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What's next for Colorado after flurry of housing affordability measures in 2021?

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As the Covid-19 pandemic continued to rage, resulting in job losses coupled with increased demand for housing, Colorado's 2021 legislative session featured a significant focus on housing affordability. The legislature passed measures relating to inclusionary zoning, funding measures to support planning for affordable housing, and several other housing-related bills. Now that these bills have passed and the governor has signed them, there is significant work ahead for local governments around the state, and it remains to be seen how the legislature will continue its efforts in 2022.

Zoning and land use controls

The Colorado legislature's work on housing affordability in 2021 included special focus on zoning and land use controls. First, the legislature passed HB21-1117, which authorizes local governments to adopt inclusionary zoning. Inclusionary zoning allows local governments to require developers of new rental or for-sale housing to provide a certain number or percentage of housing units at prices that are affordable to low- and moderate-income households.

Although inclusionary zoning is strongly supported by local governments because it does not impose additional cost on them, research shows that inclusionary zoning policies are most effective when they include financial offsets and compliance alternatives for developers. Examples of offsets and compliance alternatives include providing developers with density bonuses, expedited permitting, reduced impact fees, and the ability to pay cash in lieu of providing affordable units or off-site affordable units. Because of input from advocacy groups, including the Colorado Housing Affordability Project (CHAP), the new law allows local governments to adopt inclusionary zoning while taking steps to ease land use restrictions on more-affordable forms of housing.

Funding measures to increase supply of affordable housing

The legislature also passed two funding measures, HB21-1009 and HB21-1271, both of which have also been signed into law, that encourage local efforts to increase the supply of affordable housing.

HB21-1009 tasks the Department of Local Affairs (DOLA) with conducting research on promoting transit-oriented development and increased housing density near employment centers. HB21-1271 provides grant money to local governments that take steps to ease land use restrictions on the development of affordable housing, encouraging the use of public property, expediting permitting, providing density bonuses, developing infrastructure, authorizing additional units in single-family zones, or reduced parking for affordable housing projects.

Taken together, these measures by the legislature give local governments several tools to address housing affordability challenges. But the question remains: Will local governments actually respond?

Local governments and the work that needs to be done on inclusionary zoning

Early returns suggest that many local governments have not yet begun work on inclusionary zoning. Denver is already preparing to expand its inclusionary zoning requirements through a project called Expanding Housing Affordability. Although the city has not yet released details on the scope of the program, it is anticipated to be the first post-HB21-1117 local inclusionary zoning law. The law is expected to require developers of rental housing to provide affordable units (developers of for-sale residential projects in Denver are already required to do so), and is also expected to increase the city's in-lieu linkage fee.

As some local governments take steps to adopt inclusionary zoning strategies, more may follow suit. However, the developer-constructed affordable housing that will result from HB21-1117 and will only exist in municipalities and counties that voluntarily adopt inclusionary housing requirements, which could be a small number of jurisdictions across the state. These units are likely to be a relatively modest share of housing units constructed over the coming years, as other costs imposed on developers through the land use regulatory system may continue to limit developers' ability to construct significant amounts of affordable housing.

Distribution of grant money to local governments

With respect to the funding measures adopted by the legislature, DOLA has only recently finalized rules regarding the distribution of grant money to local governments. The department has approximately \$6.8 million to distribute as part of the program. The program sets fairly aggressive timelines for the planning processes that it purports to support, and it is anticipated to be challenging for local governments to undertake significant public outreach in connection with these planning projects.

More broadly, the planning grants available under HB21-1271 are competitive and not all cities and counties will receive awards. Although these grants will be helpful in encouraging willing jurisdictions to plan for and develop affordable housing, the dollar amounts of these grants may not incentivize other, less willing communities to take the steps needed to modify land use restrictions in support of increasing affordable housing supply.

Thus, while the legislature's efforts to address housing affordability in the past session will enable local governments to make some headway in addressing affordability challenges, the battle is far from over.

Indications of public opinion suggest that housing affordability remains top of mind for many Colorado communities, including likely voters. Groups such as CHAP are expected to gear up for another legislative session to push continued focus on eliminating zoning barriers to the creation of affordable housing, including through requirements for planning, transit-oriented development, and a push for medium-density housing in more areas.

With the 2022 mid-term election on the horizon, only time will tell if the legislature will continue to respond to the growing need for more affordable housing in our state.

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