

Bill aims to give local governments authority to require affordable housing units

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Colorado's legislature appears poised to pass a [bill giving local governments power to require new rental housing developments to provide affordable housing units](#). If adopted, the bill would reverse a longstanding interpretation of the state's rent control statute precluding such requirements, which are commonly known as "inclusionary housing ordinances."

Those in favor of the bill, which passed the House Transportation & Local Government Committee on a party-line vote March 10, see its potential to create needed affordable housing. Others fear that the bill lacks protections for developers and could stifle more development than it creates.

Because they often lack resources to construct housing, local governments around the country use inclusionary housing ordinances to create affordable units. Under these ordinances, housing developers must set aside as affordable a particular percentage or number of housing units in a project. Affordable units' rents or sales prices are capped and made available to low- or moderate-income households. Under a [1981 law prohibiting rent control](#), Colorado local governments can require for-sale units to be affordable, but have not had a similar authority with respect to rental units as a result of a 2000 Colorado Supreme Court case.

Town of Telluride v. Lot Thirty-Four Venture, L.L.C.

In the face of an affordable housing crisis in the 1990s, Telluride enacted an inclusionary ordinance that applied regardless of whether the new residential development would be marketed as "for sale" or "for rent" housing. A developer challenged the law, and in [Town of Telluride v. Lot Thirty-Four Venture, L.L.C.](#), the Supreme Court interpreted the rent control law to prohibit inclusionary housing measures. Although an amendment to the rent control statute, adopted in 2010, exempted voluntary agreements between local governments and permit applicants, it has not produced a significant amount of affordable housing. The amendment expressly prohibits local governments from denying zoning, conditional and special use, subdivision and site plan permits if an applicant refuses to enter into such a voluntary agreement.

Summary of proposed bill

The 2021 bill, HB21-1117 would roll back Telluride, expressly allowing local inclusionary housing ordinances. The bill provides that the rent control statute does not apply to local land use regulations that restrict rents on "newly constructed or redeveloped housing units" so 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 site. The current version of the bill does not provide any detail as to what such options or alternatives may, or should, entail.

There is weighty debate over the capacity of inclusionary housing ordinances to address affordability issues. The Washington, D.C.-based Urban Institute has found that [inclusionary housing ordinances have mixed results](#). Well-designed ordinances may, according to the Lincoln Institute of Land Policy, [produce low- to moderate-income units and avoid suppressing the development of market-rate units](#).

These ordinances generally do not, however, produce units for very low income people or those requiring supportive services. Research further suggests that programs adopted without proper economic impact analysis or flexibility to adjust to changing market conditions can discourage development of housing altogether, exacerbating the affordability challenges created by inadequate supply.

Opponents and supporters of HB21-1117

Opponents of HB21-1117 argue that, because inclusionary housing ordinances impose costs on developers, they will slow or stop housing construction. The bill is opposed by the [Colorado Apartment Association](#) and other groups that represent housing developers.

Supporters of the bill include the [Colorado Municipal League](#) and [Colorado Counties, Inc.](#) The [Colorado Housing Affordability Project](#) (CHAP), a volunteer group of professionals and academics interested in housing issues, has also supported the bill while recommending adoption of zoning reforms – including allowing accessory dwelling units, transit-oriented development, and middle-income housing – to ease the affordability crisis.

If the legislature adopts HB21-1117, many Colorado local governments are expected to move quickly to adopt inclusionary housing ordinances. Although HB21-1117 puts few limitations on such ordinances, organizations such as CHAP have suggested that local governments consider housing needs, the financial impacts of affordable units on housing development, and compliance alternatives in their eventual ordinances.

HB21-1117, if passed, will take effect on September 1, 2021.

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