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ANNUAL SEMINAR ON MUNICIPAL LAW

2022

WORKFORCE HOUSING

**Income Restricted,
Affordable, Attainable
Housing**

Overview

- **What are the needs?**
- **What are the funding sources?**
- **What are the mechanisms/vehicles to implement?**
- **What tools are available for compliance?**
- **Recent state law changes providing new opportunities.**

Town of Breckenridge

Legal Case Study



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History of the Town's Programs and Projects

The Town retained a consultant in 2000 to conduct an affordable housing study that paved the way for Town's programs and projects for the following two decades.

- Identified stakeholders
- Assessed the needs at the time and the Town has conducted ongoing needs assessment approximately every 5 years.
- Established high level roles and responsibilities of the Town with respect to the established Housing Authority at the time and other key stakeholders.

The Wellington Neighborhood

- The first deed restricted neighborhood in Breckenridge is known as the Wellington.
- The Wellington, started in 2000 with a total of 282 homes (233 of which are deed restricted). With the completion of the final house in 2020, we now have close to 1200 deed restricted properties in the Town of Breckenridge.



How does the Town determine what the needs are?

The needs assessment from 2000 and ongoing assessments have continued to indicate additional need. The Town's programs and projects are addressing a *mix of incomes and a mix of owners and renters*.

- Certain projects are restricted for occupants that are qualified through income tied to area median income.
- Other programs and projects have no income restrictions, but impose other limitations such as working in the local area a minimum number of hours per week, resale restrictions and aim to preserve the existing housing stock.

**HOW DOES THE TOWN FUND THEIR
HOUSING
PROGRAMS AND PROJECTS?**

Multi-jurisdictional Housing Authorities

- Under the authority of C.R.S. § 29-1-204.5, the Summit Combined Housing Authority (SCHA) was formed.
- 2006 SCHA created by IGA with representation from Summit County and the towns of Breckenridge, Frisco, Dillon, Montezuma and Silverthorne.



Multi-jurisdictional Housing Authority – Authorized to Levy Taxes

Section 29-1-204.5 (3) authorizes a multi-jurisdictional authority to levy ad valorem, sales or use taxes.

(f.1)(I) Sales or Use Tax at a rate not to exceed 1%, upon every transaction or other incident with respect to which a sales or use tax is levied by the state, excluding the sale or use of cigarettes.

(f.2) Ad valorem at a rate not to exceed five mills on each dollar of valuation for assessment of the taxable property within such area.



Multi-jurisdictional Housing Authority – Authorized to Impose Impact Fee

Section 29-1-204.5 (3) authorizes a multi-jurisdictional authority to impose an impact fee if all of the following conditions have been satisfied:

- No portion of the authority is located in a county with a population of more than one hundred thousand;
- Fee is not levied upon the development, construction, permitting, or otherwise in connection with low or moderate income housing or affordable employee housing;
- Rate of the fee is two dollars per square foot or less; and
- The authority also imposes a sales and use tax pursuant to paragraph (f.1) of this subsection (3), an ad valorem tax pursuant to paragraph (f.2) of this subsection (3), or both.



SCHA Referred Measures

- 2006 Referred Measure 5A approved a temporary sales and use tax of one-eighth of 1 percent (0.125 percent) and a development impact fee of \$2 or less per square foot of new construction, to be used for affordable housing purposes for a period of 10 years.
- 2015 Referred Measure 5A Extension was approved by voters, authorizing the extension of the 2006 measure's sales and use tax commencing Jan. 1, 2017, and continuing thereafter as a voter-approved revenue change.
- SCHA collects the sales tax (which does not apply to groceries), retains budgeted administrative costs, and then distributes the remaining funds to each jurisdiction proportionally based on revenue generation.

Restrictions on Uses of SCHA Revenue

The statutory purpose of the Summit Combined Housing Authority is to “effect the planning, financing, acquisition, construction, reconstruction or repair, maintenance, management, and operation of housing **projects or programs** pursuant to the Housing Authority’s plan:

1. To provide dwelling accommodations at rental prices or purchase prices (i.e., for rent or for sale) within the means of families of low or moderate income; or
2. To provide affordable housing **projects or programs** for employees of employers located within the jurisdiction of the authority.

Short term rental regulatory fee

- **Rationale:** Fee is needed to support the local labor force and Town housing programs that sustain the tourism economy in Breckenridge. Without an adequate supply of housing and housing support programs, the Town risks losing some of its labor supply that is essential to the businesses in which STR guests spend money during their stay.
- **Study:** Demonstrates a reasonable relationship between guest spending from STRs in the town and the demand for housing affordable at incomes of 150 percent of Area Median Income (AMI) or less
- **Amount:** The proposed maximum amount is \$756 (per bedroom, per year) the gap between what the employee-households can afford and the cost to purchase a home in the Town of Breckenridge.
- **Legislative Adoption:** \$400 but can increase annually up to max amount.
- **Uses:** Created special revenue fund / restricted to support workforce housing - buy downs, lease-to-locals, acquisition of deed restricted units, and/or construction of new units.

WHAT ARE THE MECHANISMS/VEHICLES TO IMPLEMENT THE STRATEGIES?

Town policies and legislation

- Breckenridge Municipal Code, § 9-1-19-24A, imposes an impact fee on all new development. The employee generation and mitigation rates are found in subsection D. Similar policy in the Town of Vail and other mountain towns.
- Other jurisdictions have a requirement that developers construct units or pay a fee in lieu.



Restrictive Covenants

Covenant recorded at time of sale with mandates such as:

- Minimum hours of work within restricted geographical area
- Occupancy restrictions (Primary residence/owner-occupied)
- Restrictions on STR use
- Appreciation CAP
- Resale Restrictions (i.e. qualified buyer and maximum resale price)



Development Agreement and Long Term Ground Lease

- Alta Verde will be opening December 1, 2022. Project funded through CHFA and 9% low income tax credits or \$13 million to be used over a period of 10 years with 80 units at rental rates as low as 60% AMI.
- Alta Verde II 174 units of which 10% are market rate and the remaining from 50-120% AMI.



Intergovernmental Agreements

IGA between Summit County and the Town to acquire the LOGE Hotel, built in 1961, located outside of Breckenridge in unincorporated Summit County.

It has 38 bedrooms and was bought for \$6 million, a purchase evenly split between Summit County and the Town of Breckenridge with plans to update units. <https://www.summitdaily.com/news/town-of-breckenridge-and-summit-county-buy-old-hotel-team-up-to-create-more-workforce-housing/>



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Intergovernmental Agreements

IGA between Summit County and the Town to redevelop the Justice Center site. The site is owned by the County and the financing will be split equally between the Town and the County. The Town will issue certificates of participation and the parties will split the debt service. [Sol Center - Summit FIRC](#)

JUSTICE CENTER APARTMENT UPDATE

- Town/County Collaboration
- Site-approximately 1.8 acres
- Planning for modular
- Next Step-MOU/Entitlements/COP
- Decision on 2- or 3-stories
 - 2-stories – 44 units (12 studios, 24 one bed, 8 three bed)
 - 3-stories – 54 units (12 studios, 30 one bed, 10 two bed)
- Net Zero vs Modular Decision
- Council Worksession-November 23rd



Programs

Lease to Locals

- Short-term to long-term conversion program with up to \$20,000 per year subsidy depending on the size of the property.
- Property must be located in unincorporated Summit County or the Town of Breckenridge.
- Property owners will need to submit an application, sign a lease with qualifying tenants, and undergo lease checks to ensure they are in compliance.
- Qualifying tenants are required to work at least 30 hours per week for an employer based in and providing service for Summit County.



Programs

Housing Helps

- Town fees provided to homeowners, real estate buyers and sellers in exchange for restrictive covenant on the property to preserve housing stock.
- Amount varies depending on the market and how well the home meets current needs in the community.
- Recipients may use the funds for down payment, home repairs, special assessments, or any other purpose.



Programs

Buy Downs

- SCHAs and/or Town funds used to acquire market rate units and place a deed restriction on the property, requiring the unit's occupant to work full time in Summit County and to resell with appreciation limitation cap.
- Properties must be located within local neighborhoods rather than resort neighborhoods and align with the Town/County's housing priorities.



HOW DOES THE TOWN ACHIEVE COMPLIANCE?



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Compliance

Compliance has been successful for the Town:

- Important to work closely with the title companies.
- Town attends closings.
- Buyer must execute:
 - Restrictive Covenant
 - Appreciation limiting note
 - Deed of trust – the Town has to release the deed of trust at time of sale which protects against appreciation cap.
- The real estate community is very familiar with the program.

<https://www.rockymountainrealestatelaw.com/2018/04/hundreds-of-denver-homeowners-impacted-by-previously-overlooked-affordable-housing-covenants/>

Contractual Remedies for Enforcement of Covenants

- Equitable relief and specific performance.
- Liquidated damages - \$100 dollars per day for each day that an owner is not in compliance with the covenant and restrictions.
- Attorney fees for prevailing party in an enforcement action.
- Resource intensive and longer process.

Municipal Court

Until this year, the code defaulted to the general penalty provision which allows for a summons and complaint to be filed in Municipal Court. The penalties are as follows:

- Infractions – not to exceed \$500.
- Misdemeanors – not to exceed \$2650 or one year imprisonment.

This has been used as a tool, but not a great fit.

Administrative Fines and Penalties

Last month, the Town adopted a new provision to authorize administrative fines and penalties to provide an additional enforcement mechanism.

Breckenridge Municipal Code, § 9-16-6.

- Failure to comply with a deed restriction or covenant shall be punishable by an administrative penalty in the amount of one hundred (100) dollars per day.
- Failure to file an annual verification affidavit or respond to a request for compliance information from the Town shall be punishable by an administrative penalty of two hundred and fifty (250) dollars.
- Failure to comply with occupancy or employment covenants in any deed or restrictive covenant may result in limitations on housing sale appreciation amounts.
- Fines and penalties under this section are cumulative.

Employee Performance and Workforce Housing

Ensuring various documentation accounts for possibility of termination

- Restrictive Covenant – Relief in Extraordinary Circumstances
- Accounts for provisions under C.R.S. § 13-40-101

Recent State Laws

- House Bill 21-1329
 - Affordable Housing Transformation Task Force Report, January 2022
https://leg.colorado.gov/sites/default/files/affordable_housing_report_final_0.pdf
 - Recommendations for \$400 million unallocated funding from the American Rescue Plan Act of 2021
- Senate Bill 21-117 – prohibition on rent control still in place but provides opportunities for municipalities to mandate construction of rental units on new construction or redevelopment provided it meets certain criteria.
- SB 21-199 and HB 21-175 – Opportunities for social equity initiatives and possibly more housing benefits for undocumented workers?



“The Missing Middle”

- SB 22-232 creates the “Middle Income Housing Authority” with authority to issue bonds, enter into PPPs, provide housing assistance. Local jurisdiction may object and project cannot proceed.
- HB 22-1051 – CHFA state affordable housing income tax credit provide financing to developers seeking to build affordable rental housing to Coloradans with an eighty percent area median income and above. The program fills a gap in the marketplace, as existing state and federal resources primarily support the development of housing for those with a sixty percent area median income and below. The “missing middle” with incomes too high for housing credit units under traditional thresholds but often overburdened by market rents.

Discussion/Questions





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Thank You!

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