



COLORADO
MUNICIPAL
LEAGUE

**OPPOSE
UNLESS
AMENDED**

SB23-213: LAND USE

OPPOSE UNLESS AMENDED

SUMMARY OF REENGROSSED BILL

Passed by the Senate April 28, 2023

On Friday of last week, the Senate approved **Senate Bill 23-213** on third reading. This summary outlines changes made by the Appropriations Committee, with significant modifications passed on second reading. The version of the bill summarized below carries forward the Appropriations Committee's rewrite of the bill (L.073), removing the most aggressive land use and zoning preemptions. Major changes to the Appropriations Committee amendment are denoted by reference to the floor amendment number. Fiscal notes, amendments, and committee reports can be accessed [here](#).

The Senate's final version of the bill remains a substantial improvement from the introduced bill, even though many aspects will substantially increase municipal workload and costs, add significant complexity to processes, assert limited preemptions of local authority, and exert broader state influence over planning and other local efforts. CML previously offered to support the bill if the House and Governor Polis commit to refrain from adding additional mandates, preemptions, or exertions of state control. *This assumed no substantial additional Senate amendments*, but the Senate did add amendments that were substantial. Given this, CML's official position is **OPPOSE UNLESS AMENDED** to remove in the House some of the unfunded mandates described below.

NEXT ACTION

The bill was assigned to the Transportation, Housing & Local Government Committee, and will be heard on Tuesday, May 2 upon adjournment of the House. (Note: Because we are in the last days of the session, it is difficult to predict exactly when the hearing will occur) Witness testimony will be taken and is the last opportunity for public testimony. If you wish to sign up to testify in committee, either remotely or in person, please [follow this link](#). A Legislative Action Alert will also be sent out with instructions for those wishing to sign up to testify along with any new developments.

SIGNIFICANT CHANGES FROM THE APPROPRIATIONS COMMITTEE AMENDMENT

During the debate on second reading, several amendments were adopted that created additional mandates for municipalities and counties, including:

- Mandates to adopt a minimum number of affordability strategies and long-term affordability strategies.
- Mandates to conduct local displacement risk assessments and adopt a minimum number of displacement mitigation strategies.
- Mandating participation in a regional planning process.
- Increasing reporting requirements on housing permitting and review.
- Requiring DOLA's housing needs assessments to address the statewide and regional need for accessory dwelling units and requiring local housing needs assessments to align with state and regional assessments.
- Creation of an affordable housing and homelessness legislative oversight committee and task force.

MOST AGGRESSIVE LAND USE AND ZONING PREEMPTIONS REMAIN REMOVED

Preemptions of local control and home rule authority that were removed from the bill include requirements that certain municipalities follow a state-issued model code or modify local laws to allow, as a use by right. These requirements included accessory dwelling units in single-family zones as use by right; middle housing in certain areas with single-family zoning as use by right; and multifamily housing near fixed rail stations and "key corridors" as use by right. The Senate also removed:

- Broad language preempting local laws and requirements, including those that might make certain development "physically impossible or practically difficult";
- Substantial parts of the legislative declarations that attempted to establish traditionally local matters as being of mixed state and local concern; and
- Provisions concerning common interest communities and water loss audit verification.

DEPARTMENT OF LOCAL AFFAIRS MOSTLY FOCUSED ON PLANNING AND RESOURCES, BUT ONEROUS MANDATES REMAIN (SECTION 1)

In the amended version of the bill, DOLA will perform a variety of tasks focused on assisting local governments, including:

- Conducting **statewide, regional, and local housing needs assessments** and providing guidance for municipalities to create local housing needs plans. Senate amendments require assessment of housing inequities of historically excluded populations (L.078) and require the state to assess the need for accessory dwelling units across regions (L.101). The local housing needs assessment explicitly must be “aligned with regional and state housing needs assessments” (L.096).
- Conducting a **displacement risk assessment** and providing guidance to mitigate that displacement risk (L.070). Elements are added to the displacement mitigation measures and the definition of displacement is updated.
- Creating **menus for affordability strategies and new long-term affordability strategies (L.097)** that municipalities must select from in creating their housing needs plans. Different menus exist for urban municipalities and rural resort job centers. Existing and new strategies are based on highly prescriptive language that may limit local flexibility.
 - Some strategies are now explicitly focused on accessibility and age (L.089).
 - The new long-term strategies concept also borrowed from the list of affordability strategies, narrowing municipalities’ options in choosing from the former.
- Creating “**state strategic growth objectives,**” a “**natural and agricultural land priorities report,**” and a “**water supply forecast.**” Strategic growth objectives are “broad guidance” and will define strategic growth areas to further the bill’s goals This could include growth in key corridors and transit areas, avoiding greenfield development, prioritizing redevelopment and infill development, supporting a mix of housing types and density levels, and water efficiency. Generally, these areas are in census urbanized areas. The objectives promote investment in these areas, will streamline state agency permitting processes, and require state projects, grant programs, and planning efforts to support the areas. Any increase in mandated elements of plans or links to plan raises concerns that these state objectives will interfere with local determination or inhibit projects and funding.
 - The “water supply forecast” now must conform to basin implementation plans (as well as the State Water Plan (L.105).
- Conducting “**compliance reviews**” of plans. DOLA’s determination of “non-compliance” may negatively affect eligibility of a municipality for funding or state projects. The addition of a mandated minimum number of strategies and more discrete implementation language is a negative addition for municipal interests as it exerts state control directly on the choices municipal governing bodies make and could inhibit projects and funding (L.097).

The bill maintains an **advisory committee** to assist DOLA with its work but adds a 14th member representing special districts. The committee continues to consist of state officials and local

government planning employees appointed by the governor and by legislative leadership. There are subcommittees for urban area and rural resort job centers. Within a few months of its formation, the committee will also report to the General Assembly on key corridors and recommendations to address long-term housing supply and affordability needs. The committee will meet three times annually. The urban area subcommittee must produce a report on the “status, opportunities, and challenges of regional planning” covering transportation, housing, and “regional equity” between communities that house workforce and urban municipalities (L.080).

The **public comment process** remains the same. Given the reinsertion of some mandates, the lack of process for DOLA’s “compliance reviews” raises new concerns and questions.

The **technical assistance** remains the same except for the ability to provide assistance through counties as well as MPOs and regional entities (L.100).

MUNICIPAL PLANNING REQUIREMENTS INCLUDE NEW MANDATES THAT WILL BURDEN RESOURCES AND CONSTRAIN LOCAL AUTHORITY

Housing needs plan (Section 1): Urban municipalities and rural resort job centers must create a “**housing needs plan**” by December 2026. Smaller urban municipalities with a lower level of annual household income may opt out of this requirement. Generally, plans may be informed by local and regional housing needs plans and must include must contain:

- A narrative of the stakeholder process;
- An analysis of how the municipality will address housing needs, now amended to include substantially more detail and a mandatory minimum of affordable housing strategies (L.078 and L.097). Urban municipalities and rural resort job centers must adopt at least 2 affordability strategies (3 if there is a transit-oriented area in the urban municipality) and 1 long-term affordability strategy. Urban municipalities must “demonstrate the adoption” of their strategies by June 2025; the deadline for rural resort job centers is not clear;
- An implementation plan identifying strategies to meet housing needs, which now explicitly references mandatory minimum number of strategies (L.097);
- A narrative of displacement risk and mitigation measures. The bill now requires a **local displacement risk assessment** by December 2024 and every 5 years and the adoption of a minimum number of “**short-term and long-term displacement mitigation strategies**” (L.070). Unclear language sets that minimum number based on vulnerable population percentages and requires “evidence-based” reasons for the selection of strategies. These requirements apply to urban municipalities and rural resort job centers.
- The addition of mandatory minimum strategies and the restructuring of the menus is a negative development for municipalities. DOLA will conduct a “compliance review” and

approve or provide feedback housing needs plans. DOLA's consideration of housing needs plans will be considered as it develops strategic growth objectives where state projects and funding will be prioritized.

Strategic growth and housing mix analysis (Section 1): Metropolitan planning organizations (MPOs) with a population of 250,000 or more and municipalities outside of those MPOs that have a population of at least 50,000 must also create a "**strategic growth and housing mix analysis**" by December 2025. This applies to all municipalities and counties with a population over 250,000. This new analysis concept will influence master plans and must include:

- Areas for development or redevelopment qualifying as "strategic growth areas" (an area identified by the state as a priority area for growth under the state's identified goals);
- Prioritization of strategic growth areas for the development of middle and multifamily housing supporting the state's goals including meeting needs for all income levels, age, and family status, as well as reducing transportation related climate and air quality impacts (L.078); and
- An evaluation of existing zoning and density in strategic growth areas.

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Master plans (Sections 5 and 8): The bill includes a new concept of a mandatory "strategic growth element" that includes information from the regional "**strategic growth and housing mix analysis**" created by an MPO (as applicable) and an analysis of how that information is being included, plus other local strategic growth areas, transportation, utility and infrastructure gaps that are needed to enable strategic growth areas, and zoning refinements and densities needed to accommodate housing needs and strategic growth objectives.

The amendment also requires urban municipalities to review and revise master plans to ensure compliance with the requirements of the section at least every 10 years.

The bill includes mandatory standards for county and municipal master planning. Plans adopted or amended after June 2024 must include a housing element, a water element, and a natural and agricultural land priorities element, in addition to the new "strategic growth element."

Plans must be submitted to DOLA for review and comment.

RESOURCE-INTENSIVE REPORTING REQUIREMENTS INCREASED (SECTION 1)

Urban municipalities and rural resort job centers also must report on housing development information annually, including housing activity, zoning information, and workforce dedicated to development review. These requirements may require substantial extra effort by municipal planning staff already stretched thin or the acquisition of new systems to track information. The report must also now include specific counts of permits in transit-oriented areas and as categorized according to the state-issued housing needs assessment (e.g., by income, by for-sale or rental, by affordable housing, and by number of bedrooms) (L.078).

CONTINUING LIMITATIONS ON MUNICIPAL AUTHORITY

Residential occupancy limits (Section 4): The bill continues to prohibit local residential occupancy limits “that differ based on the relationships of the occupants of a dwelling.” The bill does not limit overall occupancy limits for structures, building safety codes, or density standards.

Manufactured and modular housing (Sections 2, 3, 7): The bill maintains efforts to promote and streamline opportunities for manufactured, modular, and tiny homes,¹ much of which is already regulated heavily by Federal law or DOLA’s Division of Housing. This includes state authority to approve representatives that will perform final construction plan reviews (that already do inspections).

Section 7 generally requires that municipalities treat manufactured and modular homes under similar standards to site-built with regards to approvals and site standards. Existing law prohibits municipalities from having development laws that exclude these housing types. Without changing other existing provisions in Title 31, the bill requires that:

- Approval processes be based on “objective standards and administrative review” equal to site-built homes, but can be subject to a “discretionary approval process” (now using the bill’s definition of “objective standards” and this term) if an equivalent process applies to site-built homes;
- Municipalities not apply more restrictive development standards than applied to site-built homes in the same residential zones (including requirements for permanent foundations, minimum floor space, size, improvement location standards, and side yard or setback standards).

OTHER PROVISIONS

The bill retains authority to **sell municipal property without an election** for affordable housing purposes (Section 6).

The bill continues to **modify various transportation statutes to focus projects and grants**

on state strategic growth objectives (Sections 9, 10, 11, and 12). The committee amendment required that CDOT articulate state growth objectives in project requirements.

The bill mandates that counties, municipalities, and a council of government included in a regional housing needs assessment must engage in a **regional housing needs planning process** (L.096 and L.080).

The bill creates a “**Legislative Oversight Committee Concerning Affordable Housing and Homelessness**” and a “**Task Force Concerning Affordable Housing and Homelessness**” (L.081). The committee oversees the task force and recommends interim bills and reports. The task force consists of 25 members representing state agencies and includes 16 members appointed by the committee chair and vice-chair representing homeless services, for-profit and non-profit developers of affordable rental housing and for-sale housing, supportive housing or services, multifamily housing operators, local governments (3 members), homelessness advocacy, affordable housing advocacy, most with regional representation, as well as persons with lived experience of homelessness and affordable housing occupants. The task force will follow state expenditures under Senate Bill 23-213, Proposition 123, and other affordable housing legislation, make recommendations on affordable housing and homelessness. Notably, the task force will review the impact and progress of land use reforms.

The bill now includes a requirement for DOLA to conduct a **statewide summit and regional meetings** with member associations of municipalities, counties, and special districts (L.091). A later amendment removed references to “statewide associations. (L.100)”

Definitions of “affordable housing” and “rural resort job center” were modified to allow local determination of affordability and to clarify confusion about transit service frequency (L.083).

