

Second Regular Session  
Seventieth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0713.02 Bob Lackner x4350

SENATE BILL 16-059

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SENATE SPONSORSHIP

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HOUSE SPONSORSHIP

(None),

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Senate Committees  
Finance

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 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.

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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://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.

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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, 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."

1 (e) Since 2000, the state's need for affordable housing in all  
2 geographic regions has grown exponentially. Among other effects, the  
3 immense demand for affordable housing is a huge impediment to  
4 economic growth and opportunity within the state and the ability of the  
5 state to provide a high quality of life for all its residents and to develop,  
6 attract, and maintain a high quality workforce.

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.

13 (g) By giving local governments the authority to adopt the type of  
14 programs authorized by Senate Bill 16-\_\_\_, enacted in 2016, local  
15 governments will be given an additional and meaningful resource to  
16 expand the supply of affordable housing in their communities without  
17 running afoul of what the general assembly intended to prohibit in the  
18 rent control statute. The affordable housing program authorized by this  
19 legislation does not run afoul of the rent control statute because the  
20 statute is directed at prohibiting a particular type of local laws and the  
21 affordable housing programs authorized by this legislation do not fall  
22 within that category.

23 (2) By enacting Senate Bill 16-\_\_\_, enacted in 2016, the general  
24 assembly intends to fully exercise the lawmaking role delegated to it by  
25 the Colorado Supreme Court in the *Telluride* case to clarify the rent  
26 control statute for the purpose of authorizing local governments to adopt  
27 programs to expand affordable housing. The general assembly further

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.