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Senate Bill 23-213: Summary of Amendments of the Senate Local Government and Housing Committee Adopted April 18, 2023

The Senate Local Government and Housing Committee approved Senate Bill 23-213 on April 18, 2023, with amendments. This summary describes significant elements of amendments. CML's analysis of the introduced bill can be reviewed for a more complete comparison.

The amendments reduced the scope of the bill but did little to address the objections raised by CML and its member municipalities. The amended bill retains broad preemptions of longstanding zoning authority, continues to charge the Department of Local Affairs (DOLA) with regulatory and oversight responsibilities, and continues to use over broad, ambiguous language to curb municipal authority with little concern for unintended consequences.

The bill applies to fewer municipalities but continues to selectively target predominately home rule municipalities.

- Rural Resort Job Centers removed from the preemptions allowing accessory dwelling units (ADUs), middle housing, and housing in "key corridors" as a use by right. Those communities must engage in a process that requires them to development affordability strategies for DOLA's review. They also are encouraged to participate in a regional process. The prior regional planning process for those communities was deleted.
- A late amendment appears to impose ADU mandates on all local governments for agriculturally zoned land with single-family dwellings, including Rural Resort Job Centers and counties. This amendment conflicts with the exemption of "standard exempt parcels" that include agriculturally-zoned land.
- Tier 1 Urban Municipalities can opt-out of key corridor and middle housing requirements and housing needs plan requirements if they have fewer than 25,000 in population and an average household income under $55,000. It is not clear if this is a permanent exemption. The basis for these criteria is not clear.
- Population is now counted by the state demographer (instead of relying on census data) and can change at any time. There is no transition period to update land use codes despite strict timelines in the bill.

Upzoning requirements are reduced to an indeterminate extent and rely on complex evaluations of land use specific to each targeted municipality. Each housing type is remains mandated, using through a DOLA-created model code or through changes to local zoning districts and laws that meet state minimum standards and preemptions. The model code automatically applies if a municipality takes no action or DOLA rejects the municipality's efforts.

- ***Accessory dwelling units:*** Except for the agricultural zoning amendment noted above, ADU requirements now apply only to Urban Municipalities and Non-Urban Municipalities now that Rural Resort Job Centers have been removed.

  The amendments removed the permission for ADUs to be up to 50% of the primary residence's size; instead, municipalities must approve ADUs between 500-800 square feet as a use by right in all properties where single-family residences are allowed. The amendments clarify that minimum standards for setbacks and other site requirements be similar to those for single-family dwellings.

- ***Middle housing:*** With the new special treatment of Rural Resort Job Centers, middle housing requirements now apply only to Tier 1 Urban Municipalities. Tier 1 Urban Municipalities can opt-out of middle housing requirements if they have fewer than 25,000 in population and an average household income under $55,000. There is an overlap between key corridors and transit-oriented areas that remains unclear.

  Anticipated amendments would have reduced the maximum number of units in middle housing from 6 to 4, but that amendment appears to not have been adopted.

  - DOLA's model code: Middle housing will be a use by right on all "eligible properties" where single-family residences are allowed as a use by right within one mile of a "fixed route system."
  - State minimum standards: Middle housing must be allowed as a use by right in an area that is at least the size of the greater of: (1) the area in transit-oriented areas and key corridors where the municipality allows single-family residential; or (2) 30% of all area where the municipality allows single-family residential.

    Minimum standards must permit subdivisions and conversions of single-family housing. Single-family housing standards must apply to middle housing.

- ***Transit-oriented areas:*** Transit-oriented development mandates remain applicable only to Tier 1 Urban Municipalities with fixed-rail stations.
  - DOLA's model code: "Mixed-income multifamily" "net density" "of up to at least" 60 units per acre must be allowed as a use by right in transit-oriented areas.
  - State minimum standards: The municipality must have a one or more zone districts or subdistricts in the transit-oriented area allowing "multifamily housing" as a use by right and allow a minimum "average net density" "up to at least" 40 units per acre. The zone district(s) must be at least 50% of the "eligible parcels" in each transit-oriented area. (Eligible parcels exclude "standard exempt parcels," parks or open

space, area subject to a conservation easement, airports, mobile home parks, and areas with current or future industrial uses.)

- ***Key corridors:*** With the new special treatment of Rural Resort Job Centers, key corridor requirements now apply only to Tier 1 Urban Municipalities.
    - DOLA's model code: A "mixed-income multifamily housing" must be allowed as a use by right with a "net density" of "up to at least" 40 units per acre, but only on parcels that qualify as a key corridor due to their proximity to bus rapid transit). A 30 units per acre standard applies anywhere else in a key corridor identified by CDOT.
    - State minimum standards: The municipality must have a one or more zone districts to achieve an "average net density" of "up to at least" 40 unites per acre of "multifamily housing" as a use by right in at least the greater of 25% of the area of "eligible parcels" of the key corridor areas designated by CDOT or 10% of all eligible parcels in the jurisdiction. (Eligible parcels exclude "standard exempt parcels," parks or open space, area subject to a conservation easement, airports, mobile home parks, and areas with current or future industrial uses.)

Timelines for state regulation and municipal compliance are adjusted in both directions.

- The amendments extended some deadlines for municipalities and shortened others. Where applicable, the deadline for model codes or minimum standards was pushed to June 30, 2025, for ADUs, middle housing, and transit-oriented areas, with the automatic application date for model codes extends to December 31, 2025. For key corridors, where applicable, the adoption date was brought forward 18 months to June 30, 2024, with the automatic application date for the model code set six months later.

- The bill's timelines continue to impose the automatic application of the model codes harshly, even when a municipalities is attempting to comply with the laws mandates. If DOLA rejects a municipality's attempt to adopt minimum standards, DOLA's model code is applied immediately, even if the deadline to adopt the model code or minimum standards has not yet passed. DOLA has the discretion to permit a cure period but is not required to do so.

Parking restrictions continues to inhibit authority to meet local needs. There is no effort to consider objective criteria, alternative parking options, and the sufficiency of transit and multi-modal transportation options. Aggressive restrictions on parking continue to threaten local efforts to incentivize affordable development through density bonuses.

- ***Accessory dwelling units:*** New parking requirements remain prohibited for ADUs.
- ***Middle housing:*** The amendments permit .5 parking spaces per unit for middle housing.
- ***Transit-oriented areas:*** The prohibition of new parking requirements remains consistent in transit-oriented areas. The bill prohibits new parking for "any uses" that might be connected in some way to multifamily housing.

- ***Key corridors:*** The amendments permit .5 parking spaces per unit for multifamily housing in key corridor zone districts, regardless of the quantity of housing, the size of units, or the availability of parking. Parking requirement restrictions apply "in connection with" multifamily housing; it is unclear if these means they apply to uses beyond housing.

Affordability and displacement remain disconnected from preemptions and mandates for specific housing types.

- DOLA's "menu of affordability strategies" is more fully described. The list does not provide municipalities with additional authority and recreates many practices already adopted by municipalities. Many practices are overly prescriptive (e.g., "*eliminate"* parking requirements for certain projects instead of "*reduce*"), meaning that they may not be attractive options. Urban Municipalities remain required to adopt 2 strategies. Rural Resort Job Centers must adopt at least 5 strategies.
- The definition of "displacement" is updated and DOLA is tasked with performing a displacement assessment that will guide municipalities.

Mandated elements of comprehensive planning have become more tied to state standards and complex and costly to create.

- As before, plans adopted after June 30, 2024, still must include new elements like a natural and agricultural land priorities element, a housing element, and a water element. Instead of a "greenfield development analysis," the amendment requires a far more detailed "buildable lands analysis" that must be completed by Metropolitan planning organizations by the end of 2025 and by Urban Municpalities and Rural Resort Job Centers by the end of 2026. This analysis will influence planning, projects, and grants involving CDOT, DOLA, and other organizations.
- These required elements often contain expectations of conformance with state objectives or plans and strict content requirements. DOLA remains tasked with reviewing plans for compliance.

The advisory committee of state appointees that supports DOLA in regulating municipal land use now includes some municipal representation.

- The bill's "multi-agency advisory committee" now includes a handful of municipal and metropolitan planning organization staff with "land use planning" experience. Appointments are made by the Governor and legislative leadership. Besides including a "community representative with housing expertise," there is no required representation from other professionals that provide input on development in municipalities, like water and wastewater experts, city engineers, building officials, economic development professionals, and police or fire officials.
- Subcommittees for Urban Municipalities and Rural Resort Job Centers are created.

Municipalities appear to be able to claim an exemption or extension for deficiencies in water, wastewater, and stormwater resources and infrastructure. The bill does not account for any other burden on public infrastructure or services in a similar manner.

- Instead of having to prove a need for an unspecified extension or exemption, a municipality can notify DOLA of the need for an exemption or extension based on identified deficiencies. DOLA is authorized to create rules for this process. The actual implementation of this section is unclear.

The bill remains filled with ambiguous and overbroad language that creates substantial concern and uncertainty. These provisions will serve to inhibit the ability of municipalities to address the impacts of development and will likely subject municipalities to challenges and lawsuits from developers.

- The amendments prohibit local land use laws that would make the regulated development types or mandated densities "physically impossible or practically difficult." These ambiguous provisions are not an improvement from prior language regarding casuing "unreasonable costs or delays" or making development "infeasible." This language recklessly expose municipalities to significant liability, undermines local efforts to create affordable housing, and could force the public to bear burdens that should be borne by developers.
- The amendments retain broad language requiring "objective procedures" and prohibiting any "local law" thast would "interfere with the "intent" of the law. This broad preemptive language could undermine reasonable local laws and guarantees litigation to determine whether a local law meets the "intent" of the General Assembly.
- While the amendments added some exemptions for local laws, the amendments also used language that could restrict the utility of those exemptions. For example, while attempting to permit some local mitigation of impacts and protect local affordability requirements, the amendments also now appear to require that these be "generally-applicable standards" or subject to the apply the provisions of the Regulatory Impairment of Property Rights Act, C.R.S. §§ 29-20-201 *et seq*. These would expressly apply to inclusionary zoning provisions and affordable housing requirements established pursuant to C.R.S. § 29-20-104(1)(e.5-e.7). The impact of these new standards is not clear but the inconsistency of language could limit the use of site-specific mitigation standards.
- The amendments continue to provide DOLA with broad authority to update both model codes and legislatively-enacted minimum standards "as it deems necessary." There is no requirement that DOLA's authority be used to provide flexibility for municipalities, suggesting that the minimum standards could be made more restrictive.
- The amendments did not reduce the onerous and complex reporting requirements imposed on municipalities.
- The bill still preempts local decisions on residential occupancy based on relationship.
- The amendment included a new aggressive legislative declaration stating that "development and use of land is a matter of mixed statewide and local concern."