

**First Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO**

**INTRODUCED**

LLS NO. 17-0471.01 Bob Lackner x4350

**SENATE BILL 17-086**

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**SENATE SPONSORSHIP**

**Fenberg,**

**HOUSE SPONSORSHIP**

**(None),**

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**Senate Committees**

State, Veterans, & Military Affairs

**House Committees**

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**A BILL FOR AN ACT**

101      **CONCERNING A CLARIFICATION THAT THE STATUTE PROHIBITING**  
102              **LOCAL GOVERNMENTS FROM ENACTING LOCAL LEGISLATION**  
103              **THAT WOULD CONTROL RENT ON PRIVATE RESIDENTIAL**  
104              **HOUSING UNITS DOES NOT PROHIBIT LOCAL GOVERNMENTS**  
105              **FROM ADOPTING INCLUSIONARY HOUSING PROGRAMS.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)*

In 1981, the general assembly enacted legislation that prohibits counties and municipalities (local governments) from enacting any

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

ordinance or resolution that would control rent on private residential property.

The bill clarifies that an ordinance or resolution that would control rent on either private residential property or a private residential housing unit does not include an ordinance or resolution enacted by a county or a municipality that establishes, as a condition of obtaining approval for the development of a project, inclusionary housing or inclusionary zoning requirements.

As used in the bill, "inclusionary housing" or "inclusionary zoning" means a program enacted legislatively and with opportunity for public input that requires, as a condition of obtaining approval for the development of a project, the provision of residential units affordable to and occupied by owners or tenants whose household incomes do not exceed a limit that is established in the ordinance or resolution.

The bill specifies different components that may be included in an inclusionary housing program.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly  
3 finds, determines, and declares that:

4 (a) In 1981, the general assembly enacted legislation that prohibits  
5 counties and municipalities, referred to in this section as "local  
6 governments", from enacting any ordinance or resolution that would  
7 control rent on private residential property or private residential housing  
8 units, referred to in this section as the "rent control statute".

9 (b) In 1994, the town of Telluride, Colorado, enacted an  
10 ordinance, referred to in this section as the "Telluride ordinance", to  
11 address the shortage of affordable housing generated by the pressure of  
12 new development in the area. The ordinance required land developers to  
13 mitigate the effects of new development by selecting from among a group  
14 of options, or a combination of them, to satisfy the affordable housing  
15 requirement.

16 (c) The Telluride ordinance was subsequently challenged as a

1 violation of the rent control statute.

2 (d) In 2000, in *Town of Telluride, Colorado v. Lot Thirty-Four*  
3 *Venture LLC*, 3 P.3d 30 (Colo. 2000), the Colorado supreme court held,  
4 among other things, that the Telluride ordinance was unconstitutional as  
5 a violation of the rent control statute. In its holding, the supreme court  
6 held that "our holding that [the Telluride ordinance] constitutes rent  
7 control does not prevent the General Assembly from amending the rent  
8 control statute to permit local ordinances such as [the Telluride  
9 ordinance]. In short, we hold that the Town's remedy must be with the  
10 legislature."

11 (e) Since 2000, the state's need for affordable housing in all  
12 geographic regions has grown exponentially. Among other effects, the  
13 immense demand for affordable housing represents a significant  
14 impediment to economic growth and opportunity within the state and the  
15 ability of the state to provide a high quality of life for all its residents and  
16 to develop, attract, and maintain a high quality workforce.

17 (f) In adopting their master plans, municipalities specifically are  
18 directed by section 31-23-207, Colorado Revised Statutes, to accomplish  
19 a coordinated, adjusted, and harmonious development of the municipality  
20 and its environs that will, in accordance with present and future needs,  
21 best promote health, safety, order, convenience, prosperity, and general  
22 welfare, including, among other things, affordable housing.

23 (g) By giving local governments the authority to adopt the type of  
24 inclusionary housing programs authorized by Senate Bill 17-\_\_\_\_, enacted  
25 in 2017, local governments will be given an additional and meaningful  
26 resource to expand the supply of affordable housing in their communities  
27 without conflicting with what the general assembly intended to prohibit

1 in the rent control statute. The affordable housing program authorized by  
2 this legislation does not conflict with the rent control statute because the  
3 statute is directed at prohibiting a particular type of local laws and the  
4 inclusionary housing programs, implemented legislatively and with public  
5 input, represent the desire of the residents of that municipality.

6 (2) By enacting Senate Bill 17-\_\_\_\_, enacted in 2017, the general  
7 assembly intends to fully exercise the lawmaking role delegated to it by  
8 the Colorado supreme court in the *Telluride* case to clarify the rent  
9 control statute for the purpose of authorizing local governments to adopt  
10 inclusionary housing programs to expand affordable housing. The general  
11 assembly further intends that Senate Bill 17-\_\_\_\_ be construed as liberally  
12 as possible to promote the policy objectives specified in this section.

13 **SECTION 2.** In Colorado Revised Statutes, 38-12-301, **add** (2.5)  
14 as follows:

15 **38-12-301. Control of rents by counties and municipalities**  
16 **prohibited - nonapplication of prohibition to inclusionary housing**  
17 **policies adopted by local governments to promote affordable housing**  
18 **- legislative declaration - definition.** (2.5) (a) FOR PURPOSES OF  
19 SUBSECTION (1) OF THIS SECTION, AN ORDINANCE OR RESOLUTION THAT  
20 WOULD CONTROL RENT ON EITHER PRIVATE RESIDENTIAL PROPERTY OR A  
21 PRIVATE RESIDENTIAL HOUSING UNIT DOES NOT INCLUDE AN ORDINANCE  
22 OR RESOLUTION ENACTED BY A COUNTY OR MUNICIPALITY THAT  
23 ESTABLISHES, AS A CONDITION OF OBTAINING APPROVAL FOR THE  
24 DEVELOPMENT OF A PROJECT, INCLUSIONARY HOUSING OR INCLUSIONARY  
25 ZONING REQUIREMENTS.

26 (b) AS USED IN SUBSECTION (2.5)(a) OF THIS SECTION,  
27 "INCLUSIONARY HOUSING" OR "INCLUSIONARY ZONING" MEANS A

1 PROGRAM THAT REQUIRES, AS A CONDITION OF OBTAINING APPROVAL FOR  
2 THE DEVELOPMENT OF A PROJECT, THE PROVISION OF RESIDENTIAL UNITS  
3 AFFORDABLE TO AND OCCUPIED BY OWNERS OR TENANTS WHOSE  
4 HOUSEHOLD INCOMES DO NOT EXCEED A LIMIT THAT IS ESTABLISHED IN  
5 THE ORDINANCE OR RESOLUTION. THE COMPONENTS OF AN INCLUSIONARY  
6 HOUSING PROGRAM MAY INCLUDE, BUT ARE NOT LIMITED TO:

7 (I) REQUIRING A PROPERTY OWNER OR A DEVELOPER, AS A  
8 CONDITION OF THE APPROVAL OF A NEW DEVELOPMENT PROJECT, TO SET  
9 ASIDE A SET PERCENTAGE OF UNITS WITHIN THE DEVELOPMENT WITH  
10 RENTS THAT ARE SET TO BE AFFORDABLE TO HOUSEHOLDS WITH TARGETED  
11 INCOMES;

12 (II) OFFERING A PROPERTY OWNER OR DEVELOPER DIFFERENT  
13 FORMS OF INCENTIVES TO COMPENSATE THE DEVELOPER FOR SETTING  
14 RENTS IN A WAY THAT PROMOTES AFFORDABLE HOUSING AND ACHIEVES  
15 THE COMMUNITY'S AFFORDABLE HOUSING GOALS;

16 (III) PROVIDING MULTIPLE OPTIONS FOR A PROPERTY OWNER OR  
17 DEVELOPER TO MEET PROGRAM REQUIREMENTS, SUCH AS CASH-IN-LIEU OR  
18 THE DEDICATION OF LAND TO THE LOCAL GOVERNMENT;

19 (IV) TARGETING A PARTICULAR INCOME RANGE AS THE  
20 BENEFICIARY OF SUCH PROGRAMS; AND

21 (V) SPECIFYING A TIME PERIOD DURING WHICH AFFECTED HOUSING  
22 PROGRAMS MAY STAY AFFORDABLE.

23 **SECTION 3. Effective date - applicability.** This act takes effect  
24 July 1, 2017, and applies to an ordinance or resolution enacted by a  
25 county or municipality on or after said date.

26 **SECTION 4. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.