YIMBY LAW

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The *Telluride* Test in Colorado

Can the State preempt local zoning authority?

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Summary

Local zoning authority derives from case law, not the Colorado Constitution. Those cases limit that authority to purely local issues. Statutory municipalities and counties receive their power directly from state statute, which the state is free to amend at any time. For home rule municipalities, their authority yields to the state on any matter that is an issue of mixed state and local concern. Under that test, zoning is unquestionably an issue of statewide concern, from a factual and legal framework.

General Zoning Authority

Zoning authority does not derive from the Colorado Constitution. Article XX, § 6, grants specific enumerated powers to home-rule municipalities, but does not address zoning. Case law recognized zoning as a police power[1], but its use is only constitutionally valid where the use is reasonably related to public health, safety, or general welfare.[2] Specifically, article XX, § 6, of the Colorado Constitution only confers legislative authority to draft ordinances concerning "local and municipal matters." The State Supreme Court clarified that local zoning is only allowable "so long as it conforms with constitutional limitations."[3]

Statutory municipalities (such as the City of Creede, Garden City, Lake City, Orchard City, and Sugar City) and 60/64 counties do not have such constitutional delegation to regulate matters of local control.[4] Their authority comes exclusively from state statute, which are subject to amendment by the legislature. New laws can change, revoke, or grant new authority to such localities.

[1] *Colby v. Denver Bd. of Adjustment*, 255 P. 443 (Colo. 1927).
[2] *Wright v. City of Littleton*, 483 P.2d 953, 955 (Colo. 1971) (citing Euclid, 272 U.S. 365).
[3] *Colo. Springs v. Securcare Self Storage*, 10 P.3d 1244 (Colo. 2000).
[4] *Glennon Heights, Inc. v. Cent. Bank & Tr.*, 658 P.2d 872, 877 (Colo. 1983).

Telluride Test for Authority

As statutes change, so too can the legal interpretations that underlie court-derived zoning authority. Fundamentally, local ordinances which conflict with state laws are invalid.[5] For home rule municipalities specifically, "in matters of strictly local concern supersede state statutes relating to those matters, but, in matters of both local and state interest, the municipality does not have a superseding authority."[6] Matters such as residency requirements for local government workers were held to be issues of local concern.[7] In matters of mixed local and state concern, a home rule municipal ordinance may coexist with a state statute as long as there is no conflict between the ordinance and the statute, but, in the event of a conflict, the state statute supersedes the conflicting provisions of the ordinance.[8]

Defenders of local authority will readily cite to *Roosevelt v. Englewood* in which the State Supreme Court stated: "We hold that zoning under Colorado constitution, art. XX, § 6, is a local and municipal matter."[9] However, while *Roosevelt* was decided in 1971, the 2000 decision in *Town of Telluride v. Lot Thirty-Four Venture* developed a more detailed test to determine the limits of home rule authority.[10]

Telluride examined whether a home-rule municipality could regulate rents using its authority over matters of local concern, in conflict with a state statute. The local regulation was found to exceed the local government's authority over local concerns. Further, the Court articulated the following inquiry to determine whether a matter is a mixed statewide concern, or purely local:

> (1) the need for statewide uniformity of regulation,
> (2) the impact of the measure on individuals living outside the municipality,
> (3) historical considerations concerning whether the subject matter is one traditionally governed by state or local government, and
> (4) whether the Colorado Constitution specifically commits the particular matter to state or local regulation.

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[5] *Ray v. Denver*, 109 Colo. 74, 121 P.2d 886 (Colo. 1942). See also *Glendinning v. Denver*, 50 Colo. 240, 114 P.652. Where the ordinance authorizes the doing of acts which the statute prohibits, the ordinance is invalid.
[6] *Vick v. People*, 445 P.2d 220, 221 (Colo. 1968).
[7] *Denver v. State*, 788 p.2d 764 (Colo. 1990).
[8] *Voss v. Lundvall Brothers, Inc.*, 830 P.2d 1061 (Col. 1992).
[9] *Roosevelt v. City of Englewood*, 492 P.2d 65, 70 (Colo. 1971).
[10] *Town of Telluride v. Lot Thirty-Four Venture, L.L.C.*, 3 P.3d 30 (Colo. 2000)

The Court clarified that announcements by the General Assembly instruct this analysis, and lend weight to the consideration that a matter is not purely local.

Under this test, local zoning rules have been invalidated multiple times. Conflicting regulations controlling housing for adjudicated children,[11] discriminating against condominiums,[12] and allowance of fracking[13] were all found to be matters of mixed state and local concern. While individual zoning decisions remain at the discretion of home-rule municipalities, their overall zoning legislation must comply with state mandates. A footnote in *Town of Frisco v. Baum*[14] did reiterate *Roosevelt's* reasoning that zoning is purely a matter of local concern, but that non-binding dicta was discussing the town's authority to delegate its powers to a municipal court, and did note that the general rule is subject to exceptions[15]

Upon challenge, the law must recognize that zoning of individual jurisdictions exerts a practical effect on the state as a whole. Exclusionary zoning forces employees to live farther from where they work, straining infrastructure on the roads and creating demand in nearby areas. The cumulative effect of individual zoning decisions directly implicates prices, travel times, access to water and open space, and the needs of governmental services. The General Assembly's explicit declaration comes from a growing and immediate need to create more housing, following a century of denial by unchecked local authority. Should a court be presented with a challenge to state zoning preemption, there is ample data to show the crisis inflicted upon Colorado by exclusionary zoning practices.

In February of 2025, Colorado's Supreme Court reviewed the question of redistricting statutes as applied to Home Rule municipalities.[16] Though the decision did not touch on housing law directly, it clarified that Home Rule authority is limited to permissive functions as dictated by state authority. "A home rule county must do the things that all counties must do and must provide the services all counties must provide."[17]

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[11] *City of Northglenn v. Ibarra*, 62 P.3d 151 (Colo. 2003).
[12] *Town of Vail v. Vill. Inn Plaza-Phase V Condo. Ass'n*, 2021 COA 108 (Colo. Ct. App. 2021).
[13] *City of Longmont Colo. v. Colo. Oil & Gas Ass'n*, 2016 CO 29 (Colo. 2016).
[14] *Town of Frisco v. Baum*, 90 P.3d 845 (Colo. 2004).
[15] See note 14, footnote 6.
[16] *League of Women Voters of Greeley v. Bd. of Cnty. Comm'rs of the Cnty. of Weld*, 2025 CO 8.
[17] *Id*. at 15, affirming *Board of County Commissioners v. Andrews*, 687 P.2d 457 at 458 (Colo. App. 1984).

Attorney General Authority to Enforce

Authority to enforce state housing laws by the Office of the Attorney General is unclear, as it specifically relates to recent zoning reforms. The Office is vested with the authority to represent "in all actions and proceedings, civil and criminal, in which the state is a party or is interested when required to do so by the governor."[18] Among other powers, the Office is explicitly empowered to intervene or bring suit in matters of housing discrimination.[19] While its Fair Housing Unit was granted the power to respond to violations of law that rick harm to consumers, public health, or public safety,[20] this power has only been used for violations of tenant protection or anti-discrimination laws.

All powers above state that the Office's powers "include" the ability to enforce them, and do not list themselves as exclusive uses. The Office's general responsibility to protect the public against violations of the law and enforce the interests of the state suggest that it may enforce zoning preemption laws. However, this power is not explicit, and the Office has so far not taken action against recalcitrant municipalities.

Conclusion

In sum, zoning is a matter of mixed state and local concern, and as such, the state can preempt local zoning power in order to facilitate increased housing production. The Attorney General may have the authority to enforce state housing laws in order to protect the public from violations of those laws.

[18] Colo. Rev. Stat. § 24-31-101(1)(b).
[19] Colo. Rev. Stat. § 24-31-101(1)(i)(viii), see also Colorado Revised Statutes § 24-34-505.5(3)(a).
[20] Colo, Rev. Stat. § 24-31-115(1).