

Colorado Rural Preservation Academy

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Affordable Housing: A New Tool for Municipalities

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A 2021 CML legislative Priority

- Clear the air on municipal authority to adopt and enforce “inclusionary zoning” and “housing impact” ordinances under their land use authority.
- Deal with lingering uncertainty caused by the 2000 Colorado Supreme Court Decision in *Town of Telluride v. Lot Thirty-Four Venture, L.L.C.*



What is an “inclusionary zoning” ordinance?

- “*Inclusionary zoning* is an affordable housing tool that links the production of affordable housing to the production of market-rate housing. IZ policies either require or encourage new residential developments to make a certain percentage of new homes affordable to low- or moderate-income residents.”



What is a “housing impact” ordinance?

- Closely related to the concept of IZ, a more general “housing impact” ordinance may require both residential and non-residential developments to mitigate housing impacts
- This kind of ordinance is based on the notion that all new development generates a demand for new employment, thus driving the need for new homes affordable to those employees.



What does “rent control” have to do with any of this?

- 1980: Boulder citizens file initiative to cap rent increases on existing housing stock.
- 1981: General Assembly adopts statute forbidding any “ordinance . . . that would control” residential rents
- 2000: Colorado Supreme Court rules that Telluride’s housing impact ordinance applicable to new development violates the rent control statute.



Key language from the Telluride Case

“The fact that the ordinance offers developers several options for satisfying the ‘affordable housing requirement’ does not change the character of, or redeem, the rent control provisions. Either the provisions constitute rent control and cannot be enforced, or they do not. What we examine here is whether the options for constructing new housing or deed restricting existing housing constitute rent control.”



Relief for “voluntary agreements”

- In 2010 the rent control statute was amended to clarify that the prohibition does not apply to rent caps that are the result of a “voluntary agreement”
- The 2010 law said, “a municipality may not deny an application for a development permit . . . because an applicant for such a permit declines to enter into an agreement to limit rent on either private residential property or a private residential housing unit.”



Municipal responses

- Denver inclusionary housing ordinance (2003) applied only to for-sale housing developments, not rental projects. Build requirement or fee-in-lieu.
- In 2016 Denver repealed its IHO requirement and adopted a “linkage fee” approach, essentially a housing impact fee on all new development, based upon an employment-generation rationale.
- More recently, Denver has adopted incentive-based regulations—for example height or density bonuses for developers willing to provide affordable homes



Other Municipalities

- Aspen: “Affordable housing credits”
- Basalt: Inclusionary 20% with options
- Boulder: Inclusionary 25% with options
- Carbondale: Inclusionary 20% with options
- Eagle: Inclusionary 10% with options
- Longmont: Inclusionary 12% with options
- Telluride: Employment-based housing impact
- Vail: Inclusionary 10% with options



SB 19-225

- Repealed the rent control statute and authorized local governments to stabilize rents.
- Fixed the “telluride problem,” but with a much broader brush.
- Local governments have not expressed a desire to implement rent control.



CML initiated legislation

- Narrowly tailored to allow municipalities the authority to promote affordable housing in their communities.
- Amends the land use statute.
- Must provide options to the developer.



29-20-104. Powers of local governments - definition.

(1) Except as expressly provided in section 29-20-104.5, the power and authority granted by this section does not limit any power or authority presently exercised or previously granted. Each local government within its respective jurisdiction has the authority to plan for and regulate the use of land by:

(e.5) REGULATING DEVELOPMENT OR REDEVELOPMENT IN ORDER TO PROMOTE THE CONSTRUCTION OF NEW AFFORDABLE HOUSING UNITS. THE PROVISIONS OF SECTION 38-12-301 SHALL NOT APPLY TO ANY LAND USE REGULATION ADOPTED PURSUANT TO THIS SECTION THAT RESTRICTS RENTS ON NEWLY CONSTRUCTED OR REDEVELOPED HOUSING UNITS AS LONG AS THE REGULATION PROVIDES A CHOICE OF OPTIONS TO THE PROPERTY OWNER OR LAND DEVELOPER AND CREATES ONE OR MORE ALTERNATIVES TO THE CONSTRUCTION OF NEW AFFORDABLE HOUSING UNITS ON THE BUILDING SITE;



Questions?



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