



2024 Legislative Issue Form

To propose a CCI legislative issue, please complete this form.

Feel free to use more than one page and include any supplemental materials.

1.) Contact Information (of person bringing forth issue):

- a. **Name:** Lynn Padgett
- b. **Title:** Commissioner
- c. **County:** Ouray
- d. **Phone Number:** 970-258-0836
- e. **E-Mail Address:** lpadgett@ourayco.gov

2.) Issue/Problem to be addressed (What is the problem this legislation is seeking to solve?)

- 1) Existence of restrictive covenants that discriminate on the basis of race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income, or ancestry;
- 2) Existence of restrictive covenants that increase the cost of a) constructing and maintaining housing b) long-term renting, thereby exacerbating the housing crisis defined by unaffordability and unavailability
- 3) Existence of restrictive covenants that literally or functionally prohibit creating adequate defensible space or conducting wildfire mitigation on private parcels or open space within subdivisions or PUDs.

I discovered the issue of the majority of Ouray County covenants banning or having severe barriers to wildfire mitigation; reducing construction costs through compact designs or use of modular construction; and/or prohibiting long-term renting of residential dwellings while researching how to enable a long-term rental duplex unit in the appropriate Ouray County zones as a strategy to increase the availability and affordability of residential dwellings outside of publicly funded affordable housing developments.¹

3.) Background on this Issue/Problem (How did this come to be? Why are you seeking a legislative remedy?)

- 1) Model HOA covenants over the 100 years have provided language that discriminates on the basis of race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income, or ancestry²;
- 2) Model HOA covenants have also contained language that specifies minimum square footage and a ban on prefabricated, factory built, or modular housing or specifying that houses must meet a minimum square footage threshold and be site built³;
- 3) Model HOA covenants have also contained language that prohibits any occupancy other than the primary owner and guests or may outright prohibit long-term renting;
- 4) Model HOA covenants have also contained language that requires HOA or Architecture Review Committee or similar committee approval before removing any trees or vegetation from a residential parcel or common open space;
- 5) Model HOA covenants may require up to 100% approval to modify covenants which make updating or modifying covenants impossible;
- 6) Obtaining legal advice and paying recording fees to amend inappropriate restrictive covenants are chilling barriers;
- 7) Increasing the affordability, availability and safety of residential housing is a dire need in Colorado.

¹ Private long-term rentals can be exempted from federal limitations on AMIs and duplexes can save 35-40% on building costs over constructing two separate dwelling units.

² A comprehensive history of the origin, proliferation, and recentness of de jure and de facto discriminatory covenants can be found in Rothstein's book "Color of Law," (https://en.wikipedia.org/wiki/The_Color_of_Law#:~:text=The%20Color%20of%20Law%3A%20A,segregation%20in%20the%20United%20States.) and other references.

³ Ouray and other counties have made available cookie-cutter covenants to developers over the years

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By Friday, July 7.



A random sampling of covenants within Ouray County found that the overwhelming majority required excessive minimum square footage and stick/site built homes that serves to increase the cost of constructing and maintaining residential housing stock. The majority of covenants reviewed prohibited long-term rentals. The majority also prohibited woody vegetation management for any reason including wildfire mitigation, without review and approval by a HOA, ARC, or similar committee.

4.) Proposed Solution/Legislative Remedy to this issue.

- 1) Make it unlawful to: outright ban modular or non-site-built residential dwelling units; to require more than 800⁴ square feet a residential dwelling unit; to ban long-term rentals (renting for more than 30 days); to require HOA/ARC/ or similar pre-approval to conduct woody vegetation removal/defensible space creation/wildfire-mitigation on a privately owned residential parcel. Enact a law similar to New York⁵ and at least 14 other states to provide a no-cost pathway to modify covenants and remove unlawful or harmful restrictions.

5.) Have you explored a non-legislative solution to this problem?

Yes, due to the extreme volume of HOA covenants, even in tiny counties like Ouray County, it is not possible to educate all landowners on how to find, read, and modify covenants. The State of Colorado is exploring top-down zoning density changes as a strategy to get more affordable or attainable residential dwelling units. Top-down “up zoning” is proven to result in very little (“no statistically significant evidence that additional lower-cost units became available or became less expensive in the years following reforms”)⁶ in dwelling units. Providing a streamlined pathway to modifying covenants that are discriminatory and in-conflict with wildfire mitigation and affordable, available housing will be more likely to produce intended results more quickly, without extraordinary public funds or resources.

6.) Statutory Citation to be modified AND proposed/revised language (The Colorado Revised Statute is available for free at [this link](#), by selecting “Colorado Revised Statutes”).

Need to verify, believe within Title 38. Property - Real and Personal > Title 38. Real Property > Title 38. Interests in Land > Article 30. Titles and Interests. Need to be clear that covenants that restrict/ban above discussed items wildfire mitigation/woody vegetation management; minimum housing size; modular or factory built dwelling units; or long-term renting are not controlling.⁷

7.) Relationship of this issue to County Commissioner’s roles and/or authorities.

Counties are expending extraordinary amounts of funds, resources, staff, and Commissioner time on public safety – wildfire mitigation and affordable housing. Fixing policy and practical barriers to privately constructing fire-wise and affordable residential dwellings that can also provide long-term workforce housing through being legal long-term rentals are proactive solutions to increasing the affordability and availability of safe long-term workforce housing. The housing crisis cannot be solved through publically funded projects alone.

⁴ An average 2br 1 bath home ranges 800 to 1500 square feet. Larger homes are more expensive to heat, cool, own, and maintain over time, further increasing the cost of home ownership or rent.

⁵ <https://legislation.nysenate.gov/pdf/bills/2021/a6152a>

⁶ “We find that reforms that loosen restrictions are associated with a statistically significant 0.8 percent increase in housing supply within three to nine years of reform passage, accounting for new and existing stock. This increase occurs predominantly for units at the higher end of the rent price distribution; we find no statistically significant evidence that additional lower-cost units became available or became less expensive in the years following reforms.”
<https://www.urban.org/research/publication/land-use-reforms-and-housing-costs>

⁷ When restrictive covenants deemed controlling.

Restrictive residential covenants are controlling where they require a more restrictive use of the land than is permitted under zoning requirements. *Lidke v. Martin*, 31 Colo. App. 40, 500 P.2d 1184 (1972).

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8.) **Has this proposal been approved by the Board of County Commissioners?**

No, because of meeting schedule limitations, this section will be updated after the next BOCC meeting which occurs 7/12/2023. **If there is no approval by BOCC, this proposal will be canceled.**

9.) **List any potential Proponents/Opponents & their perspective; indicate any groups/individuals with whom you have already discussed this issue.**

Expect that JEDI and affordable housing proponents will be supportive. Clerks Association may be concerned about procedural logistics since under Section 1(i) of the New York model bill, it states, “(i) have such unlawful restrictions removed from such document by submitting a restrictive covenant modification document, which shall be available from the county recorder, either with the deed for recording, or separately.” Realtors may be concerned but by removing restrictions that make constructing and maintain residential dwellings less safe and more costly, there may be more participation in the market by more individuals.

10.) **Have you visited with your legislator(s) about this proposal? What was their reaction? Are members of your delegation likely to sponsor, support, or oppose this proposal?**

7/6/2023: Not yet. **Will update this section.**

11.) **Anticipated Fiscal Impact (to counties, state, other stakeholders, etc.).**

Minimal. Waiving recording fees for modification of covenants may have a minor fiscal impact fee.

12.) **Please list the local subject matter experts CCI staff can follow-up with for more information on this proposal.**

County attorneys, County assessors, title agencies, County Commissioners involved in affordable housing and wildfire mitigation initiatives.

13.) **If your county is submitting multiple issue forms, please rank each issue.**

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See attached example legislation

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AN ACT to amend the real property law, in relation to requiring the modification of restrictive covenants prior to the sale of real property

Section 1. The real property law is amended by adding a new section 327-a to read as follows:

a. Modification of restrictive covenants. 1. (a) If any covenants, conditions and restrictions exist in a document to be recorded which (i) discriminate on the basis of race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income, or ancestry; (ii) require a minimum square footage greater than 800 square feet for a single family dwelling unit; (iii) prohibit or ban prefabricated, modular, or factory-built construction; (iv) prohibit or ban long-term renting; (v) procedurally obstruct wildfire mitigation and defensible space creation designed by a qualified expert agency or professional, requiring HOA or similar committee pre-approval on a private residential parcel; any seller shall:

(i) have such unlawful restrictions removed from such document by submitting a restrictive covenant modification document, which shall be available from the county recorder, either with the deed for recording, or separately;

(ii) provide the purchaser or title insurance applicant with a copy of the appropriate restrictive covenant modification document prior to or at the closing of title;

(iii) record the restrictive covenant modification document, however, such seller shall not be required to pay filing fees for the recording of the restrictive covenant modification document.

(b) Within one year of the effective date of this section, the board of managers of a condominium, the board of directors of a cooperative apartment corporation or a homeowners association if such real property is subject to the rules and regulations of such an association, shall

1 delete or amend any covenants, conditions and restrictions that exist in
2 a recorded document which discriminate on the basis of race, color,
3 religion, sex, sexual orientation, familial status, marital status,
4 disability, national origin, source of income, or ancestry. Such
5 deletions or amendments shall not be subject to the approval of property
6 owners.

7 (c) This section shall not apply to any lawful restrictions under
8 state and federal law.

9 2. The restrictive covenant modification document shall be indexed in
10 the same manner as any previously recorded document or documents to
11 which the modification document refers and shall reference the original
12 document by book and page number or instrument number and the date of
13 recording.

14 3. Subject to covenants, conditions, and restrictions recorded after
15 the original document containing unlawful restrictions, and subject to
16 covenants, conditions and restrictions recorded after the restrictive
17 covenant modification document, the restrictive covenant modification,
18 once recorded, shall be deemed the only restrictions having effect on
19 the property.

20 4. Any person holding an ownership interest in real property that he
21 or she believes is subject to an unlawfully restrictive covenant in
22 violation of state or federal law prohibiting restriction based on race,
23 color, religion, sex, sexual orientation, familial status, marital
24 status, disability, national origin, source of income, or ancestry may
25 record a restrictive covenant modification document pursuant to subdivi-
26 sion one of this section. Such recording shall include a complete copy
27 of the original document containing the unlawful language with the
28 unlawful language stricken and shall be signed under penalty of law.

29 5. The county recorder shall make available to the public forms for
30 preparation of a restrictive covenant modification document.

31 6. If the holder of an ownership interest in property causes to be
32 recorded a restrictive covenant modification document pursuant to this
33 section which contains language not authorized by this section, any
34 liability which derives from such recording shall be the sole responsi-
35 bility of the holder of the ownership interest of record and the county
36 recorder shall not incur any liability for recording such document.