning $68,000-$134,000

Percent Households that are Middle Market



WHAT CAN THE MIDDLE MARKET AFFORD?





Falling mortgage interest rates between 2010 and 2015 increased homeownership affordability

EXECUTIVE SUMMARY.

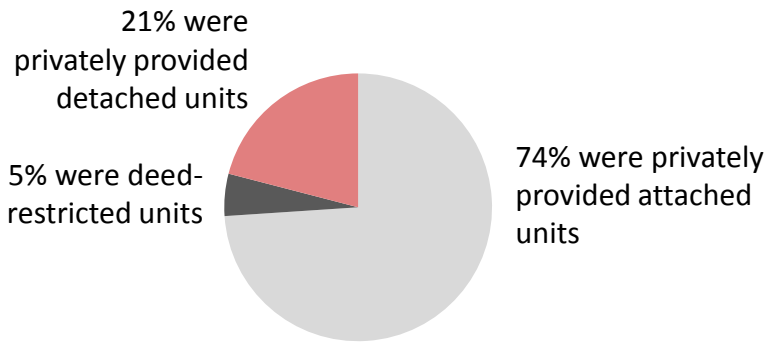
WHAT IS AVAILABLE TO THE MIDDLE MARKET?

99% of city's rentals

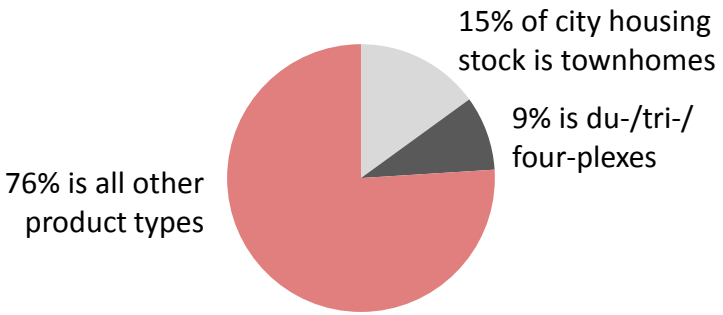
17% of detached homes for sale in 2015, or 72 units, **2** of which are deed-restricted

67% of attached homes for sale in 2015, or 262 units, **15** of which are deed-restricted

Of the 334 homes affordable to Middle Market households in 2015:



Boulder's supply of Missing Middle product types is relatively low:



EXECUTIVE SUMMARY.

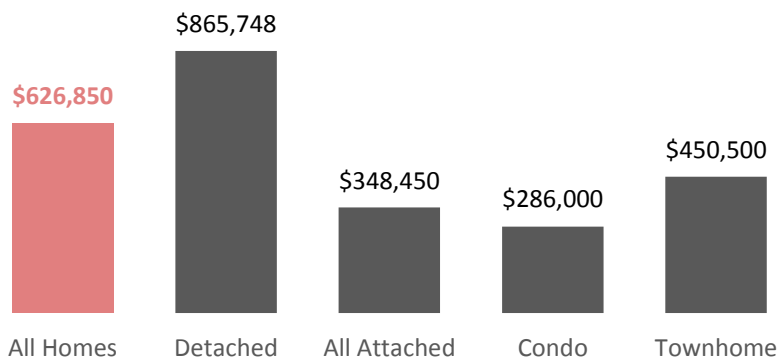
WHAT ARE THE KEY FINDINGS FROM THE MIDDLE MARKET STUDY?

Key Finding No. 1:

Attached homes maintain affordability better than detached homes

- Short term price appreciation is lower—
  Annual increase between 2011 and 2015: **10%** for detached, **7%** for townhomes, **5%** for condos.
- Long term price appreciation is lower—
  Overall increase between 1996 and 2015: **209%** for detached homes v. **138%** for townhomes and condos.

Median price remains lower



This is true even for similarly-sized homes

	Median List/Sold Price				CAGR	
	2000	2005	2011	2015	2000-2015	2011-2015
All homes with 2+ bedrooms and 900+ sq ft	$317,550	$420,000	$489,950	$700,000	5.4%	9.3%
Detached homes with 2+ bedrooms and 900+ sq ft	$372,400	$564,950	$589,900	$869,740	5.8%	10.2%
Attached homes with 2+ bedrooms and 900+ sq ft	$210,000	$285,000	$335,000	$447,000	5.2%	7.5%

EXECUTIVE SUMMARY.

Key Finding No. 2:

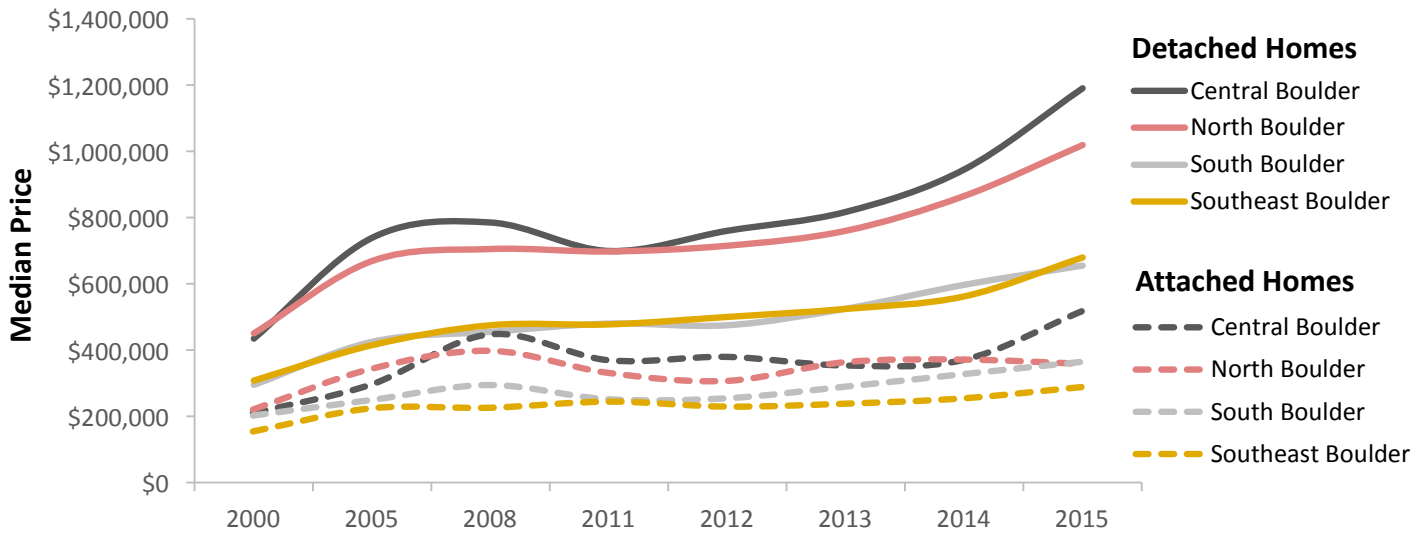
Attached units maintain a lower price even in high-demand areas in Boulder

Central Boulder detached homes sold for a median price of **$1.2 million** in 2015 v. **$522,000** for attached homes.

Key Finding No. 3:

Attached products are less likely to expand in size

The average size of detached homes rose by **700 square feet** between 2000 and 2015, contributing to price increases. Average attached home size rose by just **150 square feet**.



EXECUTIVE SUMMARY.

Key Finding No. 4:

Rentals remain very affordable to the Middle Market and may be the only way to live in Boulder

Although rent levels are at record highs—**$1,861/month** near the University, **$1,505/month** in the balance of the city—**99%** of Middle Market households can afford to rent at market prices.

Historically, Boulder's rental market has offered a range of larger units:

- ***29%*** *of rental units have 3+ bedrooms*
- ***19%*** *of rental units are single family detached homes*

Yet this is changing:

- *The share of rentals most attractive to in-commuters and families—attached products integrated into neighborhoods—is down to* ***31%*** *from* ***33%*** *in 2000*
- *Newly developed rentals in larger complexes are not family-oriented, offering firepits v. playgrounds*

Key Finding No. 5:

Purchasing an attached unit is cheaper than renting at market rates

In-commuters wanting to live in Boulder express a preference for attached products in small structures integrated into neighborhoods v. large multifamily complexes.

In-commuters would much rather buy than rent: only **6%** are willing to make the trade-off of renting in Boulder v. buying outside of Boulder.

For the same monthly expense, a renter in a new Boulder complex could purchase up to **83%** of all two-bedroom attached homes listed for sale in 2015.

Key Finding No. 6:

If all new residential is priced for the Middle Market, affordability would increase significantly.

Currently, 27 percent of the city's owner-occupied homes are affordable to Middle Market households. If all 6,750 of potential new dwelling units were added to the city today, the proportion of owner-occupied homes affordable to Middle Market households would increase to 42 percent.

SECTION I.

Introduction to Middle Market Research

SECTION I. Introduction to Middle Market Research

This report focuses on housing Boulder's middle income households. Its primary purpose is to provide information about which types of housing products are successful in broadening housing options for current and potential middle income residents of the City of Boulder.

Why a Middle Market Housing Study?

A core element of the new Housing Boulder Action Plan for 2015 and 2016 is development of a middle income housing strategy.[1] The aim of the strategy is for the city to better use its regulatory tools and investments to facilitate a richer diversity of housing choices and residential affordability (through new development, redevelopment and the preservation of existing housing).

The decline of middle income households has been a growing concern for Boulder. In 1989, 43 percent of Boulder's households were considered middle income. This proportion held until 1999, after which it began to drop, offset by an increase in high income households. Today, an estimated 37 percent of the city's households are middle income. Middle income households have declined outside of Boulder as well, though the county, region and state have maintained a higher proportion of middle income households.

Middle income households are an important segment of the city's population not only because they have historically been a core part of the Boulder community—but also because they make up a significant part of the city's workforce. Providing middle income housing to Boulder workers within the city helps achieve numerous city goals (e.g., sustainability, carbon reduction, diversity).

Development of the middle income housing strategy involves:

- Determining what the market is currently producing to serve middle income households and how unit size and location affect pricing over time—*This is the purpose of this study;*
- Identifying and evaluating land use changes and other market interventions needed to produce desired middle income housing types (e.g., duplexes and triplexes, townhomes, courtyard apartments, bungalows) and appropriate locations (coordinated with the Comprehensive Plan update)—*This is will occur as part of the Boulder Valley Comprehensive Plan (BVCP) and will be informed by this study;*
- Determining effective mechanisms to support middle income affordability (e.g., shared appreciation models, down payment assistance, preservation of existing housing)—*Development of these mechanisms will be informed by this study;*
- Identifying a methodology to monitor key market indicators to measure progress on Middle Market housing provision; and
- Drafting a middle income strategy based on analysis and additional community input.

[1] www.HousingBoulder.net

SECTION I. Introduction to Middle Market Research

Is This a New Challenge for Boulder?

Providing housing to middle income households, as well as low income households, has always been somewhat of a challenge for Boulder. The community's interest in maintaining economic diversity led Boulder to establish many of the region's first affordable housing programs and policies. In September of 2014, City Council adopted six goals to help guide the development of the housing strategy and one was designed solely on "providing a greater variety of housing choices for middle-income families and Boulder's workforce."

The affordability challenges of Boulder's low and middle income households were less severe before the 1990s—a period of significant population growth for the city and the Denver region overall. Contributing factors were strong in-migration in the region, a recovering economy and a shift in consumer housing preferences toward "lifestyle" communities, such as Boulder. **Between 1990 and 2000, the median value of a home in Boulder increased at a compound annual rate of 8 percent.**

The current, unprecedented rise in prices continues to broaden the demographic of those for whom buying or renting in Boulder is unattainable. **Housing prices in the past two years alone have risen by 31 percent.** Today, the Boulder households most vulnerable to the effects of rapid housing price increases are those who earn too much to qualify for public subsidies, but for whom the median-priced home is out of reach. These households—herein referred to as the Missing Middle, Middle Market or workforce housing—are the subject of this report.[2]

Loss of housing for the Middle Market is also an issue for other cities of high demand. *Governing* magazine recently reviewed the gap in availability of family-sized Middle Market housing in the nation's 25 largest cities. In the top 10 most expensive cities in the U.S., an average of 17 percent of all home listings with 3 or more bedrooms were affordable to families earning the local median family income. This compares to 63 percent in the other 15 cities.

Boulder is slightly more affordable than the 10 most expensive cities in the U.S. but still far more expensive than the other 15 cities included in the *Governing* magazine report. In Boulder, 20 percent of 3-plus bedroom homes for sale were affordable to the median-income four-person household in 2015 (compared to 17% in the most expensive cities and 63 percent in the other 15 cities).

Figure I-1 displays the Governing magazine data for select cities along with Boulder. The figure shows the proportion of two- and three-bedroom homes affordable to 4-person families earning the median income.

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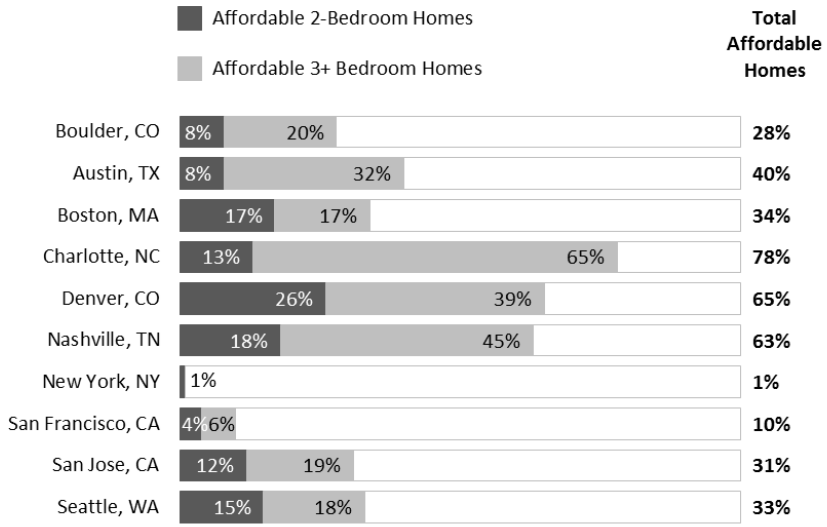
[2] The term Missing Middle was crafted by Daniel Parolek of the planning and design firm Opticos. He uses the term to define a particular residential product type: "multi-unit or clustered housing types" that are compatible in scale with single family homes and which are targeted to help meet a growing demand for "walkable urban living." Many take this definition to be synonymous with middle income households. In many, but not all, markets, Missing Middle products are more affordable than detached single family products. Yet changing market preferences for lower maintenance, walkable residential environments—largely driven by Millennials and Baby Boomers—can make Missing Middle products less affordable.

SECTION I. Introduction to Middle Market Research

Figure I-1.
Comparative Share of Home Listings Affordable to Median Income Families in Boulder and Select Cities in the United States



Source: Governing Magazine, MLS and BBC Research & Consulting.

Who is the Middle Market?

The City of Boulder has a permanently affordable middle-income housing program. This program defines middle income as approximately 80 to 120 percent of the area median income (AMI) in the Boulder region or, for example, a three-person household with an annual income between $68,000 and $104,000 (2015).[3] This program was established as part of the City of Boulder's goal of 450 permanently affordable middle income housing units. This goal was adopted in 2008 as a separate goal in addition to the "10 Percent Goal." Currently, annexation is the city's only path to create permanently affordable middle-income housing.

For the purposes of this report, the Missing Middle is defined as households earning between approximately 80 and 150 percent of AMI. This aligns with the City's income break between Low to Moderate Income and Middle Income (approximately 80% AMI) but increases the maximum income threshold from 120 to 150 percent AMI in order to provide a more comprehensive view of households that may consider themselves to be "middle class."

Previous Housing Boulder reports have explored other definitions of middle income households including income breaks of $50,000 to $150,000 and $65,000 to $150,000. This report strikes a balance between the higher threshold used in those reports and the lower threshold of Boulder's current middle income housing programs. This report focuses on the household types that are most common in Boulder: 1- and 3-person households.

MIDDLE MARKET

1-person households earning $53,060-$104,400

3-person households earning $68,200-$134,250

[3] AMI is calculated by HUD annually and is adjusted by household size. It is based on the median income of a 4-person household, as determined by household surveys conducted by the U.S. Census.

SECTION I. Introduction to Middle Market Research

What Happens When the Middle Market Can't Afford Housing?

The most obvious effect of housing prices being out of reach for workers is more in-commuting—and more traffic.

This can also lead to a shift in certain household types. Families, for example, may be economically motivated to live in more affordable communities to help manage the costs of raising children (child care, activities, saving for college). This shift has not yet occurred in Boulder; instead, the proportion of families has remained the same, but families are more likely to be high income.

Organization of Report

The remainder of this report is organized as follows:

- Section II. Middle Market Housing Products begins with a discussion of the demographics of Boulder's Middle Market households. It introduces the products that have been and are currently affordable to Middle Market households.
- Section III. Middle Market Price Trends and Affordability provides an in-depth analysis of ownership and rental affordability for Middle Market households within Boulder—what types of homes were once affordable, what is affordable now, where affordable homes are located and what's missing from the market.
- Section IV. Impacts of Middle Market Development discusses if and how an infusion of Middle Market products could contribute to Boulder's affordability.

Data limitations. This report relies heavily on data from the multiple list service (MLS), the Metro Denver Vacancy and Rent Survey, the U.S. Census and the American Community Survey (ACS). Some limitations of those data include:

- Using MLS data focuses the ownership-related findings on what the market offers buyers at a given time, not what it contains as a whole. The benefit is that MLS data provide the best measure of what potential buyers could actually find on the current market. However, it may not provide a perfect representation of all existing homes in the city. MLS data also include a lower sample of homes to analyze than data on all homes in the city. The primary alternative to MLS data is assessor's data which does include data on all homes in the city, not just those being listed/sold. However, historical assessor's data were not available for this project due to reporting issues currently being addressed by the Boulder County Assessor's Office.
- The Metro Denver Vacancy and Rent Survey does not include rental information on single family rentals. Unfortunately, the counterpart Single Family Housing Vacancy and Rent Survey was discontinued in early 2014. Neither survey provide detailed information on the distribution of rents in Boulder; instead the data focus on average and median rents as well as vacancy rates.
- The ACS reports more detail on rental distribution and offers more rental cross-tabulations than the vacancy survey. However, the lag between data collection and release means the most recent 3-year ACS data available are the 2011-2013 3-year estimates.

SECTION I. Introduction to Middle Market Research

- There are no available data sources that include non-structural design features which characterize many Missing Middle housing products (design style, orientation, community integration, etc.) and impact both desirability and affordability. As such, the study team relied on reported structural characteristics (e.g., size of unit and number of units in a building) as a proxy for style when possible.

SECTION II.

Middle Market Housing Products

SECTION II. Middle Market Housing Products

Who are Boulder's Middle Market Households?

In the spring of 2015, a "Maintain the Middle" fact sheet was compiled for Housing Boulder which described middle income households in detail. This fact sheet examined trends in middle income households—their types, age distribution and overall proportion in the city. In 1989, 43 percent of Boulder's households were considered middle income. This proportion held until 1999, after which it began to drop, offset by an increase in high income households. An estimated 37 percent of the city's households are middle income today (see Figure II-1).

Figure II-2 displays the proportion of middle income households in Boulder to the county, state and nation between 1989 and 2013. Statewide, the proportion of households that are middle income declined by 3 percentage points between 1989and 2013 (from 47 percent to 45 percent), compared to a 6 percentage point decline in the City of Boulder. Boulder County actually shows the steepest decline in middle income households over the period but still maintains a higher proportion of middle income households than the city. It should also be noted that city data are included in county estimates.

Figure II-1.
Middle Income Trends, City of Boulder, 1989 to 2013

	Low to Moderate Income	Middle Income	High Income
1989	47%	**43%**	11%
1999	42%	**43%**	15%
2009-2011	47%	**37%**	16%
2011-2013	46%	**37%**	17%
Trend	Steady	**Down**	Up

Note: In the Maintain the Middle Fact Sheet, middle income was defined as households earning between $50,000 and $150,000.

Source: Housing Boulder Maintain the Middle Fact Sheet and BBC Research & Consulting.

Figure II-2.
Middle Income Households, City, County, State and Nation, 1989 to 2013

	City of Boulder	Boulder County	State of Colorado	United States
1989	43%	51%	47%	46%
1999	43%	50%	50%	46%
2009-2011	37%	43%	46%	43%
2011-2013	37%	44%	45%	42%
Difference	-6.3%	-7.5%	-2.6%	-4.6%

Note: In the Maintain the Middle Fact Sheet, middle income was defined as households earning between $50,000 and $150,000.

Source: Housing Boulder Maintain the Middle Fact Sheet, 1990 and 2000 Census, 2009-2011 and 2011-2013 ACS and BBC Research & Consulting.

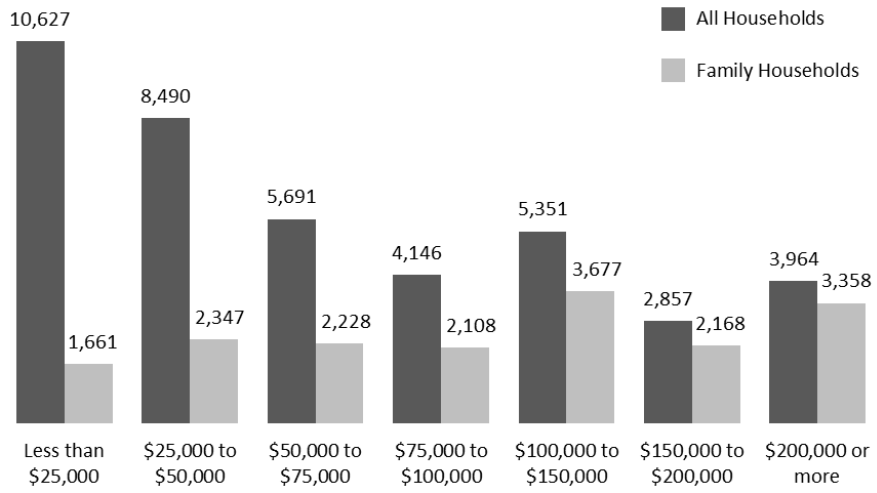
SECTION II. Middle Market Housing Products

Just over half (53%) of the city's middle income households are defined as families according to the U.S. Census. (The Census defines a family as two or more people—one of whom is the householder—related by birth, marriage, or adoption residing in the same housing unit. This definition excludes same sex couples and unmarried partners and as such, in some communities, under-represents families).

Twenty percent of Boulder's middle income households are families with children. Overall, just 19 percent of all Boulder households include children—similar to the proportion of households with children in San Francisco, Washington DC and Seattle which have some of the lowest shares of children among large cities.[1] In Denver, about one quarter of all households include children.

Figure II-3 displays all households and family households by income for the City of Boulder. Family households are more likely to be middle income than households overall. That said, family households in Boulder skew toward higher income brackets, while all households skew toward lower income brackets (likely the result of students living in the community).

Figure II-3.
Income by Household Type, City of Boulder, 2013



Note: Household income reported is for the previous full calendar year.

Source: Housing Boulder Maintain the Middle Fact Sheet and BBC Research & Consulting.

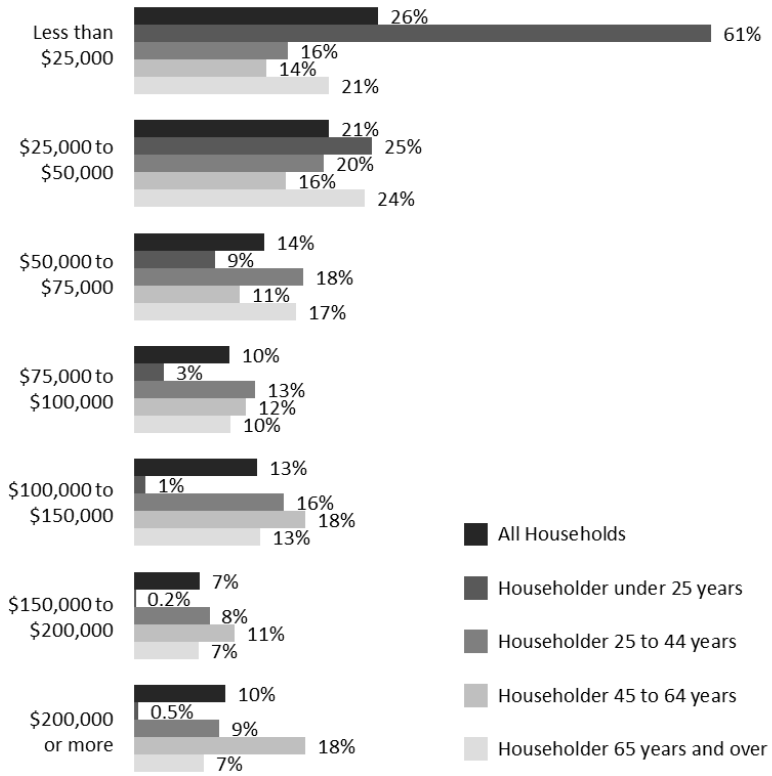
Figure II-4, on the following page, displays household income by age. Middle income households are slightly more likely to be headed by householders aged 25 to 44. Of households earning between $50,000 and $150,000, 44 percent are headed by householders between 25 and 44 years old, compared with 8 percent for under 25 years and 33 percent for 45 to 64 years.

[1] Maciag, Mike. "No Room in the City." *Governing Magazine*. November 2015, 25-30.

SECTION II. Middle Market Housing Products

Similarly, 47 percent of householders between the ages of 25 and 44 have incomes between $50,000 and $150,000, compared to 13 percent of householders under 25 years and 41 percent of householders over 45 years.

Figure II-4.
Household Income by Age of Householder, City of Boulder, 2013



Source: Housing Boulder Maintain the Middle Fact Sheet (2013 5 year ACS) and BBC Research & Consulting.

Middle income households hold key employment positions in Boulder. According to the Bureau of Labor Statistics Occupational Employment Statistics, 42 percent of Boulder employees are in industries with average or median wages that fall in the Middle Market income range. These employment categories include the following:

Employment Categories

- Accountants and Auditors
- Chemical Engineers
- Clinical Counseling and School Psychologists
- Computer Programmers
- Dental Hygenists
- Economists
- Industrial Engineers
- Landscape Architects
- Librarians
- Physician Assistants
- Registered Nurses
- Special Education Teachers, Secondary School
- Technical Writers
- Veterinarians
- Web Developers

SECTION II. Middle Market Housing Products

Which Housing Products are Key to Maintaining Middle Market Households in High Cost Cities?

Missing Middle product analyses generally focus on new housing types that are needed to help meet demand for workforce or middle income housing. In reality, in most cities, existing housing—generally older (but not historical), modest products provide the largest share of housing to the middle class.

These products make up much of the residential housing stock in the Intermountain West. For example, 61 percent of Boulder's housing stock was built in the 60s, 70s and 80s. Homes built in those decades now offer some of the lowest home prices and rents in Boulder, particularly homes built in the 1970s and 1980s (see Figure II-5).

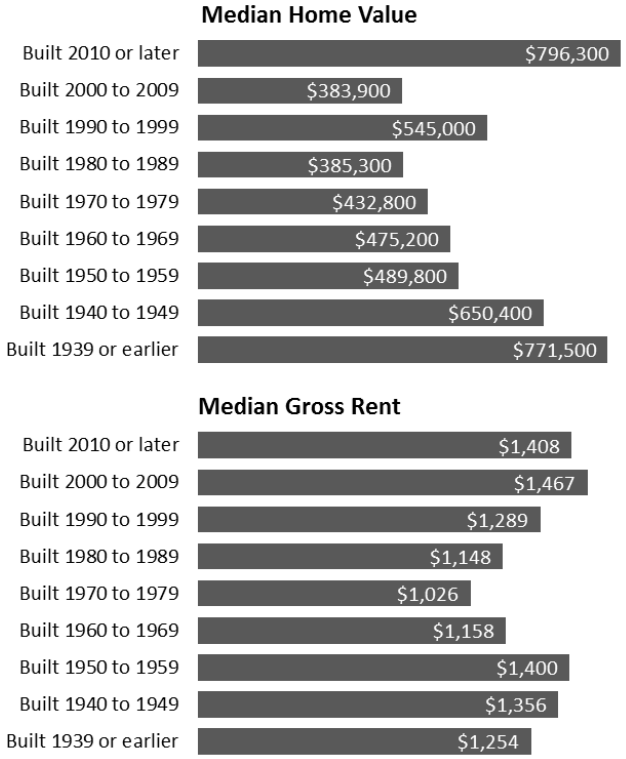
Figure II-5. Median Values and Gross Rents by Year Built, City of Boulder, 2013

Note:

Median value and median gross rent in the ACS are self-reported and as such, likely include deed-restricted units and rent subsidies.

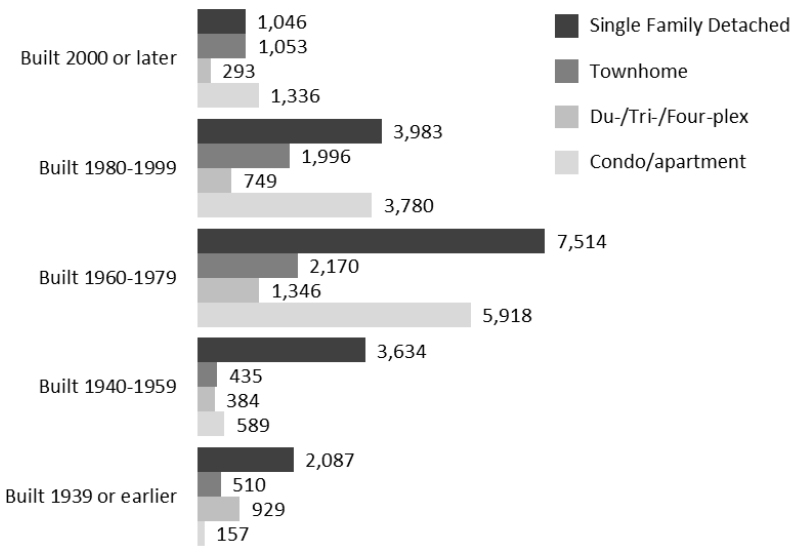
Source:

2009-2013 ACS.



As shown in Figure II-6, prior to 1980, home construction focused largely on single family detached dwellings. Since 1980, just over a third of newly constructed homes were single family detached.

Figure II-6. Year Built by Product Type, City of Boulder, 2013



Source: 2009-2013 ACS.

SECTION II. Middle Market Housing Products

In general, there are two types of products that serve Middle Market households:

- "Intentional" products—those that targeted middle income and workforce households when they were developed. They may have been subsidized through density bonuses, land donations or grants and loans to achieve their affordability.
- "Non-intentional" products—those that have maintained relative affordability because of lower demand. These were developed to be market rate products when built. Their appreciation has been more modest than the market overall, retaining their affordability to middle income households.

Which does Boulder have—and not have? Although data describing each specific Missing Middle product type are not available, the ACS does provide data to describe the primary types of housing stock in the city. As shown in Figure II-7 on the following page, 41 percent of Boulder's housing stock is detached, 52 percent is attached and 7 percent is mobile homes. Large condo/apartment buildings are the most common attached product (28%) followed by townhomes (15%) and du-/tri-/fourplexes (9%).

Affordability and demand are discussed in more detail in Section III, but simply based on product type, Boulder appears to have a relatively low supply of small structure attached units—townhomes, duplexes, triplexes and fourplexes. In the 2014 Housing Choice Survey, middle income in-commuters expressed the strongest preference for those types of attached units in the city as an alternative to living in detached homes outside the city.

Intentional product types:

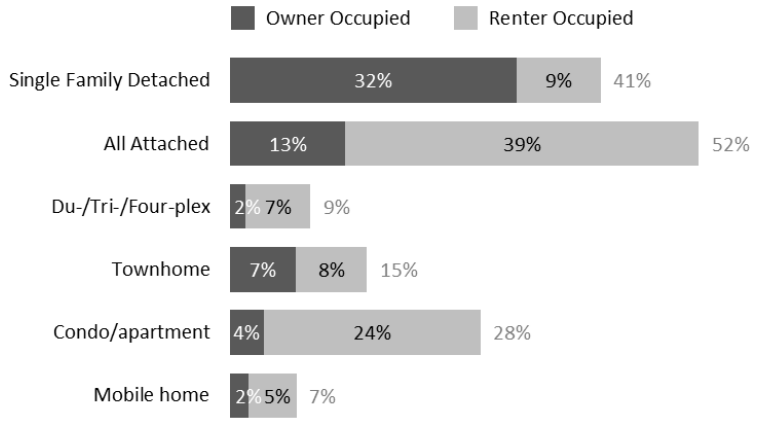
- Very small lot homes between 1,500 and 1,800 sq. ft. Includes cottage or courtyard homes. Example: Iris Hollow.
- Multiplex/reuse of existing structure. Example: Washington Village.
- Townhouse—newer, good size (1,200-1,500 sq. ft. with small private space). Example: Steelyards.
- Non-luxury condos. Example: Holiday.
- Co-housing.

Non-intentional product types:

- Older, small (1,500-1,800 sq. ft.) single family detached homes having some limitations—need rehabilitation, poor location, awkward layout, etc.—were traditional starter homes that may not be out of reach for middle market and now priced for lots/investors.
- Older attached units with limitations—poor noise control, bad design, poor location. Students potentially better occupants.

SECTION II. Middle Market Housing Products

Figure II-7.
Housing Stock by Type, City of Boulder, 2013



Source: 2011-2013 ACS and BBC Research & Consulting.

Where Do Boulder's Middle Market Households Live?

About 43 percent of Middle Market households live in rental units and the other 57 percent own their homes. These Middle Market households—both renters and owners—live throughout the city, although the Census tracts in the northern (owners) and central (renters) areas of the city have the highest numbers of Middle Market households.

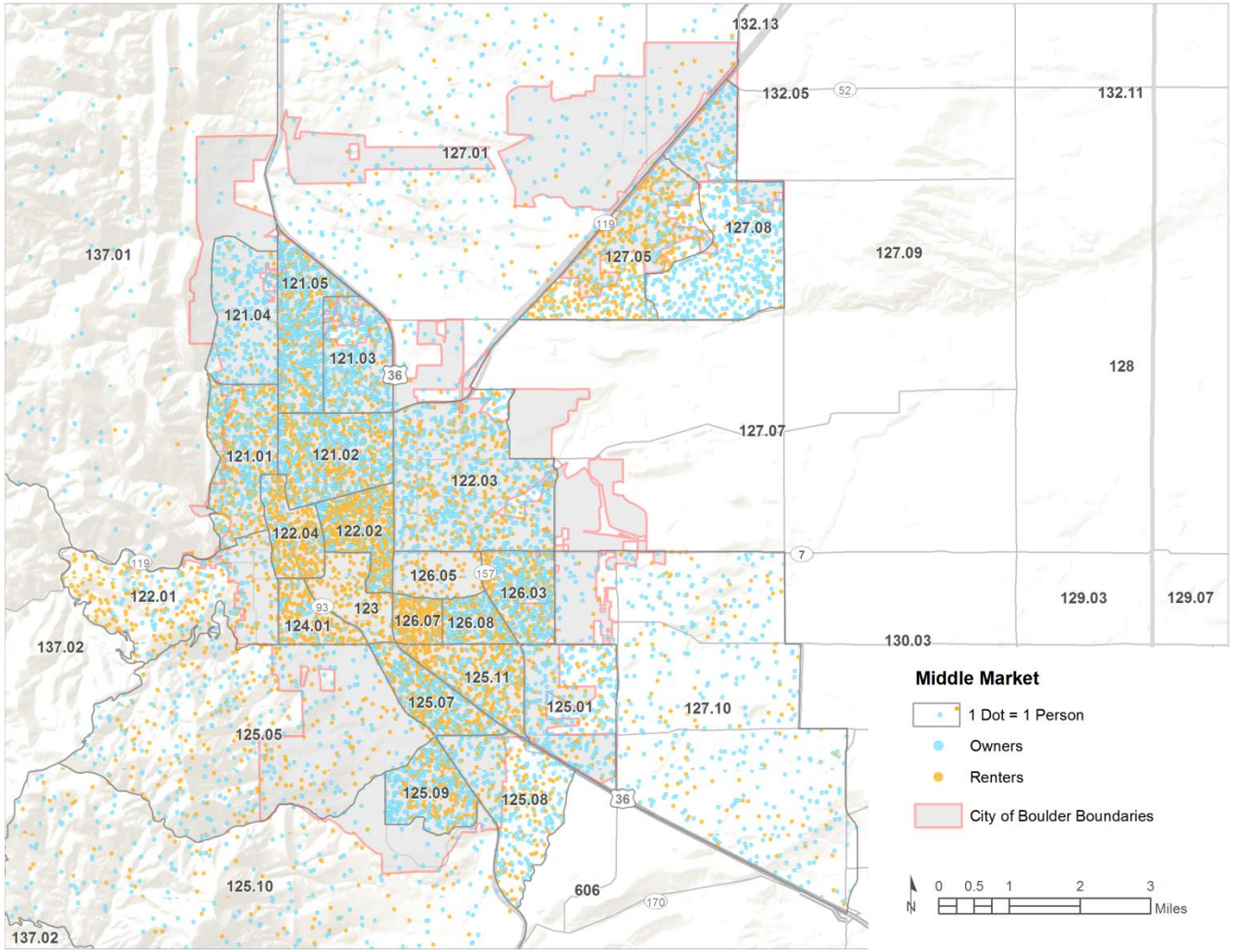
Figures II-8 through II-11 display the number and proportion of Middle Market households by Census tract. The maps emphasize that middle income residents live in many parts of the city, though owner opportunities for the middle income tend to vary more by neighborhood than do renter opportunities.

SECTION II. Middle Market Housing Products

Figure II-8.
Middle Market Owners and Renters

Source:

2009-2013 ACS and BBC Research & Consulting.

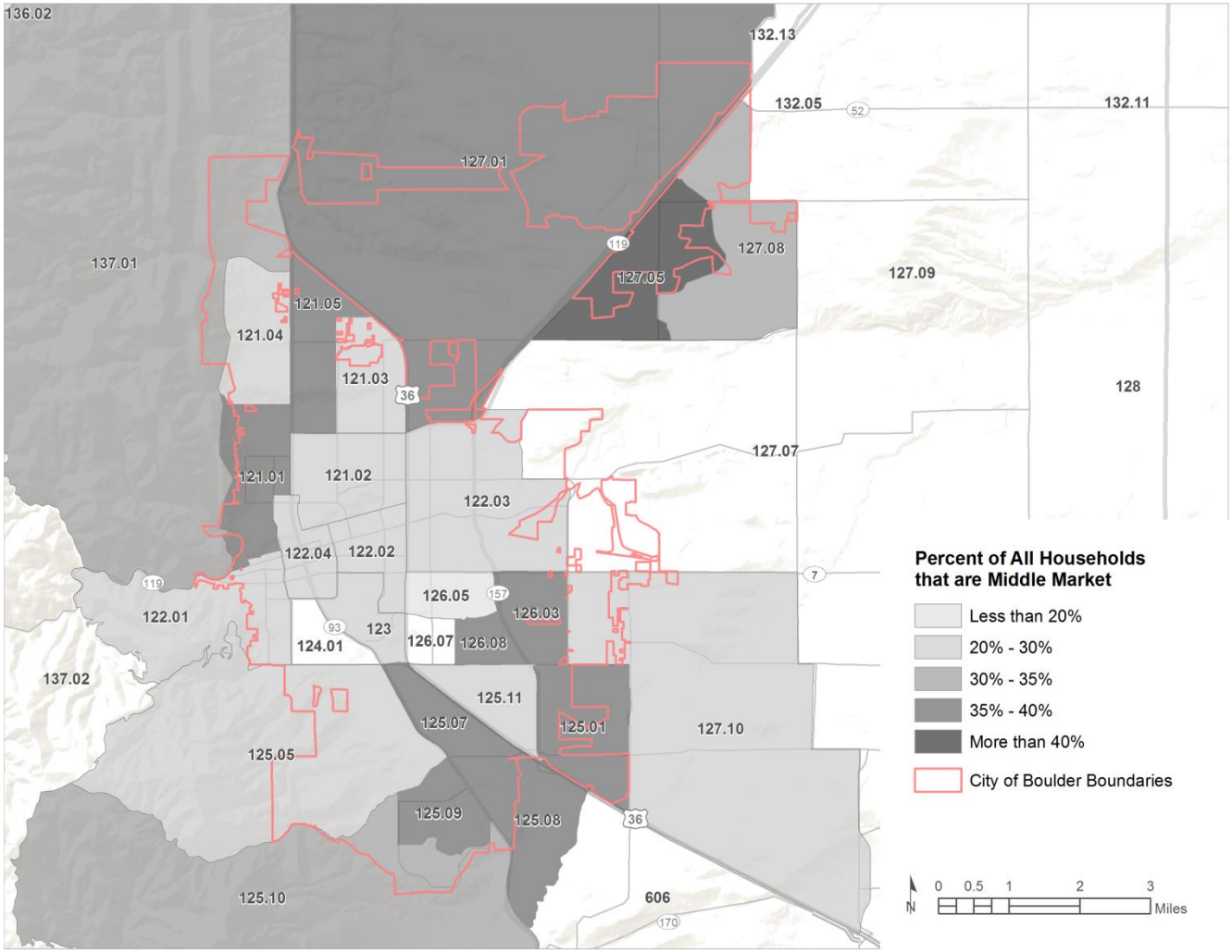


SECTION II. Middle Market Housing Products

Figure II-9.
Percent of All Households that are Middle Market

Source:

2009-2013 ACS and BBC Research & Consulting.

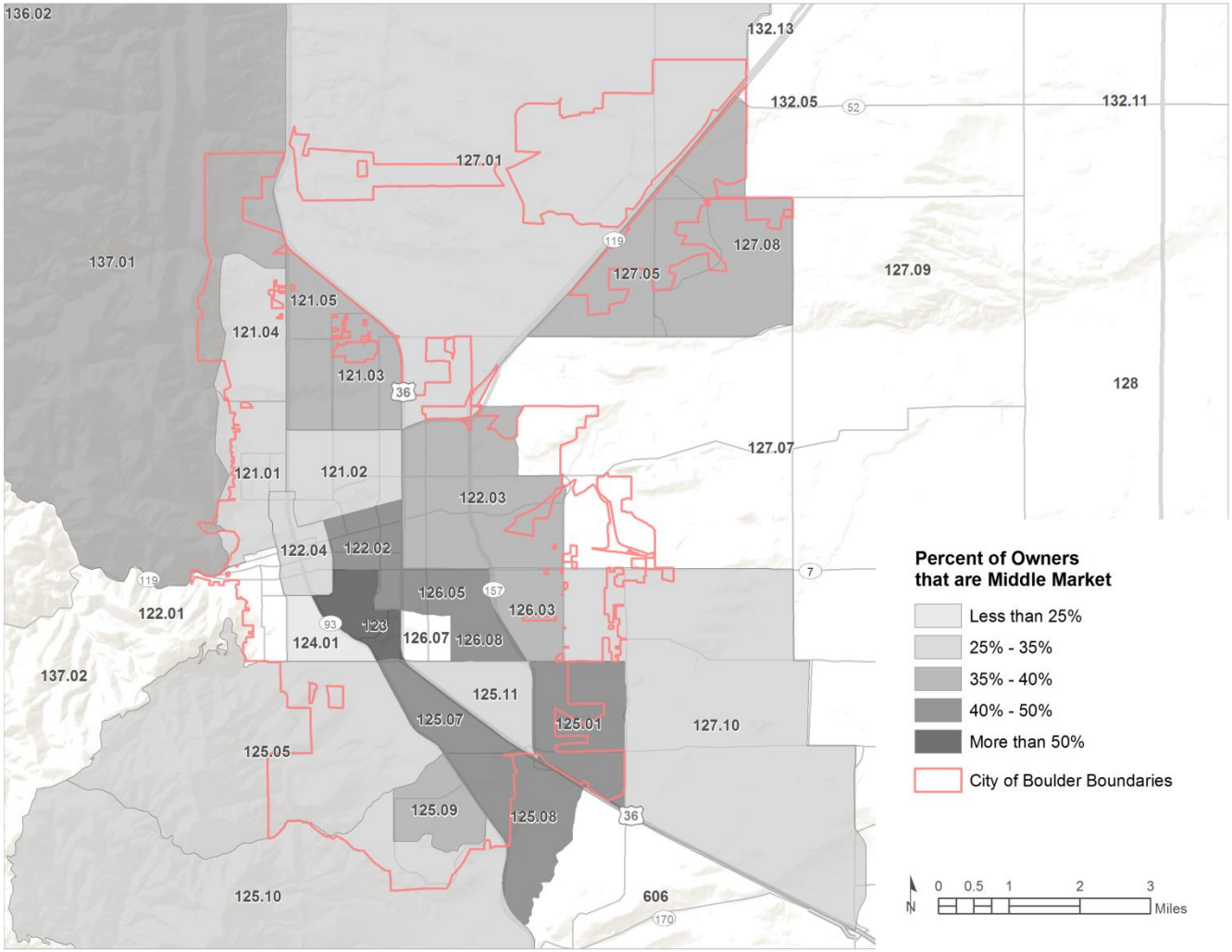


SECTION II. Middle Market Housing Products

Figure II-10.
Percent of Owners that are Middle Market

Source:

2009-2013 ACS and BBC Research & Consulting.

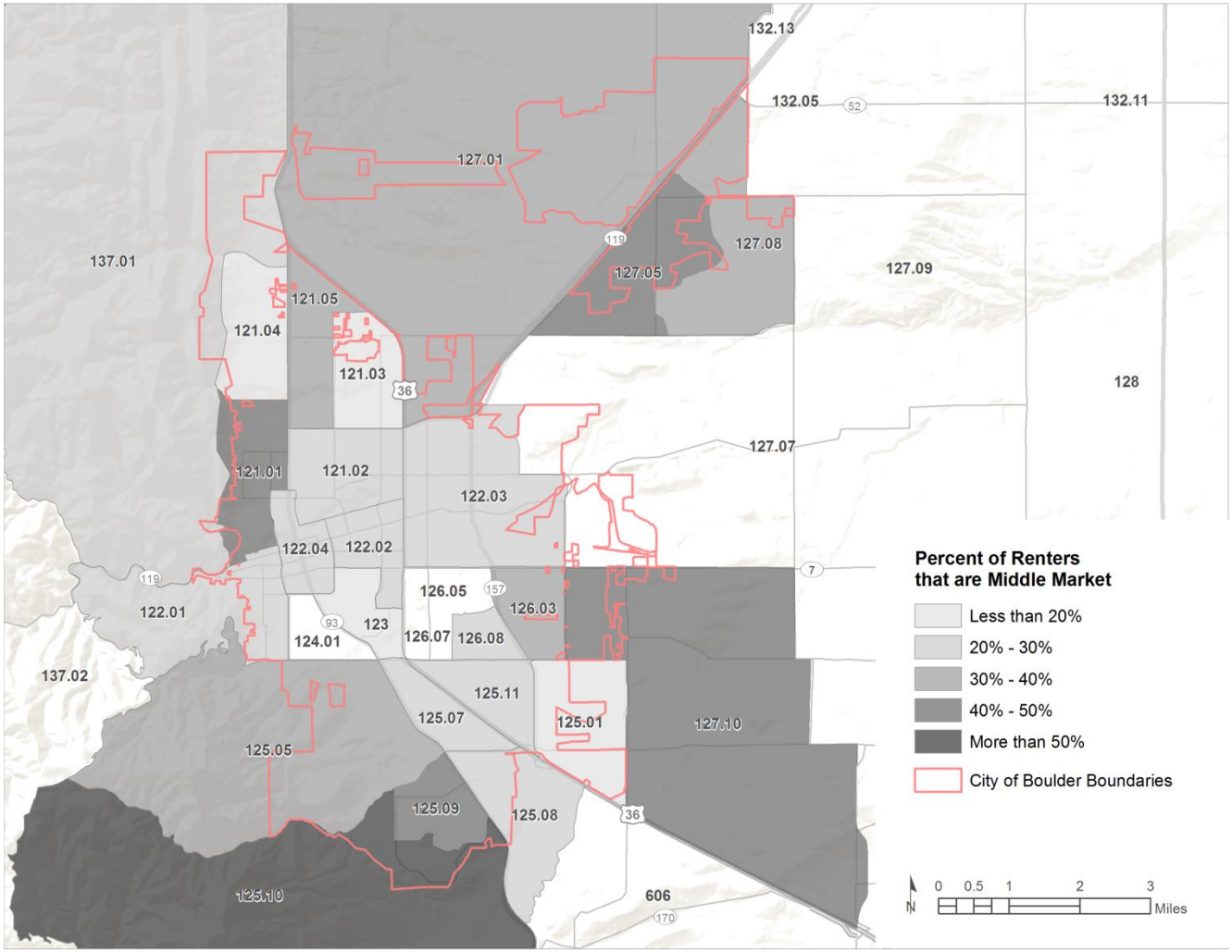


SECTION II. Middle Market Housing Products

Figure II-11.
Percent of Renters that are Middle Market

Source:

2009-2013 ACS and BBC Research & Consulting.



SECTION II. Middle Market Housing Products

What Can Middle Market Households Afford?

Figure II-12 displays affordability ranges for Middle Market households—those earning between about 80 percent and 150 percent of AMI. As noted previously, this report focuses on the household types that are most common in Boulder: 1- and 3-person households.

Affordable rent for a 1-person Middle Market household ranges from $1,327 to $2,610 and an affordable home price ranges from $227,071 to $446,781.

A 3-person Middle Market household could afford between $1,705 and $3,356 for rent and a home priced between $291,863 and $574,252.

Affordable rents shown in the figure include utilities and affordable home prices shown in the figure are based on a 30-year fixed rate mortgage with a 5 percent down payment, an interest rate of 4.25 percent and the assumption that 20 percent of the monthly payment would collectively go toward private mortgage insurance, utilities and property taxes.

As Figure II-13 on the following page demonstrates, what Middle Market households can afford has changed only modestly since 1999—except for in recent years, due to post-recession interest rates.

Figure II-12.
Middle Market Income and Affordable Housing Costs, City of Boulder, 2015

	1-Person Middle Market Household	3-Person Middle Market Household
Income Range (80-150% AMI)	$53,060 - $104,400	$68,200 - $134,250
Affordable Rent	$1,327 - $2,610	$1,705 - $3,356
Affordable Home Price	$227,071 - $446,781	$291,863 - $574,525

Note: Affordable home price assumes a 30 year fixed rate mortgage with a 5 percent down payment, an interest rate of 4.25 percent and the assumption that 20 percent of the monthly payment would collectively go toward private mortgage insurance, utilities and property taxes. The model does not incorporate additional assumptions regarding personal finances such as current debt, wealth or financial assistance from friends or family.

Source: HUD and BBC Research & Consulting.

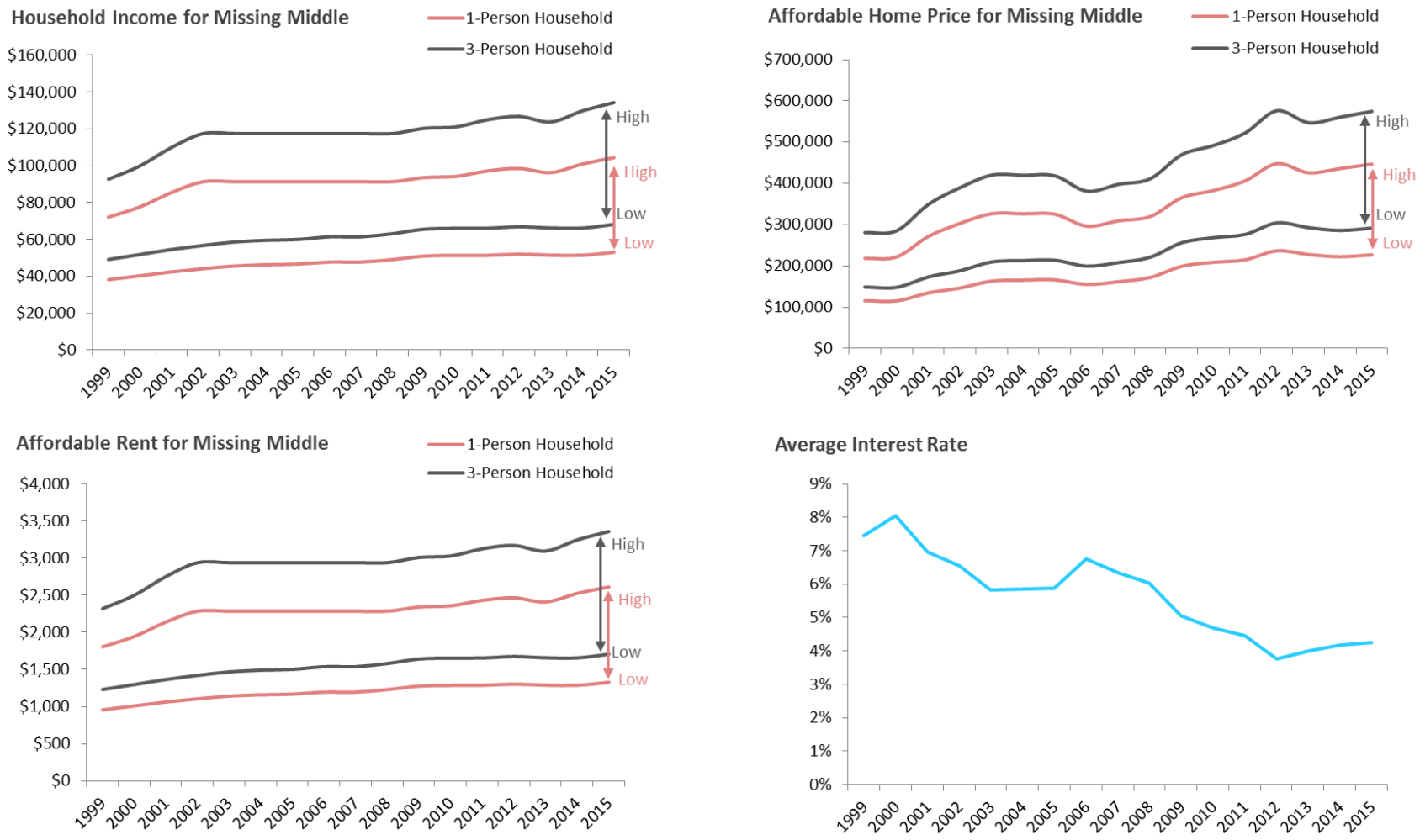
The maximum affordable rent Middle Market households can afford increased from $957 in 1999 for a 1-person household earning about 80 percent AMI to $1,327 in 2015. For a 3-person household, the affordable rent increased from $1,230 to $1,705.

Maximum home prices affordable to Middle Market households increased much more dramatically, particularly in 2012, due to changes in interest rates.

The analysis of Middle Market affordability continues in Section III, which examines market offerings for both for sale and rental products in Boulder. That analysis reveals that attached products are crucial to maintaining Middle Market home purchase opportunities in the City of Boulder.

SECTION II. Middle Market Housing Products

Figure II-13.
Middle Market Income and Affordable Housing Costs, City of Boulder, 1999-2015



Source: Interest rates from Freddie Mac and CHFA; income range based on HUD and City of Boulder data. Analysis by BBC Research & Consulting.

SECTION II. Middle Market Housing Products

If We Build It, Will They Come?

Living in attached housing—particularly for families—is still a relatively new idea for Western cities, even in high-cost areas. For example, the City of Los Angeles is one of the least affordable cities in the U.S. Yet its housing types skew toward less affordable single family detached homes: about 80 percent of homeowners in L.A. occupy single family detached homes. This compares to 68 percent in Boulder.

The Housing Choice survey completed of Boulder residents and workers in 2014 revealed some surprising findings about the trade-offs residents have made—or are willing to make—to live in Boulder:

- In-commuters willing to live in attached products in Boulder v. a detached home in another community are generally lower income ($25,000 and $65,000) and single. These are the 1-person Middle Market households described in this section.
- Townhomes, followed by smaller complexes, are a clear preference for these workers willing to make tradeoffs for attached homes: 74 percent would live in a townhome and 62 percent would live in a du-/tri-/fourplex.
- High income commuters are least likely to make the attached product trade off. Townhomes are the only product of moderate interest to this demographic.
- Having private space or a shared garden is a strong preference of those making the attached housing trade off. A balcony or deck is much less desirable. More important, however, is being located near open space or trails.
- Some residents would prefer living in a mobile home to living in attached housing in Boulder. This is particularly true of new immigrants and large families renting mobile homes in Boulder. These workers would rather move outside of Boulder to buy than purchase an attached home within the city.

SECTION III.

Missing Middle Price Trends and Affordability

SECTION III. Missing Middle Price Trends and Affordability

This section provides an in-depth analysis of ownership and rental affordability for Middle Market households within Boulder—what types of homes were once affordable, what is affordable now, where affordable homes are located and what's missing from the market. The section begins with a trend analysis of median home values then discusses the availability and characteristics of homes priced for the middle market. The section concludes with an analysis of the rental market.

Ownership Analysis

Ownership opportunities in the City of Boulder have shifted away from Middle Market households toward higher income residents over the past several decades. During this period of rising prices, Boulder has maintained some affordable purchase options through alternative ownership products, such as deed-restricted and attached homes. Some of these products were built as affordable, i.e., deed-restricted homes. Others are affordable because they are attached homes.

The analysis of ownership affordability for Middle Market households indicates that attached products have maintained more affordability over time—and that opportunities for Middle Market ownership are increasingly limited to attached products and specific neighborhoods.

Trends in median value. According to the Census, the median value of owner-occupied homes in 1980 in Boulder was $133,000. By 1990, this had *dropped* to just $123,000.

A household wanting to buy the median-value home in 1980 needed to earn $67,000. In 1990, a household wanting to buy the median-value home needed to earn $52,000.[1]

Since that time, home prices in Boulder have increased substantially resulting in declining affordability for middle income households. For example, single family detached homes in Boulder's Wonderland Hills neighborhood initially sold for between $150,000 and $200,000. This was an affordable price for a household earning around $66,000.[2] These same homes now sell for more than $1 million and are affordable only to those earning nearly $300,000, or just 5 percent of Boulder's households.[3]

Market data on median home values in Boulder, shown in Figure III-1 on the following page, reveal two primary periods of steep appreciation over the past 20 years: the late nineties through early 2000s and 2012 to the present.

As indicated by the figure, all home prices rose, but attached products were able to maintain more affordability for Boulder buyers. Over the entire period shown, single family detached homes increased in value by 209 percent and attached homes (condos and townhomes) increased by 138 percent.

---

[1] According to data from Freddie Mac, the average interest rate on a 30-year fixed-rate mortgage was 12.43% in 1980 and 10.13% in 1990. http://www.freddiemac.com/

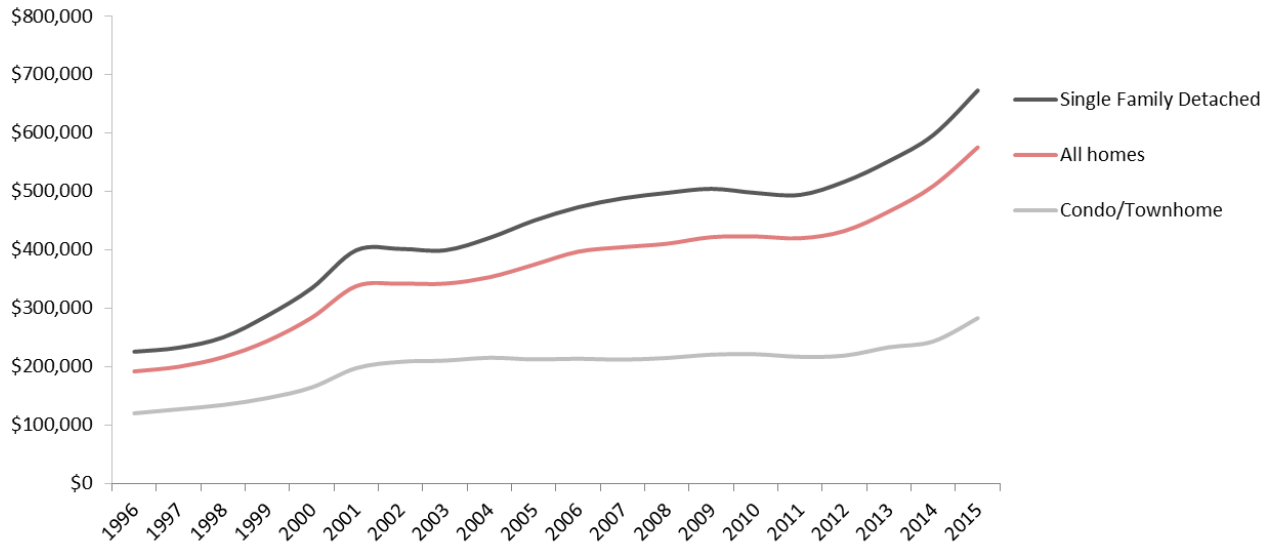
[2] Assumes 8.85% interest (1977 rate according to Freddie Mac) on a $175,000 home.

[3] $1.25 million home affordable to household earning $292,089 at 4.25% interest.

SECTION III. Missing Middle Price Trends and Affordability

Figure III-1.
Home Values, City of Boulder, 1996-2015

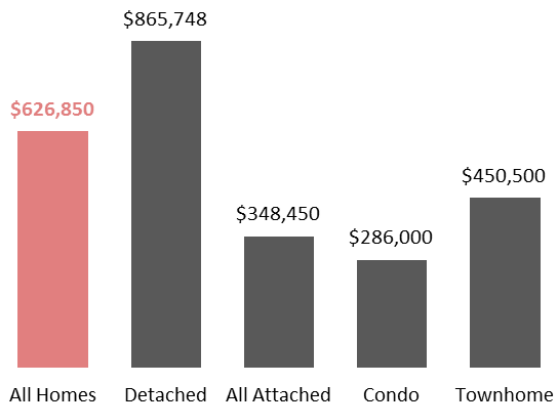
Source:
Zillow Home Value Index and BBC Research & Consulting.



Trends in price. In 2015, the median price of all homes listed for sale or sold in Boulder was $626,850. This is above the affordability threshold for a 3-person Middle Market household, as was the median price for detached homes at $865,748. The median price for attached homes was $348,450, well below the Middle Market affordability ceiling. Figure III-2 shows 2015 median price by type in Boulder.

Figure III-2.
Median Price of Homes Listed or Sold in Boulder, 2015

Source:
MLS and BBC Research & Consulting.

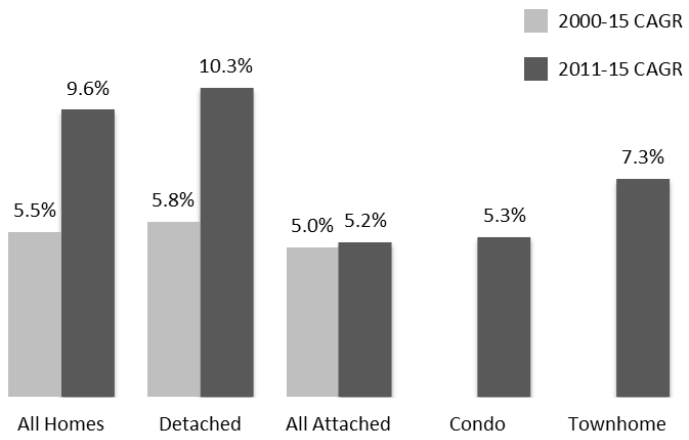


SECTION III. Missing Middle Price Trends and Affordability

Figure III-3 shows the compound annual growth rates (CAGR) for each housing type between 2000 and 2015 and between 2011 and 2015. In both periods, the price of single family detached homes increased faster than all attached products.

Specifically, between 2011 and 2015, detached products increased by about 10 percent per year while townhomes increased by 7 percent per year and condos increased by 5 percent per year.

Figure III-3.
Compound Annual Growth Rates of Homes Listed or Sold in Boulder, 2000-2015 and 2011-2015



Note: Price data for individual attached types (i.e., condos and townhomes) were not available in 2000; as such CAGR for 2000 to 2015 could not be calculated.

Source: MLS and BBC Research & Consulting.

When the data are limited to attached homes that feel more like detached homes—those with at least two bedrooms and 900 square feet—attached products continue to maintain their affordability. As shown in Figure III-4, detached homes held higher prices and higher annual appreciation than the larger attached homes.

Figure III-4.
Median Price and CAGR of Similarly Sized Homes Listed or Sold in Boulder, 2000-2015

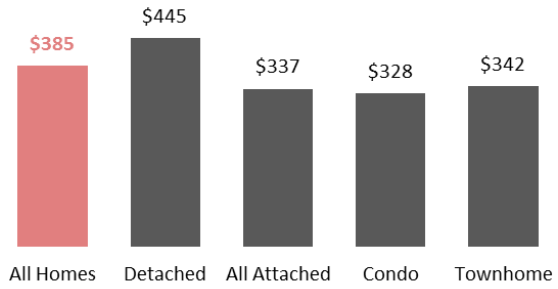
	Median List/Sold Price				CAGR	
	2000	2005	2011	2015	2000-2015	2011-2015
All homes with 2+ bedrooms and 900+ sq ft	$317,550	$420,000	$489,950	$700,000	5.4%	9.3%
Detached homes with 2+ bedrooms and 900+ sq ft	$372,400	$564,950	$589,900	$869,740	5.8%	10.2%
Attached homes with 2+ bedrooms and 900+ sq ft	$210,000	$285,000	$335,000	$447,000	5.2%	7.5%

Source: MLS and BBC Research & Consulting.

SECTION III. Missing Middle Price Trends and Affordability

Trends in price per square foot. Similar trends are evident when considering median price per square foot. As shown in Figure III-5, the median price per square foot is highest for detached homes ($445), followed by townhomes ($342) and then condos ($328).

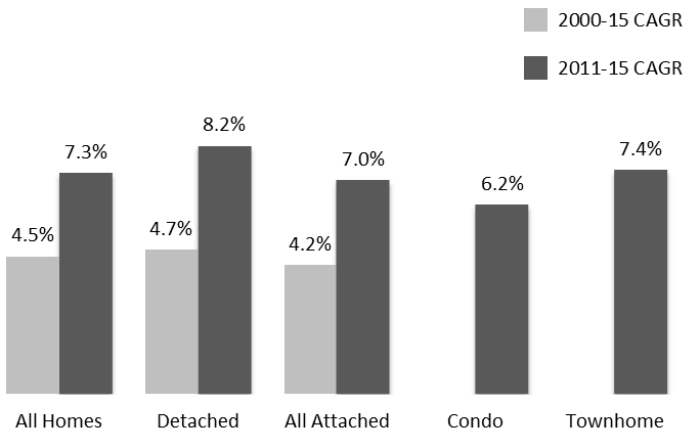
Figure III-5. Median Price per Square Foot of Homes Listed or Sold in Boulder, 2015



Source:
MLS and BBC Research & Consulting.

Not only do attached products offer a lower price-point at purchase, but they are also more likely to hold affordability across time. As shown in Figure III-6, between 2011 and 2015, detached home prices rose 8.2 percent per year, compared to a 7.0 percent increase for attached homes.

Figure III-6. Compound Annual Growth Rates of Homes Listed or Sold in Boulder, 2000-2015



Note: Price data for individual attached types (i.e., condos and townhomes) were not available in 2000; as such CAGR for 2000 to 2015 could not be calculated.

Source: MLS and BBC Research & Consulting.

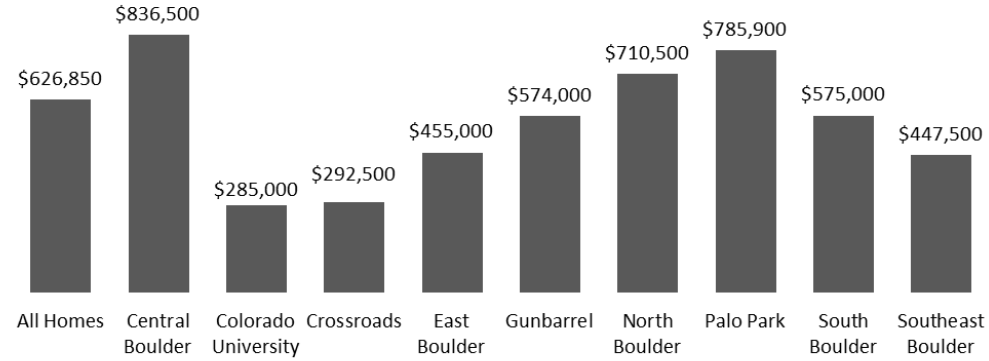
SECTION III. Missing Middle Price Trends and Affordability

Price trends by neighborhood. In addition to product type, neighborhood is a significant factor driving price differences in Boulder's for-sale market. Figure III-7 displays the median price and median price per square foot by neighborhood in Boulder for 2015, along with compound annual growth rates for each neighborhood from 2000 to 2015 and from 2011 to 2015.

Central Boulder has the highest median price at $836,500—over half a million dollars more than the median price in the Crossroads and Colorado University neighborhoods.

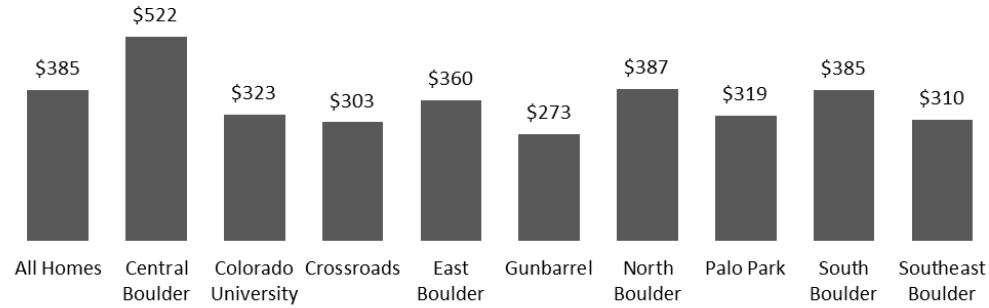
Figure III-7.
Median Price and Price per Square Foot of Homes Listed or Sold in Boulder by Neighborhood, 2015

Median Price



CAGR	All Homes	Central Boulder	Colorado University	Crossroads	East Boulder	Gunbarrel	North Boulder	Palo Park	South Boulder	Southeast Boulder
2000-15	5.5%	5.4%	3.1%	5.0%	4.9%	5.9%	3.8%	8.3%	4.9%	4.6%
2011-15	9.6%	7.4%	-2.5%	14.1%	7.2%	11.2%	6.6%	14.8%	8.5%	7.9%

Median Price per Square Foot



CAGR	All Homes	Central Boulder	Colorado University	Crossroads	East Boulder	Gunbarrel	North Boulder	Palo Park	South Boulder	Southeast Boulder
2000-15	4.5%	5.0%	3.4%	4.3%	4.5%	3.3%	4.2%	3.7%	3.9%	3.7%
2011-15	7.3%	8.2%	3.7%	11.0%	8.3%	6.2%	6.1%	4.9%	5.9%	6.5%

Note: Analysis excludes deed restricted units. 2015 data are year-to-date through Q3.

Source: MLS and BBC Research & Consulting.

SECTION III. Missing Middle Price Trends and Affordability

Figure III-8 shows the differences in price and price per square foot for attached and detached products in four of Boulder's key neighborhoods. Dashed lines represent attached product prices and solid lines represent detached product prices.

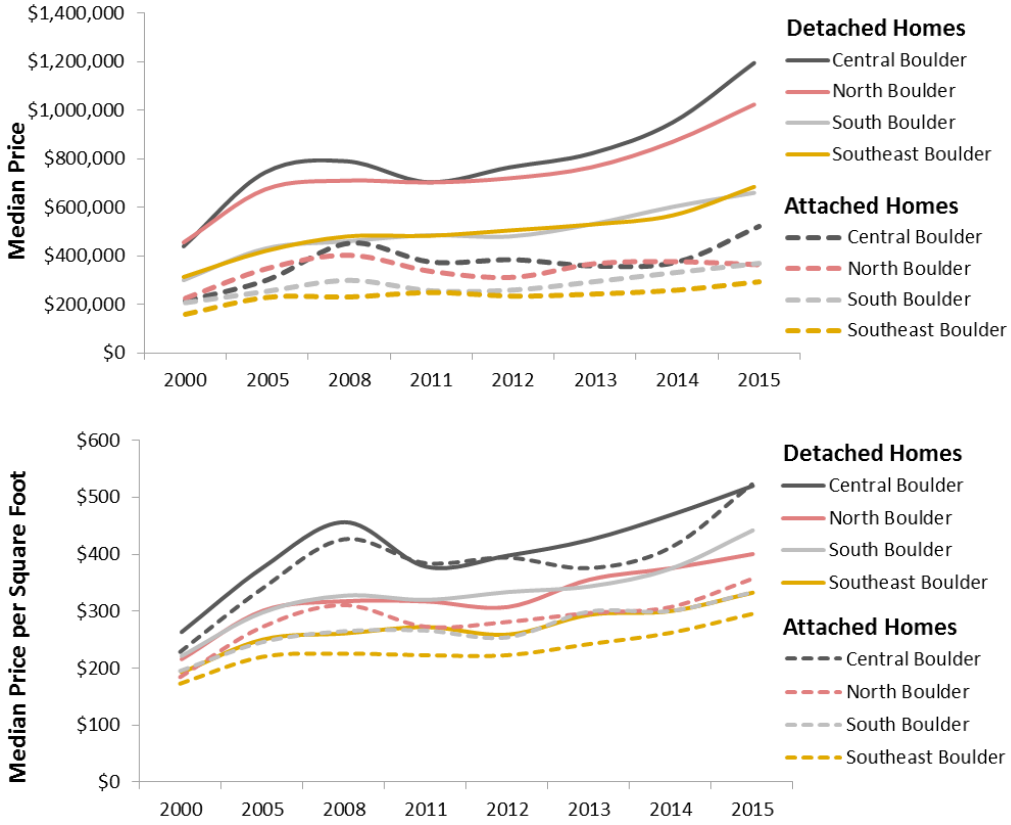
As the graphic shows, attached products have consistently had much lower medians than detached products. In Central Boulder, for example, attached products sold for $215,000 in 2015, compared to $434,500 for detached homes.

Examining the data by price per square foot tells a different story. In Central Boulder, price per square foot of attached properties passed that of detached in 2015 ($523 and $522 respectively). On a per square foot basis, attached prices in Central Boulder actually increased at a faster rate over the period as a whole (5.7% CAGR, compared to 4.6% CAGR).

However, in the other three neighborhoods (North, South and Southeast Boulder) prices for attached homes remained lower than prices for detached homes and annual growth rates for attached products were below or similar to detached properties. Especially in these neighborhoods, attached products still provide more affordability than detached products.

In highly desirable locations in Boulder, attached products maintain their affordability due to their relatively smaller size.

Figure III-8.
Median Price and Median Price per Square Foot of Detached and Attached Homes Sold in Four Key Boulder Neighborhoods, 2000-2015



Note: Dashed lines represent attached product prices and solid lines represent detached product prices. Analysis excludes deed restricted units. 2015 data are year-to-date through Q3.

Source: MLS and BBC Research & Consulting.

SECTION III. Missing Middle Price Trends and Affordability

Homes priced for the Middle Market. In 2000, half of all homes listed or sold in Boulder were priced for the Middle Market. Sixty-eight percent of those were attached products.

By 2015, only 38 percent of market-rate homes were priced for the Middle Market. Including deed restricted homes brings that proportion up to 40 percent. Over three quarters of Middle Market homes in 2015 were attached products.

Figure III-9.
Number and Proportion of Middle Market Homes Listed or Sold in Boulder, 2000 and 2015

	Total		Detached		Attached	
	2000	2015	2000	2015	2000	2015
All homes for sale	1,506	828	860	435	646	393
Priced for Middle Market	754	334	239	72	515	262
Market rate	751	317	237	70	514	247
Deed restricted	3	17	2	2	1	15
% Market rate homes priced for the Middle Market	***50%***	***38%***	***28%***	***16%***	***80%***	***63%***
% All homes priced for the Middle Market	***50%***	***40%***	***28%***	***17%***	***80%***	***67%***

Source: MLS and BBC Research & Consulting.

The presence of investors and cash buyers in Boulder's market can make homes priced for the middle market even harder to access for households without accumulated wealth. MLS statistics from the first half of 2015 indicate that 36 percent of Boulder home sales were cash purchases—many of those transactions are likely to be investors.

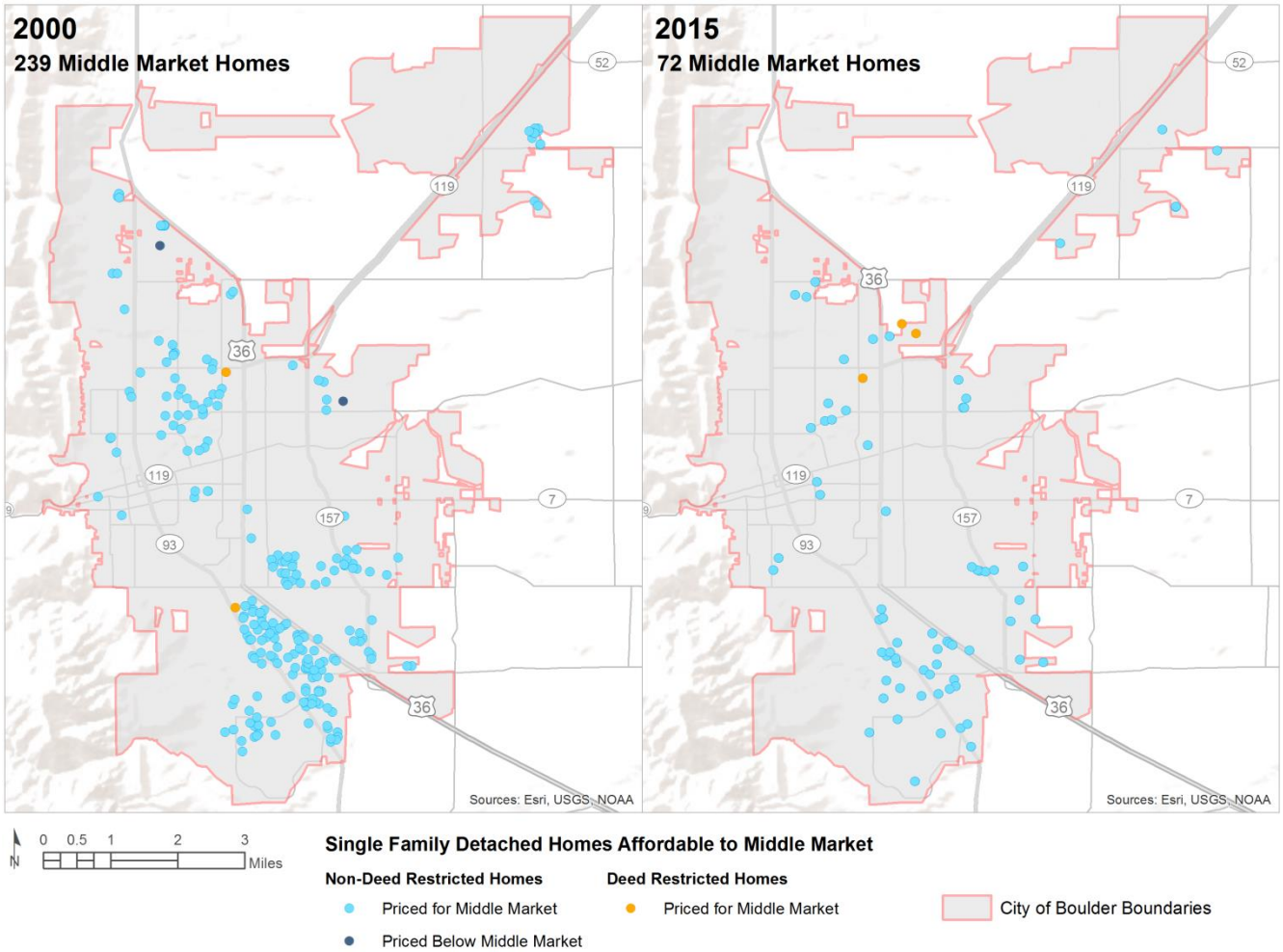
The maps on the following pages (Figures III-10 and III-11) provide additional detail on the location of Middle Market homes listed or sold in both 2000 and 2015. The maps also show homes priced below the Middle Market price thresholds.

In addition to a decline in the number of Middle Market products overall, the maps demonstrate a dilution of centrally-located homes.

SECTION III. Missing Middle Price Trends and Affordability

Figure III-10.
Single Family Detached Homes Affordable to Middle Market, Listed or Sold in 2000 and 2015

Source:
MLS and BBC Research & Consulting.

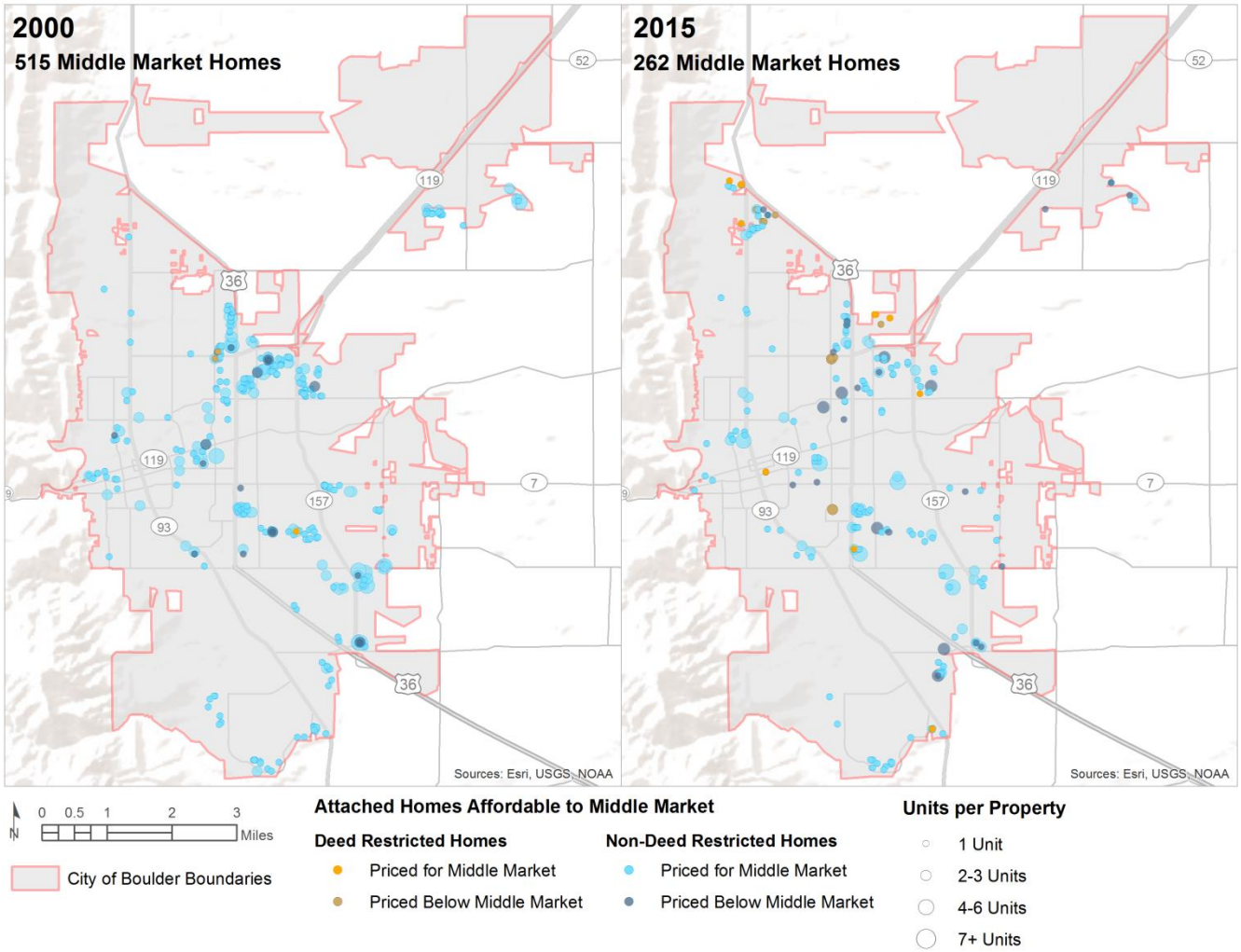


SECTION III. Missing Middle Price Trends and Affordability

Figure III-11. Attached Homes Affordable to Middle Market, Listed or Sold in 2000 and 2015

Source:

MLS and BBC Research & Consulting.



SECTION III. Missing Middle Price Trends and Affordability

Are Middle Market products missing from Boulder sales? Figure III-12 compares Boulder's housing stock to all homes listed/sold in 2015. It also shows the proportion of homes by type that are affordable to the Middle Market, based on 2015 MLS data. The figure excludes deed restricted properties.

Overall, detached homes are underrepresented in the for-sale market and condos are overrepresented. Townhomes are slightly underrepresented on the market, as are du-/tri-/fourplexes.

Figure III-12.
Distribution of Housing Stock and Homes Listed/Sold by Type, City of Boulder, 2013/2015.

	Distribution by Type		Percent Priced for Middle Market (market rate)
	Owner Occupied Housing Stock	All Homes Listed or Sold in 2015	
Detached	68%	53%	16%
All Attached	27%	47%	63%
Condo	*8%*	*30%*	*65%*
Du-/tri-/fourplex	*4%*	*1%*	*33%*
Townhome	*16%*	*14%*	*61%*
Specific type unknown		*2%*	*65%*
Mobile Homes	5%	0%	N/A
Total	**100%**	**100%**	

Note: Priced for Middle Market means homes that fall within the Middle Market affordability range. Does not include homes priced below Middle Market range.

Source: 2011-2013 ACS, MLS and BBC Research & Consulting.

Single family detached units account for 68 percent of Boulder's housing stock but only 16 percent were priced for the Middle Market in 2015. Conversely, just 17 percent of boulder's homes are attached but 63 percent of those were priced for the Middle Market in 2015. One-third of du-/tri-/fourplexes, 65 percent of condos and 61 percent of townhomes listed or sold in 2015 were priced for the Middle Market.

Have attached products grown in size as they have become substitutes for single family detached products? Figure III-13 compares the average square footage by type for homes listed or sold in Boulder in 2015 with previous years. Interestingly, this figure suggests that attached products have not grown in size, even as they have become economic substitutes for single family detached products. Average square footage for attached homes increased by 150 square feet between 2000 and 2015. Yet single family detached increased by 700 square feet over the same period—a 29 percent increase in size.

Figure III-13. Average Square Footage by Type, City of Boulder, 2000-2015

	Single Family Detached	All Attached	Condo	Townhome
2000	2,453	1,078	N/A	N/A
2005	2,757	1,151	946	1,527
2008	2,737	1,281	1,007	1,615
2011	2,749	1,330	1,080	1,660
2012	2,747	1,279	1,036	1,526
2013	2,793	1,230	1,017	1,547
2014	2,859	1,200	987	1,578
2015	3,153	1,223	988	1,583

Source:
MLS and BBC Research & Consulting.

SECTION III. Missing Middle Price Trends and Affordability

Rental Analysis

Just over half of all Boulder households are renters. Boulder's rental market has been consistently tight, with low vacancy rates and rising rents, particularly in recent years. Middle Market households in Boulder are able to afford 99 percent of rental units but must consider a variety of tradeoffs when choosing to rent, sometimes as the only option for living in the city limits.

Vacancy rates. The Census documents consistently low rental vacancy rates in Boulder over the past 30 years, the lowest in 2000 at 2.2 percent. The proportion of households that are renters has remained relatively stable and was estimated to be 51 percent in 2013. Figure III-14 displays the number and proportion of rental occupancies and vacancies in Boulder from 1980 through 2013.

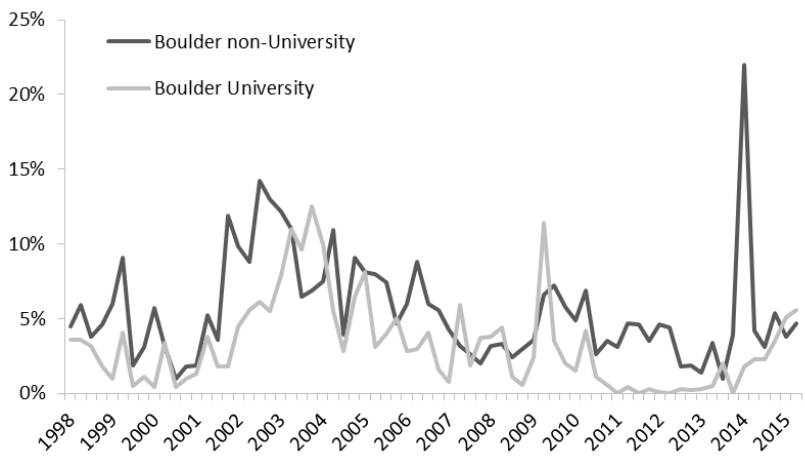
Figure III-14.
Renter Occupancy and Vacancy, City of Boulder 1980-2013

	1980	1990	2000	2008-2010	2011-2013
Renter occupied units	15,106	18,674	19,991	21,096	21,135
Percent of all occupied units	50.3%	51.5%	50.5%	52.3%	51.2%
Change in occupied rentals		**3,568**	**1,317**	**1,616**	**39**
Vacant rentals	795	884	444	574	659
Vacancy rate	5.0%	4.5%	2.2%	2.6%	3.0%
Total rental units	**15,901**	**19,558**	**20,435**	**21,670**	**21,794**

Source 1980, 1990 and 2000 Census; 2008-2010 and 2011-2013 ACS; and BBC Research & Consulting.

Figure III-15 displays quarterly multifamily vacancy rates for Boulder submarkets between 1998 and 2015. Excluding a spike in late 2014, which reflects a new development coming on line, vacancy rates for both city submarkets have held below 5 percent since 2010.

Figure III-15.
Quarterly Vacancy Rates, Boulder Submarkets, 1998-2015



Source: Metro Denver Vacancy and Rent survey.

SECTION III. Missing Middle Price Trends and Affordability

Trends in rents and rental stock. According to the Census Bureau, median rent including utilities in the City of Boulder increased from $818 in 2000 to $1,173 in 2013—a 43 percent rise.

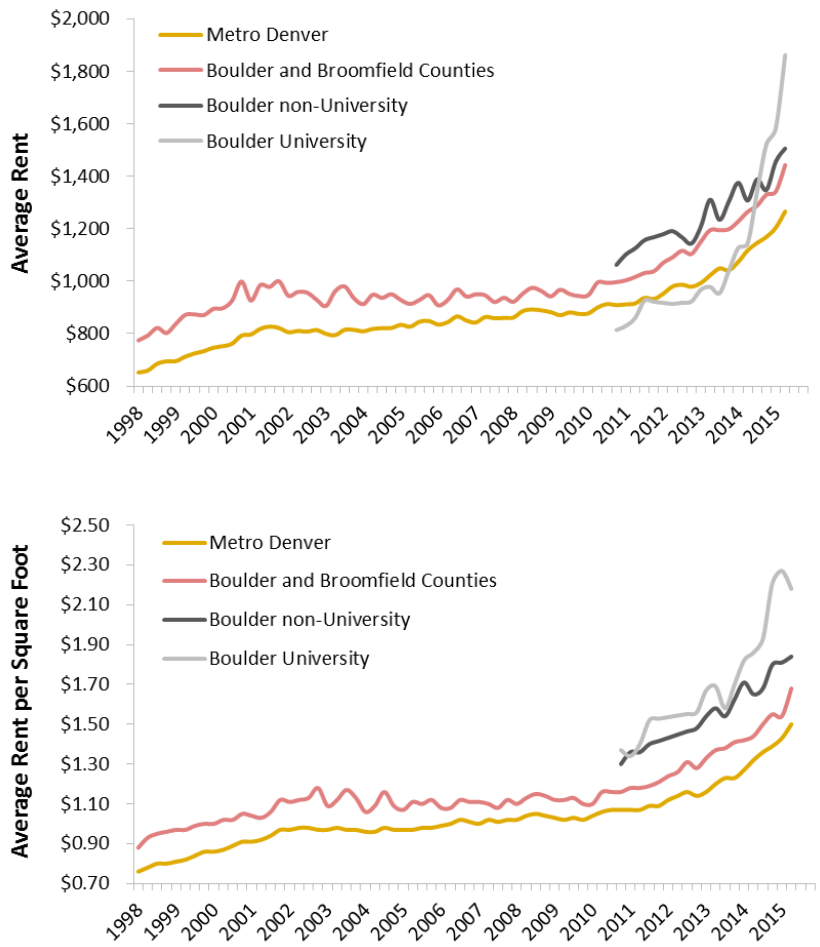
The Denver Metro Apartment Vacancy & Rent Report, the most up-to-date source for local rental trends, which does not include single family rentals estimates the Q2 2015 average rent in Boulder to be $1,861 in the University area and $1,505 in non-University Boulder, up from $703 and $960 in Q2 2006, respectively.

Figure III-16 displays the long term trend in average rents and average rent per square foot for Boulder/Broomfield counties (collectively) and Metro Denver as a whole. The figure also includes data for City of Boulder submarkets starting in 2010. Rents were relatively stable through much of the 2000s but began to increase more sharply in 2011.

Since 2011, rents in the non-University area have increased by about 8 percent per year and rents in the University area have increased by 21 percent per year.

Not surprisingly, 3-bedroom units command the highest rents in both Boulder submarkets: $2,262 on average in the non-University area and $3,462 in the University area. Figure III-17 shows the average rent by unit size in 2006, 2011 and 2015. The figure also compares compound annual growth rates from 2006 to 2011 and 2011 to 2015 and includes comparative data for the Denver Metro area as a whole.

Figure III-16.
Quarterly Average Rent and Average Rent per Square Foot, 1998-2015



Source: Metro Denver Vacancy and Rent survey.

SECTION III. Missing Middle Price Trends and Affordability

Citywide, efficiencies and 2 bed/2 bath units experienced the largest price increases. Outside the university area, 3-bedroom units also experienced substantial price increases relative to other types.

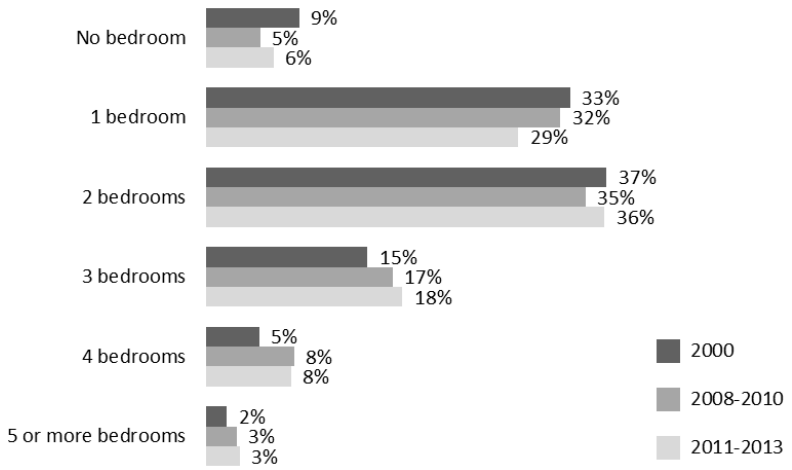
Figure III-17.
Average Rent and Compound Annual Growth Rate by Size of Unit, Boulder Submarkets, 2006-2015

	Average Rent			CAGR	
	2006 Q2	2011 Q2	2015 Q2	2006-2011	2011-2015
Boulder - Except University					
Efficiency	$892	$950	$1,459	1%	11%
1 bed	$914	$1,039	$1,299	3%	6%
2 bed, 1 bath	$801	$1,072	$1,413	6%	7%
2 bed, 2 bath	$1,144	$1,242	$1,912	2%	11%
3 bed	$1,128	$1,530	$2,262	6%	10%
All	$960	$1,125	$1,505	3%	8%
Boulder - University Area					
Efficiency	$492	$725	$1,741	8%	24%
1 bed	$673	$824	$1,453	4%	15%
2 bed, 1 bath	$859	$1,109	$1,779	5%	13%
2 bed, 2 bath	$913	$1,026	$2,663	2%	27%
3 bed	$1,900	$2,083	$3,462	2%	14%
All	$703	$860	$1,861	4%	21%
Metro Denver					
Efficiency	$586	$675	$1,004	3%	10%
1 bed	$735	$800	$1,121	2%	9%
2 bed, 1 bath	$813	$858	$1,192	1%	9%
2 bed, 2 bath	$1,009	$1,085	$1,493	1%	8%
3 bed	$1,143	$1,293	$1,788	2%	8%
All	$844	$915	$1,265	2%	8%

Source: Metro Denver Vacancy and Rent survey and BBC Research & Consulting.

According to the ACS, two-bedroom units are the most common in Boulder, accounting for about 36 percent of all rental stock. One-bedroom units account for another 29 percent. Over the past 15 years, the proportion of larger rental units (3 or more bedrooms) has increased from 21 percent in 2000 to 29 percent in 2013.

Figure III-18.
Distribution of Rental Stock by Bedroom, City of Boulder, 2000-2013



Source: 2000 Census, 2008-2010 ACS, 2011-2013 ACS and BBC Research & Consulting.

As shown in Figure III-19 on the following page, about half of all rentals are in buildings with at least 10 units. The proportion of rentals that are single family detached units has held steady at 19 percent since 2000.

SECTION III. Missing Middle Price Trends and Affordability

Figure III-19.
Distribution of Rental Units by Type, City of Boulder, 2000-2013

	2000	2008-2010	2011-2013
Number of rentals	20,051	21,096	21,135
Distribution of Rental Units by Type			
Single family detached	19%	19%	19%
Townhome	17%	20%	16%
Duplex, triplex, fourplex	16%	12%	15%
Condos/apt	47%	49%	49%
Small condo/apt bldg (10-20 units)	*14%*	*16%*	*14%*
Med condo/apt bldg (20-50 units)	*16%*	*14%*	*18%*
Large condo/apt bldg (50+ units)	*18%*	*19%*	*16%*
Mobile home	1%	1%	1%

Source: 2000 Census, 2008-2010 ACS, 2011-2013 ACS and BBC Research & Consulting.

Figure III-20 displays the percent of all homes by type that are occupied by renters. Just 23 percent of single family detached units and 33 percent of townhomes are occupied by renters. In contrast, 94 percent of du-/tri-/fourplexes and 87 percent of condo/apartment buildings house renters.

Figure III-20.
Percent of Homes Occupied by Renters by Units in Structure, City of Boulder, 2000-2013

	2000	2008-2010	2011-2013
Number of rentals	20,051	21,096	21,135
Percent of All Homes Occupied by Renters			
Single family detached	21%	22%	23%
Townhome	36%	44%	33%
Duplex, triplex, fourplex	84%	94%	94%
Condos/apt	85%	88%	87%
Small condo/apt bldg (10-20 units)	*83%*	*79%*	*75%*
Med condo/apt bldg (20-50 units)	*80%*	*79%*	*72%*
Large condo/apt bldg (50+ units)	*79%*	*86%*	*82%*
Mobile home	85%	86%	87%

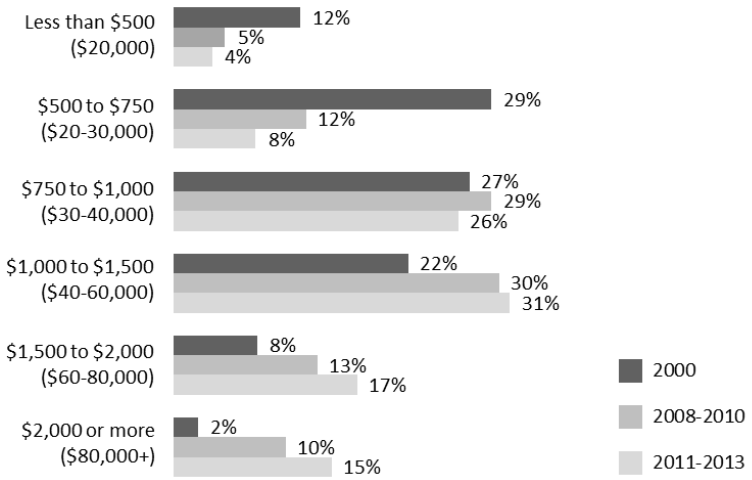
Source: 2000 Census, 2008-2010 ACS, 2011-2013 ACS and BBC Research & Consulting.

Rentals for the Middle Market. In 2000, 41 percent of rentals were priced below $750 per month and just 10 percent were priced over $1,500 per month. By 2013, only 12 percent were priced below $750 and 32 percent were priced over $1,500 per month. Nearly two-thirds of all rental units in 2013 were priced over $1,000 per month. The shift toward more expensive rentals in Boulder's market is illustrated in Figure III-21 on the following page, which depicts the distribution of gross rent (rent including utilities) in 2000, 2010 and 2013.

This shift in rents is driven by rising rents of existing stock but also by new construction that focuses on amenity-rich luxury products.

SECTION III. Missing Middle Price Trends and Affordability

Figure III-21.
Distribution of Gross Rent (Income Required to Afford), City of Boulder, 2000-2013



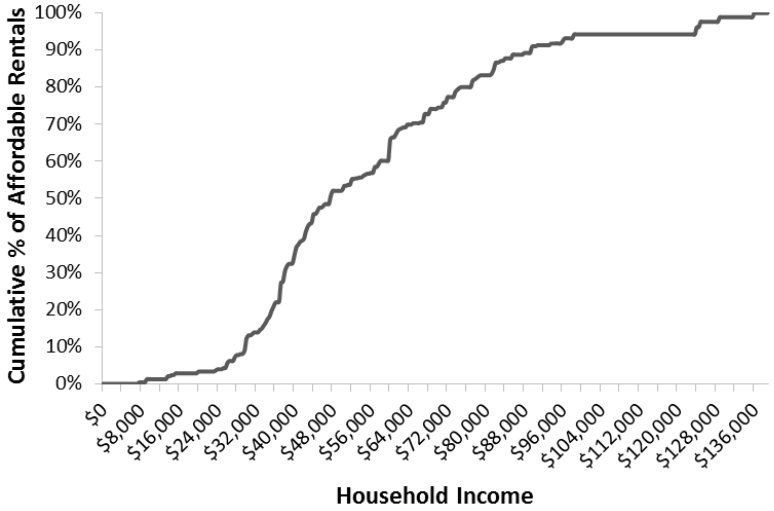
Source: 2000 Census, 2008-2010 ACS, 2011-2013 ACS and BBC Research & Consulting.

As discussed in Section II, middle income households in Boulder can afford between $1,327 and $3,356 in rent. Of the 21,000 rental units in Boulder, 39 percent are priced in the Missing Middle range and another 60 percent are priced below that range—meaning 99 percent of all rentals are affordable to middle income households.[4]

Figure III-22 displays cumulative affordability by income in Boulder—that is, the cumulative proportion of rentals affordable by household income.

[4] Calculation assumes 1-person Middle Market renter can live in any size unit and 3-person Middle Market renter requires at least two bedrooms.

Figure III-22.
Cumulative Proportion of Affordable Rentals by Income, City of Boulder, 2013



Source: IPUMS 2009-2013 ACS and BBC Research & Consulting.

For Middle Market renter households, the choice to live in Boulder is one of tradeoffs as opposed to affordability. An extensive housing choice survey of Boulder in-commuters conducted in 2014 found that about half of middle income in-commuters would consider living in Boulder in the future. Most were willing to live in attached housing in order to live in Boulder and expressed a strong preference for townhomes and du-/tri-/fourplexes over condos/apartments. Boulder's current rental market has a relatively small and declining share of those attractive types of units (31 percent of the total rental stock)—down from 33 percent in 2000.

SECTION III. Missing Middle Price Trends and Affordability

Balancing housing preferences with a desire to live in Boulder may pose a particular challenge for middle income families as family-oriented developments are in shorter supply. Recent rental developments in Boulder tend to offer amenities attractive to non-families (e.g., fire pits, dog washes, bike maintenance areas but no playgrounds, no mention of proximity to daycare or schools on websites; pictures of dogs but not kids).

In addition to housing type preferences, Middle Market renters also weigh the tradeoff of renting in Boulder against purchasing a home—either in Boulder or elsewhere. According to the 2014 Housing Choice Survey, just 6 percent of Boulder renters that made some type of tradeoff to afford Boulder said they were willing to rent instead of purchase a home in order to live in in the city.

Figure III-23 examines the tradeoff between renting at two of Boulder's newest rental developments and purchasing a similar sized home in Boulder. Two- to three-bedroom units at the Lofts at Peloton range in price from $2,400 to $4,100 per month and offer between 1,000 and 1,700 square feet. For the same monthly expense, a Peloton renter could purchase up to 83 percent of all two-bedroom attached homes listed for sale in 2015 in Boulder.

Figure III-23.
Comparison of Rents to Purchase Options, City of Boulder, 2015

	Solana		Peloton	
	Low	High	Low	High
Rent for a 2-3 bedroom unit	$2,123	$2,418	$2,424	$4,124
Square Footage	969	1,072	1,056	1,659
Purchase options at the same monthly cost				
2+ bedroom attached homes:				
% affordable to renter	28%	43%	43%	83%
Average square footage	1,138	1,189	1,189	1,396
2+ bedroom townhomes/ du-/tri-/fourplexes:				
% affordable to renter	19%	33%	33%	85%
Average square footage	1,357	1,406	1,406	1,634

Note: Solana does not offer a three-bedroom unit.

Source: www.theloftsatpeloton.com, www.solanaboulder.com, MLS and BBC Research & Consulting.

SECTION IV.

Impacts of Middle Market Development

SECTION IV. Impacts of Middle Market Development

What Does the Future Hold?

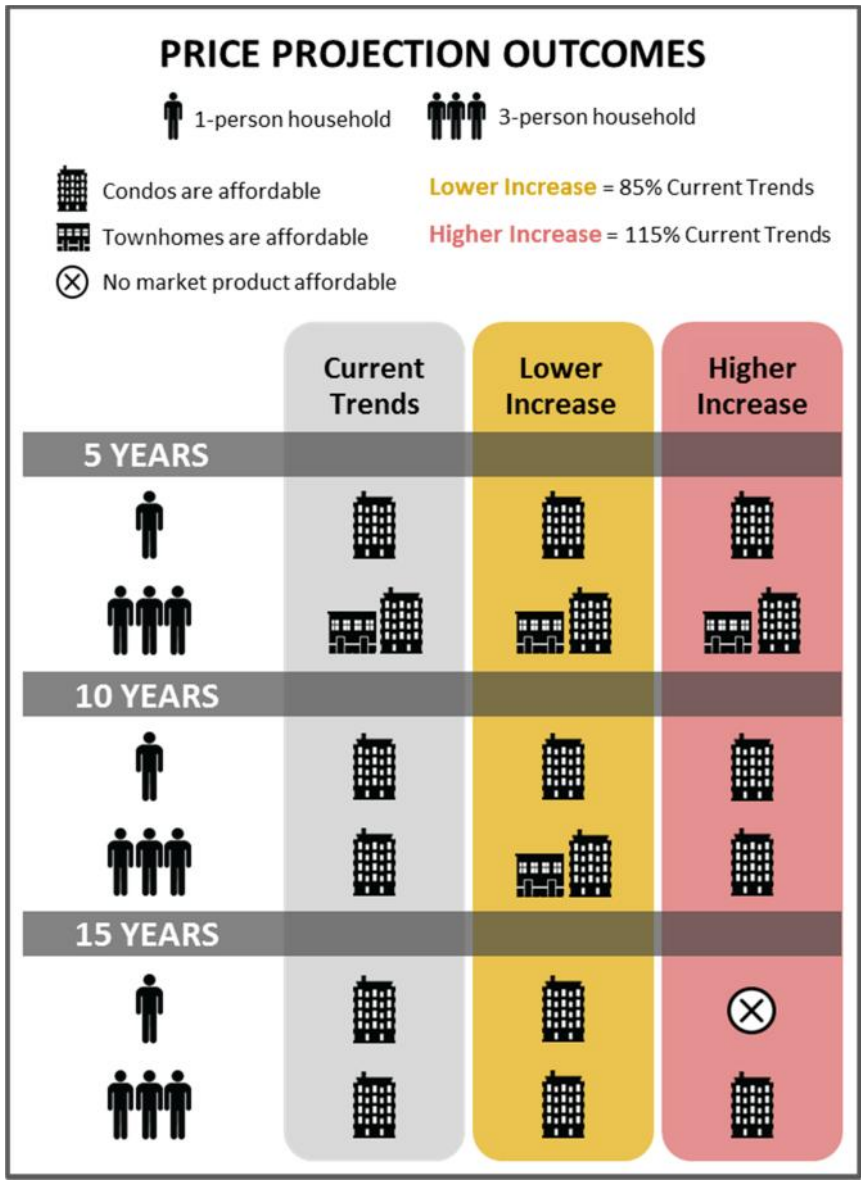
To understand how prices could increase during the next 5, 10 and 15 years, we modeled three price scenarios:

- Price increases are the same as those experienced between 2000 and 2015 ("Current Trends"),
- Demand slows and prices increase at 85 percent of the rate experienced between 2000 and 2015 ("Lower Increase"), and
- Demand accelerates and prices increase at 115 percent of the rate experienced between 2000 and 2015 ("Higher Increase").

In all scenarios, incomes were assumed to increase at the same rate as the previous 15 years (1.99% increase per year for the HUD median income).

The outcomes of each price scenario projections for 5, 10 and 15 years are shown in the infographic to the right. Specifically, the graphic shows when 1- and 3-person middle income households can no longer afford the median home price by type of home. In all but one scenario both 1- and 3-person households are limited to condos within 10 years.

Although not shown in the figure, 3-person households are limited to one-bedroom units within 10 years, except in the lower increase scenario.



SECTION IV. Impacts of Middle Market Development

Given Increases in Costs, is it Possible to Develop Affordable Middle Income Products in the Future?

Newly constructed, market rate condos and townhomes in Boulder that were on the market in 2014 and 2015 ranged from $230,000 for a very small one-bedroom, one-bath condo, to $550,000 for a well-sized 3-bedroom, 2-bath condo, to $800,000 for a large, amenity-rich product.

Several new residential communities are planned for 2016 and 2017 in Boulder Junction. Residential development will include approximately 150 permanently affordable units and 168 market rate units. Currently, the units are expected to sell in the $500,000 to $700,000 range. This pricing is determined by both what the market will bear, the costs of development, and the risks developers absorb.

New, single family detached products in Boulder are selling for between $350 and $550 per square foot, depending on the location. This equates to a price of between $770,000 and $1.2 million for a 2,200 square foot home.

As demonstrated in Section III, although attached products are not always less expensive on a price per square foot basis, their smaller size results in a lower cost overall. And even as prices rise—as they are likely to do in the future—attached products offer deeper levels of affordability.

What Can the City Do to Facilitate Middle Market Development?

This study has demonstrated that privately-provided, smaller, attached housing products play a significant role in maintaining a supply of affordable housing in Boulder. Although attached products have increased in price in tandem with the market overall, they have been more effective in maintaining affordability than single family detached homes. This is likely to continue in the future, especially for condominiums.

Encourage attached products. A potential strategy for maintaining middle income housing options in the city is to focus on types that are underrepresented in Boulder's housing stock and/or the market but also have a relatively high affordability for the Middle Market—du-/tri-/four-plex developments and townhomes. These are also the types of attached products middle income commuters indicated they would be most willing to accept in order to live in Boulder in a 2014 survey of Boulder residents and workers.

Developers who were interviewed by Clarion Associates in 2014 confirmed this strategy, naming the following product types that they felt are needed to house middle income households in Boulder: Micro-units, cottages, and other small products will sell/rent in current market and may be the best way to create affordability without subsidies.

Lower prices for attached products developed in the next few years could be achieved by streamlined development approval;

SECTION IV. Impacts of Middle Market Development

aggressively zoning for smaller, attached units in areas that can accommodate additional units; and reducing land costs.

The first two would reduce the risk developers are currently building into pro formas of developing in Boulder. Removing land from the equation—e.g., in a model where land was deeply discounted or donated, much like Denver's Stapleton or Lowry—can reduce prices significantly.

Other concepts that are being actively explored in other high-cost cities include micro-housing, small lot subdivisions and land trust housing.

Develop communities around existing inventory. As in any community, some of the most affordable properties in Boulder are affordable because they are 1) In less desirable locations (e.g., busy streets, adjacent to industrial or commercial uses), and 2) Were not built to current preference standards of residents.

The limitations of these properties offer value in that they have kept a segment of the market more affordable. And these properties are likely to remain relatively affordable in the future—making them the only option for many middle income households.

Attached products, even in a community like Boulder, remain less desirable for growing families. One Boulder builder attributes this to an "American culture that is geared toward independence." Yet developing a community feel within and around these properties—thereby demonstrating that the property offers the same level of collaborative living environment as planned unit development—may be key to attracting families to attached housing. This will also be important to residents without children, particularly low to moderate income workers, who consider the trade-offs of living in Boulder in smaller, attached homes or potentially buying a detached home in a surrounding community.

Focus on the preservation or conversion of existing properties. Conversions of old motels into single-room occupancy, transitional and/or permanently affordable housing for low income residents has been used in many markets. More aggressively making better use of the underutilized properties in Boulder should be part of the solution to create more Middle Market Housing.

Reduce development barriers. Developers interviewed for this study, many of whom also participated in a focus group discussion about housing development barriers in 2014, believe simplifying the residential building code to reduce the conditions placed on alternative housing types, in addition to offering more flexibility in setbacks, open space requirements, lot sizes and parking standards, would help reduce the cost of developing housing affordable to the middle market. This lack of flexibility and variance options, coupled with linkage and inclusionary zoning fees, incentivize developers to build larger, less affordable products. Reductions in development barriers should reduce costs and could be coupled with agreements that developers offer the homes at a more flexible price point.

Attached products are more dependent on the community around them.

Attachment B: CURRENT TRENDS

One important step toward developing a middle income housing strategy is to understand current land use capacity. Staff prepared this qualitative GIS-based analysis to reflect what current zoning allows.

2040 Housing Unit Projections

Subcommunity	**Existing Units in 2015**	**Additional Units (Zoning Capacity)**
Central Boulder	13,370	730
Colorado University	2,020	1,080
Crossroads	4,250	1,250
East Boulder	1,400	800
Gunbarrel	5,600	200
North Boulder	6,080	620
Palo Park	1,720	480
South Boulder	7,320	480
Southeast Boulder	9,680	1,120
Total		**6,760**

Source: 2040 Projections prepared in 2015 for BVCP update

The housing unit projections for 2040, summarized in the above table, were developed as part of the Boulder Valley Comprehensive Plan update. Projections are not a precise science. The numbers are generated by a model that estimates how many additional units could be built on a site based on the zoning designation. The market conditions (likeliness to redevelop) of each site are not taken into consideration. These numbers represent maximum potential under current zoning with assumptions about constraints built into the model. Even so, all sites may not redevelop to include the full number of units tallied through the analysis.

Remove Parcels Unlikely to Provide Future Housing

After accounting for all potential housing development that might be possible under current zoning, those that would be developed or redeveloped for private or public housing (outside CU) within the next 15 years were deducted. The following categories of units have been deducted from the unit projections noted above.

- Permitted units – 902 units (13 percent) of projected units were permitted since the time the model was prepared. These units will still contribute housing to the overall housing mix, but they do not offer future potential.
- University of Colorado – 1,372 units (20 percent) are attributed to CU's plans for additional student housing and dormitory units.
- Boulder Junction – 987 units (15 percent) are in future phases and not yet zoned to accommodate the number of units projected. Once those areas are zoned, those units could be built but not in the immediate future. Phase 2 of the Transit Village Area Plan

identifies these units by 2040 for development of areas east of the railroad and west of 30th.

- Religious or Private Schools – 474 units (7 percent) of projected units are owned by religious entities or private schools. Many have either large surface parking lots or vacant adjacent land; however if they redevelop as housing they are more likely to serve a population in need (e.g., Trinity Lutheran will serve low-income seniors).

Remaining Capacity for Housing

Subtracting units projected on the categories detailed above removes 3,735 units, 55 percent of the projected units, and reduces the number of potential middle income units from 6,760 to approximately 3,025 units for the immediate future.

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MEMORANDUM

To: City of Boulder
From: Heidi Aggeler
Re: Summary of discussions with developers re: Missing Middle housing products
Date: November 19, 2015

To inform the Middle Income Housing Study, BBC interviewed developers active in building attached products in Boulder. BBC's discussions focused on market demand for attached products (who is buying, who is not); the types of products missing in Boulder; and recommendations for how the city could facilitate development of Missing Middle housing.

We also reviewed findings from the developer/builder focus groups conducted by Don Elliott of Clarion Associates in late summer 2014. That group discussion focused on specific opportunities to produce innovative and affordable housing products in Boulder, as well as regulatory barriers to the realization of those products.

This memorandum summarizes the findings from these discussions.

Market Demand for Attached Products

Developers agree that the Boulder market can absorb just about any type of affordable housing product, although some products are slower to sell than others. Attached housing located on busy streets, without access to open space and/or private outdoor space, and without a perceived "community" are in lowest demand. Conversely, attached products in the highest demand are those that are built within or create an intentional community.

Families are not yet actively buying attached homes. This may be partially related to the lack of family friendly amenities in some of the attached-product communities that have been built in Boulder. The Holiday neighborhood appears to be an exception. Developers feel that Boulder needs to work on creating a culture for young families within attached housing that is special and different from that in the surrounding suburbs.

The idea that detached homes are superior to attached homes is rooted in a Western culture geared toward independence. There is a need to stimulate cultural change to encourage residents to think more broadly about attached housing products as an acceptable long-term

housing solution. This cultural change should be stimulated at the government level with more creative thinking about housing solutions.

Perceived Gaps in the Market

Developers believe that smaller products are key to affordability. "The smaller the unit, the smaller the gap between price and ability to pay." *Note: This theory is supported by the analysis in the Middle Income Housing Study.*

When asked what types of housing products are missing from the market in Boulder, developers said:

- A diversity of attached housing products in general.
- Affordable homes that are not deed-restricted, allowing buyers to "move up."
- Homes affordable to people in the upper AMI brackets.

Primary Barriers to Developing Affordable Attached Homes

Developers were asked their opinion on the primary barriers to developing affordable, attached homes in Boulder. The barriers given focused on land costs and regulatory barriers; no developers mentioned lack of demand in Boulder as a challenge.

High land costs. "Land cost is the biggest problem we have in Boulder." There is a tremendous amount of underutilized land in Boulder that should be repurposed into affordable, attached homes. The city needs to more actively subsidized land that could be transformed into attached-housing communities.

Strong notions of how people should live driving policy. The bias of city leaders toward living in detached single family homes creates barriers to affordable housing in that it prevents diversity in housing products and choice.

High fees. Residential development fees have increased significantly during the past decade. Although most fees are relatively small, together, they contribute significantly to the cost of housing development. Some of these fees should be waived for affordable housing.

Fees that create the largest barriers include: use tax (very high), development excise tax and development review fees.

Complexity of the code. Boulder's code is very complex in general. As such, this lengthens the development process, raises costs and discourages affordable and residential development. An example of this is the new IG district which, because of its complexity and conditions, has not been the expected boon for residential development.

Specific concerns mentioned by developers include:

- Very tightly defined and controlled setbacks, open space, and parking standards with no administrative flexibility, make it seem like every project requires multiple variances.

- The same parameters are measured and treated differently for different types of housing. Example: Roof decks are considered open space for multifamily units but not for single-family units.

- Road widths are inflexible, and it seems there is no one way to resolve differences between planning and public works staff on those issues.[1]

Specific challenges within the code.

Per dwelling unit standards. Lot size and open space requirements tied to number of dwelling units take away any incentive to build smaller, more affordable units. The same requirement applies whether the unit is small or large. Smaller units should be treated differently, and restricting unit sizes will lead to more affordable units.

Parking regulations.

- Parking requirements and related areas for screening and landscaping of parking areas often limit achievable density even when per dwelling unit development standards do not. In other cases, parking maximums defeat project financing.

- Underground parking is still cost prohibitive in many projects despite incentives in the code.

- City delays in approving neighborhood parking permit areas is an issue. With a backlog of applications, developers cannot realistically offer this as way to mitigate neighborhood impacts from affordable projects with little on-site parking.[2]

- There is a need for more Boulder-specific studies on car usage and actual parking trends. Who is renting and buying these units and how many cars do they own?

- RTD is part of the problem; they are slow/unwilling to expand EcoPasses into new contexts such as affordable housing developments. But without a commitment to EcoPasses in new developments, the neighbors will continue to demand more on-site parking.

Building height limits.

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[1] Staff note: Different road widths have been allowed in many different projects. Please note that this is an emergency service provider issue and not just a Public Works and Planning.

[2] Staff note: The longest time frame for neighborhood parking permit is a year depending on the number of requests and scheduling for the public process.

- Current height limits are unrelated to building code-driven logical cutoff points for different types of housing construction. There is no flexibility for even small deviations due to building design or site constraints.

- Even where the code allows extra heights if specific conditions are met, the public treats them as variances or bonuses, and staff sometimes calls them by those names and treats them that way.

Design requirements. Boulder's design requirements are much less flexible than in many other communities and lead to higher housing costs. In general, the progressive nature of Boulder residents means that developers do not need to build "showy" housing products. Developers are not advocating for cheap housing, but feel that relaxing design standards for affordable products would help reduce costs without negatively affecting neighborhoods.

A high risk development environment. Overall, there is no incentive in Boulder to build a moderately-priced product. The risk of developing in Boulder is too high, the process is too difficult, and the codes incentivize less dense developments.

Developers raise prices on market rate units to gauge against the risk of developing in Boulder. Developers estimate that the regulatory environment causes a difference in pricing between deed-restricted and market rate units of 200 to 400 percent.

Factors that contribute to a high-risk environment:

- The many conditions on allowable types of housing.

- The need to submit very detailed complex documents at (a) Concept, (b) Tech Docs, and (c) Building Permits (re-checked).

- Length of review: Reviews that take 6 months in other Front Range communities take 18 months in Boulder.[3]

- Lack of flexibility with linkage fees, inclusionary housing, and parking create incentives to builder bigger/traditional products.

The result is lack of variety in housing types. This is largely caused by the built-in bias towards larger units created by the linkage fee system, the per-dwelling-unit development standards, and time and risk of taking "a new thing" through the development review process. If barriers were removed, variety would increase over time.

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[3] Staff note: This depends on what reviews are being discussed. If this it the time between initial concept and the first building permit being issued it may be accurate, but if it is specific to the entitlement process (e.g. Site Review) then 18 months is not accurate. A comparison with other Front Range communities is more complicated than implied by the comment.

In sum, Boulder's system assumes that there are only two types of housing: (a) subsidized or incentivized housing that is restricted for permanent affordability, and (b) private market rate units where sales prices will support linkage fees to support category (a).

Desired changes to regulatory review.

- Concept Plan approval should lead to entitlement, with later stages of review within the entitlement framework.
- Staff should have more ability to make common sense adjustments to unique circumstances.
- There should be fewer steps in the review process, with less detailed information needed up front, and more internal incentives to find all potential code issues during initial review.
- There should be more opportunities for developer/neighbor/staff collaboration in the review process.

What can the city do to facilitate development of attached and affordable homes?

When responding to this question, several developers began by acknowledging Boulder as a community long-committed to creative approaches for addressing affordable housing needs. "One of the great things about Boulder in the early years is that we could push the envelope." Boulder was one of the first communities to embrace the idea of mixed-type housing developments, allowing developers to depart from the traditional, single family detached model that dominated residential development in the 1970s and 1980s.

This early thinking about how to create communities is evident in current planning—e.g., in the current Comprehensive Plan update.

Developer responses to the question: **What can the city do to help create more attached housing?**

- Develop a culture that embraces alternative housing products. Be a leader. Stimulate cultural change in perceptions of how we live.
- Rezone parcels of the city to favor attached products.
- Streamline the regulatory process (see above recommendations).
- Lower fees. Waive impact fees for affordable developments (both deed-restricted and market rate affordable).
- Focus area plans on building community within what appear to be distinct and separate parcels. Bridge the functions of different developments to create continuity where it does not currently exist.

Developer responses to the question: **Where are the most opportunities to develop affordable attached housing?**

- Focus on developing community and repurposing of vacant and underutilized land in East Boulder. There is a perception that future residents may not want to live there because this area is not desirable for Planning Board or City Council members, or city staff. Yet there is such a keen interest in living in Boulder, that this area will be successful, especially if a neighborhood is developed around it.
- Transit Corridors: North and South Broadway
- Valmont, Arapahoe, 30th Street
- Frontage Roads, e.g., Foothills Parkway (single-family homes make no sense)
- North Boulder difficult sites. Because of flood plain issues and "bad zoning" the city will have to take the lead there
- In the future, adding density to existing neighborhoods.

Middle Income Housing Approaches from Other Cities

February 23, 2016 Study Session

City staff surveyed other cities in North America to identify different approaches to expand housing opportunities for middle income households. Included are three recently adopted housing strategies (Boston, New York and Seattle) and select examples of middle income programs and initiatives.

This broad sample includes both new and well-tested approaches. Further analysis would be needed to assess the feasibility and/or appropriateness for use in Boulder.

Recently Adopted Middle Income Housing Strategies

In 2014 and 2015, three cities, Boston, New York and Seattle, adopted housing strategies that included housing solutions targeted to serve middle income households. While these cities are much larger than Boulder, there are lessons to be learned from their approaches, both in regards to the specifics of tools employed as well as the broader approaches reflected in these strategies. For example, New York City, which lost numerous relatively affordable cooperative communities in the last housing bubble and stands to lose many more affordable apartments due to expiring affordability requirements, places a much greater emphasis on long-term affordability, while Seattle's approach to housing its middle class is far more market driven. Below are summaries of the middle income elements of these strategies.

City: *Boston, MA*
Document(s): Housing a Changing City: Boston 2030
Definition of Middle Income: $50,000 - $125,000 annual income
Related Articles: Walsh pushes for middle-income housing, May 2014, Boston Globe

Boston seeks to produce 20,000 additional middle income units by 2030 (4/5 of units are expected to result from private market activity with the balance of units deed restricted). The following are tools Boston intends to use to achieve its goals:

- Land use and zoning changes
- Property tax incentives
- Regulatory (streamlined permitting)
- Publicly-owned land
- Funding
- Affordable covenants
- Inclusionary Housing
- Programs (homebuyer assistance, Fair Housing)

MIDDLE INCOME GOALS (monitored quarterly):

1. Double middle-income housing production, creating 20,000 units by 2030
2. Expand and enhance homebuyer assistance programs (e.g., downpayment assistance, deed-restricted housing) to help 5,000 middle class homebuyers purchase first homes
3. Ensure equal home mortgage access to middle income households of all races.

ACTIONS:

Market-Oriented

1. **Rezone (land use, regulatory)** to allow significant density in areas affordable to middle class.
2. **Property tax incentives** to encourage middle income housing construction.

3. **Reduce residential construction costs** on housing product targeted to specific demographics (e.g., affordable, middle income), using a specific scope of construction in designated areas.
4. **Streamlined permitting** targeted to small builders developing privately-owned vacant parcels

Long-Term Affordability Secured

5. **Public resources**, including **city-owned infill lots and funding**, to create mixed-income homeownership development with long-term affordability;
6. **Inclusionary Development Policy** (up to half of units serve between 80% and 100% AMI);
   a) Continue to require substantial share of inclusionary housing units be provided onsite
   b) Modify policy to allow higher rents in targeted geographic areas

Other City Program

7. **Fair Housing education, monitoring and compliance** to promote racial equity in homeownership market

City: *New York, NY*
Document(s): Housing New York (2015)
Definition of Middle Income: 121 - 165% AMI (*Moderate income: 81 - 120% AMI)
Related Articles: De Blasio Unveils 'Most Ambitious' Affordable Housing Plan in Nation

Housing New York focuses on long-term affordability and preservation of units with expiring affordability, as a result, only one of its middle income-oriented actions, compact units, is purely a market solution. All other Housing New York actions result in long-term affordability. To secure more units affordable to middle income households, the city plans to rely on the following tools:

- Land use and zoning changes
- Funding and financing, property tax incentives, city-issued bonds
- Publicly-owned land
- Affordable covenants
- Policy (new mandatory inclusionary housing)
- Limited-equity coops
- Regulation (targeted parking reductions)
- Targeted infrastructure improvement
- Programs (homebuyer assistance, various coop organizing and financing programs, etc.)
- Public/private partnership

MODERATE AND MIDDLE INCOME GOALS:
Create and preserve 22,000 units affordable to moderate income households (80 – 120% AMI) and 22,000 units affordable to middle income households (121 – 165% AMI) over 10 years.

MIDDLE INCOME ACTIONS:

Market-Oriented

1. **Expand availability of compact units** (e.g., micro units)

Long-Term Affordability Secured

2. Establish new **Mandatory Inclusionary Housing** **(low and moderate* served**) and provide tax exemptions to developers for deeper affordability or higher share of affordability
3. Pilot **Mixed-middle-income Program:** 20% low, 30% moderate (Boulder's middle); 50% middle income; target to mixed use transit corridors; pursue zoning changes to support mixed use
4. **Create new tax incentive program** to provide rental building owners partial or full tax exemption in exchange for regulatory agreement ensuring affordability for life of exemption
5. **Inclusionary Housing Preservation Program** gives developers bonus density in exchange for

agreement to renovate and preserve affordable housing

6. **Expand Mitchell-Lama preservation strategies** (48,000 moderate and middle-income affordable rentals and coops); fund repairs and renovations in exchange for extended affordability and assist properties to restructure debts
7. **Finance affordable homeownership opportunities** (all existing programs) through Tenant Interim Lease Program, which helps organized tenant associations in City-owned buildings to set up low-income coops, Affordable Neighborhood Cooperative Program (uses HDC financing to promote development of affordable coops) and Real Estate Owned Program (third-party acquires and rehabilitates bank-foreclosed homes for moderate-income households)
8. **Aggregate small sites** for smaller rental and HO developments (new program)
9. **Targeted infrastructure investment** to enable new affordable units (e.g., sewers, streets)
10. **Identify underutilized city-owned sites** as mixed-income redevelopment sites
11. Identify and encourage development on **underused privately-owned sites** through strategic partnerships and pooled development rights
    Reduce development costs to encourage market affordability
12. **Reduce parking requirements for affordable housing in transit accessible areas**
13. **Ease restrictions on conversion of** older, obsolete **non-residential buildings** to residential.
14. **Create development finance toolbox** to leverage private market to develop affordable housing
15. **501(c)(3) bonds to finance MI housing:** Use 501(c)(3) charitable organization created with City's assistance to develop and provide middle income affordable housing on city-owned land.

City: *Seattle, WA*
Document(s): Housing Seattle: A Roadmap to an Affordable and Livable City, An Action Plan to Address Seattle's Affordability Crisis
Definition of Middle Income: Not defined
Related Articles: Seattle council candidates band together to back alternate housing plan

Of the three communities profiled with middle income components to their housing strategies, Seattle places the greatest emphasis on market interventions. Seattle does not propose to deed restrict middle income housing. Tools Seattle plans to employ to support middle income housing production include:

- Land use and zoning (e.g., urban villages)
- Regulatory change (streamlining permitting)
- Policy (parking reform)
- Land banking

MIDDLE INCOME GOALS:
Create 30,000 market-rate housing units over the next 10 years

MIDDLE INCOME ACTIONS:
Market-Oriented

1. **Increase Opportunities for Multifamily Housing,** particularly in areas near transit, services and amenities.
2. **Streamline City Codes and Permitting Processes**
3. **Comprehensive Parking Reform:**
    a) Clarify definition of frequent transit service to reduce requirements in transit areas;

b) Reduce parking requirements for multifamily housing outside of Urban Centers and Urban Villages that have frequent transit service;
c) Ensure parking mandates are not reintroduced in Urban Centers and Urban Villages; and
d) Remove parking requirements for ADUs and other small-scale housing types in Single Family areas.

4. In new transit hubs, work with government agencies to **secure land to build mixed-income housing**.

Select Middle Income Initiatives in Other Communities

In addition to profiling recent housing strategies, staff surveyed a variety of communities with programs and policies to address demand for middle income housing. Some of the communities profiled have long-standing middle income policies and programs and some are launching new initiatives.

Inclusionary housing is by far the most used approach to providing middle income housing with long-term affordability (i.e., deed restricting covenants). In addition to cash in lieu from inclusionary housing, funding sources employed by these communities include sales tax, commercial linkage fees, city-issued bonds and community benefit fees (bonus density, condominium conversion). Other tools employed to generate middle income housing in these communities include land banking, transfer of development rights, zoning and land use, regulatory tools (expedited review), accessory dwelling units and laneway houses and apartments, city-owned land, and homeownership programs (e.g., first-time homebuyer, energy conservation).

Aspen/Pitkin County, Colorado

According to the 3rd quarter 2015 Elliman Report, the median home sales price in Aspen was $3.4 million, making it one of the most expensive housing markets in the country. High housing costs have been a longstanding challenge in Aspen. In 1984, the Aspen/Pitkin County Housing Authority (APCHA) was created specifically to promote workforce housing solutions, rather than to provide housing services more typically associated with housing authorities such as public housing. Their mission statement is "to provide affordable housing opportunities through rental and sale to persons who are or have been actively employed or self employed within Aspen and Pitkin County…" According to the Aspen/Pitkin County Employee Housing Guidelines income categories served by APCHA range from low to upper middle income. To provide a sense of households qualified for APCHA's middle income categories, a household with two dependents can qualify for the lowest middle income category and earn up to $160,000. The same household could qualify for the highest upper middle income category and earning up to $201,000.

To support APCHA's efforts, the City of Aspen maintains a Housing Development Fund dedicated to affordable housing. Aspen's funding sources include:

- A one percent housing real estate transfer tax (established prior to TABOR),

- City sales tax,
- cash in lieu, and
- A Credit Certificate Program which allows a private sector developer to meet affordable housing requirements by purchasing a credit equivalent to the free market value of an affordable unit in an all-affordable housing project.

Pitkin County supports affordable housing with an Employee Housing Impact Fee.

Breckenridge, Colorado

A 2014 report documents the impacts of Breckenridge's affordable workforce program, including, most notably, housing one third (623 housing units) of all households in Breckenridge. One particularly notable deed-restricted development in Breckenridge is the Wellington Neighborhood. The Town of Breckenridge land banked the property that would become the Wellington Neighborhood and transferred development rights from other parcels to the Wellington parcels in order to create a mixed use, mixed-income neighborhood that includes 230 units deed restricted to household earning up to 80, 90, 100, 110, 120 and 150 percent AMI.

Montgomery County, Maryland

Established in 1974, Montgomery County, Maryland's inclusionary housing program, the Moderately Priced Dwelling Unit Program, is the oldest in the nation. It serves low to moderate income renter and owner households. In 2006, a second inclusionary housing program, the Workforce Housing Program was added in Montgomery County to create housing opportunities for middle income households (70 to 120 percent AMI). The inclusionary requirement applies to projects with 35 or more units and requires 10 percent of units to be restricted to these households. Stated goals of the Workforce Housing Program include providing housing choice, increasing housing for public employees whose incomes cannot support the high cost of housing close to their workplace, assisting employers in reducing critical labor shortages; and reducing traffic congestion.

Portland, Maine

Portland, Maine's recently adopted (October 2015) Inclusionary Zoning Ordinance places a 10 percent permanently affordable requirement on residential buildings with 10 or more units. Middle income households (100 to 120 percent AMI) are targeted by the program. Portland does not have an inclusionary program for low- and moderate-income households. This program is mandatory, but does provide development incentives such as increased height and density, and tax breaks.

Roseville, California

Roseville, California has a 10 percent affordable housing goal with 20 percent of the goal targeted to middle income households. Middle income housing is promoted through the Density Bonus Program (voluntary inclusionary housing with a deed restricting covenant), a commercial linkage fee, Second Unit Ordinance (accessory units, a market-rate housing solution), Condominium Conversion Ordinance (per unit one-time community benefit fee paid for conversion of rental apartments to for-sale condos), expedited project review, and zoning and land use.

San Diego, California

San Diego's Housing Trust Fund (HTF) is primarily funded by a commercial linkage fee as well as cash in lieu from the Inclusionary Housing program. Households with incomes up to 100 percent AMI can be served by the HTF. Over time middle income tiers (80 and 100 percent AMI) have been added to a number of housing programs, including the Housing Enhancement Loan Program (HELP) energy efficiency and water conservation loans, the first-time buyer Shared Equity Program, the Condominium Conversion Program and Down Payment/Closing Cost Assistance Grants.

San Francisco, California

San Francisco produces rental and for-sale middle income housing through its mandatory Inclusionary Housing Program, which produces housing that serves households earning up to 200 percent AMI. Other city programs with income limits up to 200 percent AMI include the City Second (mortgage) and Downpayment Assistance Loan programs. The income limits for the Rehab and Lead Programs top out at 92 percent AMI. The Middle Income Rental Housing Program serves households earning up to 150 percent AMI. These rental units are secured in exchange for a density bonus.

In 2007, SPUR (San Francisco Planning and Urban Research Association) convened a task force of architects, developers and policymakers to develop an affordable by design strategy for San Francisco. Recommendations focused on regulatory changes, parking, required "family" bedroom count units, design, and the inclusionary housing requirement. The report can be found here.

In the 2015 election, San Franciscan's responded to the community's worsening housing crisis through the ballot box. Propositions A, K and D, all of which support the production of housing affordable to low to middle income households, passed on November 2015. Proposition A authorized the city to issue up to $310 million in bonds to fund affordable housing programs. Proposition A is expected to support the renovation and construction of 30,000 affordable units over the next four years. Proposition K expanded the target income levels of housing developments allowed on surplus lands to include households earning up to 150 percent AMI. Proposition D authorized increased building height for a mixed-income development called Mission Rock, which is expected to produce 1,500 housing units, 33 percent of which will serve low to middle-income households.

Vancouver, British Columbia

Laneway houses, a type of accessory dwelling unit, have been promoted in Vancouver as an option to allow middle income households to live in areas they could not otherwise afford. According to a December 2015 article in Citiscope, the city has received nearly 2,000 applications in the six years since laneway houses have been allowed, 85 percent of which have been constructed. Factors that have helped to promote the laneway house include elimination of neighbor approval requirements and eliminating the owner occupancy requirement. The city also provides a how-to guide that serves to help residents interested in building laneway houses by providing an overview of laneway houses, lot eligibility, and design requirements. In Vancouver, laneway houses are allowed in all single-family residential zones, one residential two-family zone and one multiple dwelling unit zone.

Due to the popularity of the laneway house, Vancouver recently launched a laneway apartment option that allows mini apartment buildings up to six stories tall along lanes in a neighborhood chosen for its scale. Four projects were in review at the time of this writing, but had not yet been built.

HOUSING BOULDER WORKING GROUP SUMMARY
MAINTAIN THE MIDDLE

GOAL: Provide a greater variety of housing choices for middle-income families and Boulder's workforce.[1]

KEY THEMES:

- The group discussed the middle income data at length and requested additional information. This can be found on the updated Fact Sheet for Maintain the Middle. They ultimately concluded, that although "middle income" can be difficult to define, key takeaways are that there has been a loss of middle income households and there's a gap in available housing "between the extremes," between low and high incomes. One member advocated a price elasticity study to determine whether increasing housing supply actually makes housing significantly more affordable given the effect of increasing number of jobs on the cost of housing.

- In regard to evaluating tools, the group discussed the importance of identifying any tool's costs and benefits and also considering its impacts on everyone, including current residents. The possibility was brought up of putting any new initiatives to a popular vote. The group agreed that broad community support should be one of the tool screening criteria.

- Additionally, the group favored tools that would provide a variety of housing choices to meet the diverse needs of middle income people, would support alternative transportation and would be sustainable.

- The group did "thumbs up" polling on two fundamental questions that could influence their individual thinking about each tool:
  - Do you generally support tools that increase the supply of housing, or tools that focus on preserving existing housing and its affordability, or a combination?
    All eight members present at the meeting (four absent from meeting) gave thumbs up to a combination. One additional member not present at the meeting provided a written comment opposed to increasing the housing supply unless 1) new development pays its own way for all facilities and services it uses, 2) the city stops creating additional demand for housing by adding more employment space, and 3) middle income affordability is maintained over time.

  - Do you think city funds should be used to subsidize middle income housing, or should that funding come from other sources, or a combination?
    Five of eight members present gave thumbs up to a combination and three others gave thumbs up to only non-city funding. An additional member not present at the meeting provided a written comment that impact fees on development should pay 100 percent of

[1] On July 28, 2015 City Council adopted changes to the Maintain the Middle goal proposed by the working group. This change struck the following language from the beginning of the goal, "Prevent further loss of Boulder's economic middle by preserving existing housing"

HOUSING BOULDER WORKING GROUP SUMMARY
MAINTAIN THE MIDDLE

the true cost of providing the middle income housing for which the development creates demand, and that any city funding should be spent on only permanently affordable units.

SHORTLIST OF TOOLS FOR FURTHER CONSIDERATION:
The group "dot voted" (nine of 12 members) to create this short list of tools for further consideration, with the following comments:

Land Use Designation and Zoning Changes

Cooperative Housing

- Co-Housing only got one dot (voting was limited to five dots each person), but should be considered part of Co-op Housing

Occupancy Limits

- Already happening, make it legal and better enforce nuisance code
- Could be treated as a type of cooperative housing, or could be differentiated from it
- Makes better use of existing houses and densities, and is a good use of land

Height Limit

- Could mean adding more height in general throughout city by adding one or two stories to existing one-story buildings; and/or could mean allowing up to 55' in select places or even over 55'
- Higher buildings are more energy- and land-efficient
- Needs to be considered in conjunction with density and setbacks

Accessory Dwelling Units/Owner's Accessory Units

- Require them to be permanently affordable
- Look at the whole range of amendments to current restrictions, e.g., the current size limit numbers seem arbitrary

Bonuses for Higher Affordability and Certain Housing Types

The group agreed (eight of 12 members present) that of the above tools, these would have the most impact:

- Land Use Designation and Zoning Changes
- Occupancy Limits
- Height Limit

Also, individual members were asked to state their favorite one or two tools and why; their responses are posted online under Meeting #4 Notes.