

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0713.02 Bob Lackner x4350

SENATE BILL 16-059

SENATE SPONSORSHIP

Ulibarri,

HOUSE SPONSORSHIP

(None),

Senate Committees
Finance

House Committees

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 **PROPERTY DOES NOT PROHIBIT LOCAL GOVERNMENTS FROM**
105 **ADOPTING CERTAIN ALTERNATIVES OUTSIDE THE TRADITIONAL**
106 **UNDERSTANDING OF RENT CONTROL TO EXPAND THE SUPPLY OF**
107 **AFFORDABLE HOUSING.**

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://www.leg.state.co.us/billsummaries>.)

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.

In 1981, the general assembly enacted legislation that prohibits counties and municipalities (local governments) from enacting any ordinance or resolution that would control rent on private residential property (rent control statute).

The bill clarifies that a program enacted by a local government through an ordinance or resolution requires a land developer to mitigate the effects of new development by proving to a significant extent that affordable housing for new employees created by the development does not constitute rent control and, therefore, is not prohibited by the rent control statute if the program satisfies each of the following requirements:

- ! The program is adopted to address, and the shortage of affordable housing results from, the adverse effects of high levels of economic development within the local government;
- ! The program applies only to the new construction of residential housing units;
- ! The application of any rental rate restriction imposed by the program has no relationship to the characteristics or zoning classification of a particular unit but rather is based upon the number of employees generated by a particular development; and
- ! If the program requires the land developer to generate a certain number of affordable housing units for a set percentage of new employees created by the development, the program also allows the land developer to select from among alternatives to such requirement. The alternative methods of mitigation may include:
 - ! The imposition of deed restrictions on the title of newly constructed housing units that designates such units as affordable housing;
 - ! The imposition of deed restrictions on the title of existing residential housing units constructed prior to the effective date of the ordinance, resolution, or other form of legislation enacted by the local government that designates such units as affordable housing;
 - ! The payment by the land developer of a fee to the local government in lieu of deed restricted housing; or
 - ! The conveyance by the developer of real property to the local government with a fair market value that is equivalent to a fee paid in lieu of deed restricted housing.

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, referred to in this section as
8 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
17 violation of the rent control statute.

18 (d) In 2000, in *Town of Telluride, Colorado v. Lot Thirty-Four*
19 *Venture LLC*, 3 P.3d 30 (Colo. 2000), the Colorado Supreme Court held,
20 among other things, that the Telluride ordinance was unconstitutional as
21 a violation of the rent control statute. In its holding, the Supreme Court
22 held that "our holding that [the Telluride ordinance] constitutes rent
23 control does not prevent the General Assembly from amending the rent
24 control statute to permit local ordinances such as [the Telluride
25 ordinance]. In short, we hold that the Town's remedy must be with the
26 legislature."

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

1 intends that Senate Bill 16-___ be construed as liberally as possible to
2 promote the policy objectives specified in this section.

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

5 **38-12-301. Control of rents by counties and municipalities**
6 **prohibited - nonapplication of prohibition to certain programs by**
7 **local governments to promote affordable housing - legislative**
8 **declaration.** (2.5) NOTWITHSTANDING ANY OTHER PROVISION OF THIS
9 SECTION, ANY PROGRAM ENACTED BY A COUNTY OR MUNICIPALITY
10 THROUGH AN ORDINANCE OR RESOLUTION REQUIRES A LAND DEVELOPER
11 TO MITIGATE THE EFFECTS OF NEW DEVELOPMENT BY PROVING TO A
12 SIGNIFICANT EXTENT THAT AFFORDABLE HOUSING FOR NEW EMPLOYEES
13 CREATED BY THE DEVELOPMENT DOES NOT CONSTITUTE RENT CONTROL
14 FOR PURPOSE OF THE PROHIBITION CONTAINED IN SUBSECTION (1) OF THIS
15 SECTION IF THE PROGRAM SATISFIES EACH OF THE FOLLOWING
16 REQUIREMENTS:

17 (a) THE PROGRAM IS ADOPTED TO ADDRESS, AND THE SHORTAGE
18 OF AFFORDABLE HOUSING RESULTS FROM, THE ADVERSE EFFECTS OF HIGH
19 LEVELS OF ECONOMIC DEVELOPMENT WITHIN THE COUNTY OR
20 MUNICIPALITY;

21 (b) THE PROGRAM APPLIES ONLY TO THE CONSTRUCTION OF
22 RESIDENTIAL HOUSING UNITS COMMENCED ON OR AFTER THE EFFECTIVE
23 DATE OF THIS SUBSECTION (2.5);

24 (c) THE APPLICATION OF ANY RENTAL RATE RESTRICTION THAT IS
25 A COMPONENT OF THE PROGRAM HAS NO RELATIONSHIP TO THE
26 CHARACTERISTICS OR ZONING CLASSIFICATION OF A PARTICULAR
27 RESIDENTIAL HOUSING UNIT BUT RATHER IS BASED UPON THE NUMBER OF

1 EMPLOYEES GENERATED BY A PARTICULAR DEVELOPMENT; AND

2 (d) IF THE PROGRAM REQUIRES THE LAND DEVELOPER TO
3 GENERATE A CERTAIN NUMBER OF AFFORDABLE HOUSING UNITS FOR A SET
4 PERCENTAGE OF NEW EMPLOYEES CREATED BY THE DEVELOPMENT, THE
5 PROGRAM ALSO ALLOWS THE LAND DEVELOPER TO SELECT FROM AMONG
6 ALTERNATIVES TO SUCH REQUIREMENT. THE ALTERNATIVE METHODS OF
7 MITIGATION MAY INCLUDE:

8 (I) THE IMPOSITION OF DEED RESTRICTIONS ON THE TITLE OF
9 HOUSING UNITS CONSTRUCTED ON OR AFTER THE EFFECTIVE DATE OF THE
10 ORDINANCE, RESOLUTION, OR OTHER FORM OF LEGISLATION THAT
11 DESIGNATES SUCH PROPERTY OR UNITS AS AFFORDABLE HOUSING;

12 (II) THE IMPOSITION OF DEED RESTRICTIONS ON THE TITLE OF
13 RESIDENTIAL HOUSING UNITS CONSTRUCTED PRIOR TO THE EFFECTIVE
14 DATE OF THE ORDINANCE, RESOLUTION, OR OTHER FORM OF LEGISLATION
15 ENACTED BY THE COUNTY OR MUNICIPALITY THAT DESIGNATES SUCH
16 UNITS AS AFFORDABLE HOUSING;

17 (III) THE PAYMENT BY THE LAND DEVELOPER OF A FEE TO THE
18 COUNTY OR MUNICIPALITY IN LIEU OF DEED RESTRICTED HOUSING; OR

19 (IV) THE CONVEYANCE BY THE DEVELOPER OF REAL PROPERTY TO
20 THE COUNTY OR MUNICIPALITY WITH A FAIR MARKET VALUE THAT IS
21 EQUIVALENT TO THE FEE PAID UNDER THE ALTERNATIVE DESCRIBED IN
22 SUBPARAGRAPH (III) OF THIS PARAGRAPH (d).

23 **SECTION 3. Effective date - applicability.** This act takes effect
24 July 1, 2016, and applies to an ordinance or resolution enacted by a
25 county or municipal government 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.