

CHAPTER 202

GOVERNMENT - LOCAL

HOUSE BILL 21-1117

BY REPRESENTATIVE(S) Lontine and Gonzales-Gutierrez, Kipp, Weissman, Bacon, Benavidez, Bennett, Bird, Caraveo, Cutter, Duran, Esgar, Exum, Froelich, Herod, Hooton, Jackson, Jodeh, Kennedy, McCluskie, McLachlan, Michaelson Jenet, Ortiz, Roberts, Sirota, Tipper, Titone, Valdez A., Valdez D., Woodrow, Young, Garnett;
also SENATOR(S) Gonzales and Rodriguez, Buckner, Danielson, Fields, Jaquez Lewis, Kolker, Lee, Moreno, Pettersen, Story, Winter.

AN ACT

CONCERNING THE ABILITY OF LOCAL GOVERNMENTS TO PROMOTE THE DEVELOPMENT OF NEW AFFORDABLE HOUSING UNITS PURSUANT TO THEIR EXISTING AUTHORITY TO REGULATE LAND USE WITHIN THEIR TERRITORIAL BOUNDARIES.

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

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

(a) In 2000, in *Town of Telluride, Colorado v. Lot Thirty-Four Venture LLC*, 3 P.3d 30 (Colo. 2000), the Colorado supreme court held that a local land use ordinance enacted by the town of Telluride to promote affordable housing in new developments violated a state statute that prohibited counties and municipalities from enacting any ordinance or resolution that would control rent on private residential property or private residential housing units; except that, in that decision, the supreme court made clear that, although the Telluride ordinance constitutes rent control, the general assembly is not prevented from amending the rent control statute to permit local ordinances such as the ordinance at issue in that case.

(b) Nothing in this act is intended to affect voluntary agreements to promote affordable housing stock entered into pursuant to section 38-12-301 (2), or any land use regulation adopted prior to the effective date of this act that meets the requirements of this act.

SECTION 2. In Colorado Revised Statutes, 29-20-104, **add** (1)(e.5), (1)(e.7), and (1)(e.9) as follows:

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

29-20-104. Powers of local governments - definition. (1) Except as expressly provided in section 29-20-104.5, the power and authority granted by this section does not limit any power or authority presently exercised or previously granted. Each local government within its respective jurisdiction has the authority to plan for and regulate the use of land by:

(e.5) REGULATING DEVELOPMENT OR REDEVELOPMENT IN ORDER TO PROMOTE THE CONSTRUCTION OF NEW AFFORDABLE HOUSING UNITS. THE PROVISIONS OF SECTION 38-12-301 SHALL NOT APPLY TO ANY LAND USE REGULATION ADOPTED PURSUANT TO THIS SECTION THAT RESTRICTS RENTS ON NEWLY CONSTRUCTED OR REDEVELOPED HOUSING UNITS AS 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 BUILDING SITE. NOTHING IN THIS SUBSECTION (1)(e.5) IS CONSTRUED TO AUTHORIZE A LOCAL GOVERNMENT TO ADOPT OR ENFORCE ANY ORDINANCE OR REGULATION THAT WOULD HAVE THE EFFECT OF CONTROLLING RENT ON ANY EXISTING PRIVATE RESIDENTIAL HOUSING UNIT IN VIOLATION OF SECTION 38-12-301.

(e.7) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A LOCAL GOVERNMENT SHALL NOT EXERCISE THE AUTHORITY GRANTED BY SUBSECTION (1)(e.5) OF THIS SECTION UNLESS THE LOCAL GOVERNMENT DEMONSTRATES, AT THE TIME IT ENACTS A LAND USE REGULATION FOR THE PURPOSE OF EXERCISING SUCH AUTHORITY, IT HAS TAKEN ONE OR MORE OF THE FOLLOWING ACTIONS TO INCREASE THE OVERALL NUMBER AND DENSITY OF HOUSING UNITS WITHIN ITS JURISDICTIONAL BOUNDARIES OR TO PROMOTE OR CREATE INCENTIVES TO THE CONSTRUCTION OF AFFORDABLE HOUSING UNITS:

(I) ADOPT CHANGES TO ITS ZONING AND LAND USE POLICIES THAT ARE INTENDED TO INCREASE THE OVERALL DENSITY AND AVAILABILITY OF HOUSING, INCLUDING BUT NOT LIMITED TO:

(A) CHANGING ITS ZONING REGULATIONS TO INCREASE THE NUMBER OF HOUSING UNITS ALLOWED ON A PARTICULAR SITE;

(B) PROMOTING MIXED-USE ZONING THAT PERMITS HOUSING UNITS TO BE INCORPORATED IN A WIDER RANGE OF DEVELOPMENTS;

(C) PERMITTING MORE THAN ONE DWELLING UNIT PER LOT IN TRADITIONAL SINGLE-FAMILY LOTS;

(D) INCREASING THE PERMITTED HOUSEHOLD SIZE IN SINGLE FAMILY HOMES;

(E) PROMOTING DENSER HOUSING DEVELOPMENT NEAR TRANSIT STATIONS AND PLACES OF EMPLOYMENT;

(F) GRANTING REDUCED PARKING REQUIREMENTS TO RESIDENTIAL OR MIXED-USE DEVELOPMENTS THAT INCLUDE HOUSING NEAR TRANSIT STATIONS OR AFFORDABLE HOUSING DEVELOPMENTS;

(G) GRANTING DENSITY BONUSES TO DEVELOPMENT PROJECTS THAT

INCORPORATE AFFORDABLE HOUSING UNITS; OR

(H) ADOPTING POLICIES TO PROMOTE THE DIVERSITY OF THE HOUSING STOCK WITHIN THE LOCAL COMMUNITY INCLUDING A MIX OF BOTH FOR-SALE AND RENTAL HOUSING OPPORTUNITIES;

(II) MATERIALLY REDUCE OR ELIMINATE UTILITY CHARGES, REGULATORY FEES, OR TAXES IMPOSED BY THE LOCAL GOVERNMENT APPLICABLE TO AFFORDABLE HOUSING UNITS;

(III) GRANT AFFORDABLE HOUSING DEVELOPMENTS MATERIAL REGULATORY RELIEF FROM ANY TYPE OF ZONING OR OTHER LAND DEVELOPMENT REGULATIONS THAT WOULD ORDINARILY RESTRICT THE DENSITY OF NEW DEVELOPMENT OR REDEVELOPMENT;

(IV) ADOPT POLICIES TO MATERIALLY MAKE SURPLUS PROPERTY OWNED BY THE LOCAL GOVERNMENT AVAILABLE FOR THE DEVELOPMENT OF HOUSING; OR

(V) ADOPT ANY OTHER REGULATORY MEASURE THAT IS EXPRESSLY DESIGNED AND INTENDED TO INCREASE THE SUPPLY OF HOUSING WITHIN THE LOCAL GOVERNMENT'S JURISDICTIONAL BOUNDARIES.

(e.9) THE DEPARTMENT OF LOCAL GOVERNMENT SHALL OFFER GUIDANCE TO ASSIST LOCAL GOVERNMENTS IN CONNECTION WITH THE IMPLEMENTATION OF THIS SECTION.

SECTION 3. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 28, 2021