COLORADO MUNICIPAL LEAGUE

CML Analysis of SB23-213, Land Use

► INTRODUCTION

Senate Bill 23-213 includes several subjects but primarily focuses on a central theme: municipal zoning laws caused the housing crisis by not permitting unfettered residential construction and by trying to protect communities and resources. The bill attempts to draw a line from local zoning laws affecting individual parcels of land in dozens of municipalities to "regional imbalances" that "affect equity, pollution, infrastructure costs, and quality of life." The bill does not question the state's involvement in actual statewide problems, but asserts that state regulation of hyper-local matters, imposed through over a dozen regulatory actions with insufficient process, will improve these imbalances and presumes that there will not be significant unintended consequences. This analysis is not a complete list of problems in the bill but represents the most significant elements.

► CML ANALYSIS: LAND USE BILL WOULD DO LITTLE TO MAKE HOUSING AFFORDABLE

Section 2 of SB23-213 creates a new article 33 in title 29 that imposes top-down standards on some local governments to remove local zoning authority. Despite being titled as requirements for affordable housing, Section 2 doesn't require affordability at all and is premised on speculation that developers will build more housing, either passing savings along to Coloradans or causing a market-based decline in housing costs. Section 2 begins with overbroad and complex definitions and continues to address assessments and planning before imposing mandates and preempting authority to zone land for particular uses.

An uneven strategy

The bill largely applies only to municipalities, and then only to some municipalities and in differing degrees. Municipalities are classified into four basic groups that do not cover all municipalities. The bill's requirements apply to each category, and then subsets of categories, to differing degrees in each part. Identifying where a municipality is classified is a complicated process requiring reference. Whether the bill addresses actual problems in the municipalities included in each category or causes more problems in those municipalities will be difficult to determine. See the last page of this analysis for a list of affected municipalities, reported by Colorado Public Radio.

Geographic Classification of Municipalities

Tier 1 Urban Municipality (T1UM)	Tier 2 Urban Municipality (T2UM)	Rural Resort Job Center (RRJC)	Non-urbanized Municipality (NUM)
In an MPO with a population of at least 1 million	Within an MPO	Not within an MPO	Not within the definition of an urban municipality or a rural resort job center; and
10% of territory in urbanized area with population over 75,000; and	A population between 5,000-25,000; and	A population of at least 1,000	A population of at least 5,000
A population of at least 1,000; ***or***	In a county with a population of at least 250,000	1,200 jobs and a jobs-to-population ratio of at least 64-hundredths; and	
In an MPO with a population under 1 million; and		A transit stop serviced by a transit agency serving two municipalities with at least 20 trips per day	
A population of at least 25,000			

The bill grants broad regulatory authority to DOLA

The bill contemplates dozens of regulatory actions, primarily by DOLA. The bill appropriates $15 million dollars to DOLA; however, it is not clear how that funding will be expended and whether funding for the various regulatory actions is included.

First, the Director of DOLA is tasked with issuing multiple methodologies, guidance, "menus" of strategies, statewide strategic growth objectives, model codes, rules, and minimum standards based on the recommendation of a "multi-agency committee" of executive appointees. Although the bill does not outline a public comment process, DOLA will undergo a rulemaking process that may include a public comment period. The committee's recommendation only involves a limited public process involving public comment, consultation with local governments and experts, and only two hearings, despite having statewide impact and addressing extremely local issues (29-33-108(2)). The bill does not specify which local governments and "local experts" will be consulted, and it is seemingly up to the committee members to choose those experts without any guidelines. There are no requirements to ensure inclusivity, such as meetings during varying hours, meetings in different geographic locations, or outreach to educate and explain proposed recommendations.

Second, the Director of DOLA is granted authority to modify statutory minimum standards relating to accessory dwelling units (ADUs), middle housing, housing in transit-oriented areas, and housing in key corridors. Only token consideration of process is provided.

Third, DOLA is tasked with a substantial amount of new oversight and enforcement responsibility with the receipt, review, and approval of various reports, codes, and draft and final plans.

In addition to DOLA, the Office of Climate Preparedness is directed to develop a natural and agricultural land priorities report that MPOs should apply to achieve connectivity of open space and natural lands and preservation of agricultural land and open space. Counties and municipalities must include natural and agricultural priorities in their master plans in accordance with the state's mandate.

Ambiguous mandates for housing needs assessment & planning

The bill asserts that "assessing and planning for housing needs" is a matter of mixed state and local concern. DOLA will issue methodologies for developing state, regional, and local "housing needs assessments" and then create the assessments every 5 years, beginning December 31, 2024. DOLA will allocate shares of statewide housing needs to regions defined by DOLA and local governments. DOLA will also use local housing needs assessments to mandate "net residential zoning capacities" for key corridors in tier 1 urban municipalities and rural resort job centers (see below for a more detailed analysis).

T1UM, T2UM, and RRJC municipalities must use DOLA's local and regional assessments to inform any required "housing needs plans." DOLA will create guidance for these plans, but the bill includes procedural and extensive, but ambiguous, substantive mandates for their development and adoption, including requirements to describe compliance with the bill's mandates and a "greenfield development analysis." The greenfield development analysis relies on undefined "statewide strategic growth objectives" also developed by DOLA. The bill's limited direct connection to affordability and displacement includes requirements to include a varying number of strategies regarding those issues from state-created "menus" (also developed by DOLA), although RRJC are not required to address displacement. None of the items in the menus provide additional authority to municipalities beyond existing law and given the bill's other restrictions, may inhibit existing authority to plan communities and ensure affordability.

Housing needs plans, a greenfield development analysis, and a concept of natural and agricultural land priorities consistent with state requirements must be included in master plans for T1UM, T2UM, and RRJC.

Counties and municipalities that DOLA groups into rural resort regions are required to participate in "regional housing needs planning process" resulting in a report and commitments that DOLA must review and approve. The bill suggests that this process will encourage participants to address needs through individual or regional strategies, including strategies from "menus" and locations where reduced parking requirements can reduce housing needs. The process will map locations where Article 33's minimum standards for middle housing, transit-oriented areas, and key corridors could meet needs, but later the bill actually indicates that this map would dictate where middle housing standards apply in RRJCs.

Burdensome reporting standards

T1UM, T2UM, and RRJC must collect, track, maintain, and report to DOLA an overwhelming amount of data beginning December 31, 2026. These municipalities must report both the number of permits for new housing and the number of housing construction starts each categorized by structure type, time frames to complete residential permit reviews by housing type, workforce assigned to development review by position time, implementation status of strategies identified in a housing needs plan mandated by the law, zoning information specifying zone districts, allowed uses and densities and "other data," and regional efforts to address housing needs.

"Use by right" would supersede local control

In removing the legislative discretion of municipal governing bodies in making zoning decisions, the bill removes a traditional elements of zoning authority to consider — in their best legislative judgment — consistency with plans, compatibility or harmony of surrounding land uses and development, and strategies for mitigating project impacts. Each of the zoning preemptions also includes a concept of a "use by right," meaning the development approval relies only on "objective standards" that lack any discretionary component. Objective standards prohibit any personal or subjective judgment by a public body or official and must be "uniformly verifiable or ascertainable by reference to an external or uniform benchmark or criterion" that is known before filing of the proposal. Not only does this inhibit local officials from exercising traditional authority, but it also potentially prevents municipalities making critical changes to land use laws to protect their communities that might apply to a pending project.

Zoning preemption No. 1:
Accessory dwelling units — T1UM, T2UM, RRJC, NUM

The bill declares "an increased supply of housing through accessory dwelling units" to be a matter of mixed state and local concern but reflects inadequate study of how ADUs are treated in all subject jurisdictions or what the supply would look like if the bill is enacted. Under the bill, an ADU is an internal, attached, or detached "dwelling unit" providing complete independent living facilities for at least one person that is located on the same lot as a primary residence with provisions for living, sleeping, eating, cooking, and sanitation.

By December 31, 2024, a T1UM, T2UM, and RRJC must change their local laws concerning ADUs to meet the bill's minimum standards (as may be modified by DOLA) or adopt DOLA's model ADU code. The municipalities must report their compliance by that date, subject to DOLA review and approval. Failure to adopt meet the minimum requirements by June 30, 2025, or DOLA's rejection of the jurisdiction's report, means the model code goes into effective immediately; no provision is made for who makes this determination or whether it can be disputed. If the model code is adopted, it must be implemented using "objective procedures" and the municipality cannot have any "local law" that would contravene it. The bill does not account for potential citizen referendum and expressly seeks to preempt local zoning ordinances enacted pursuant to Article XX, Section 6 of the Colorado Constitution.

Developed by June 30, 2024, DOLA's model ADU code will allow ADUs as a "use by right" anywhere a municipality allows single-unit detached dwelling units as of January 1, 2023. The code will provide "objective standards" for approval of the units, so that officials cannot evaluate local conditions to determine if the ADU will cause an unfair burden or be incompatible. The model code cannot require new off-street parking in any subject jurisdiction, even if the ADU is in an area without adequate parking or transit. The model code is not subject to the same minimum standards that apply to municipalities that do not adopt the model code.

The bill establishes minimum standards that attempt to preempt local law if the model code is not voluntarily adopted. DOLA can update minimum standards through rulemaking under an ambiguous "public hearing and comment process."

ADUs are not required to be permitted on the same lot or parcel as middle housing.

Other exemptions apply for parking spaces required by the Americans with Disabilities Act, short-term rental rules, and historic districts.

Minimum Standards for ADUs

ADUs of the greater of 800 square feet or 50% of the primary residence must be allowed as a "use by right" anywhere the municipality allows single-unit, detached dwelling units as of January 1, 2023.

Only "objective standards and objective procedures can apply," meaning that officials cannot evaluate local conditions to determine if the ADU will cause an unfair burden or be incompatible.

Municipalities must allow additions to, or conversions of, existing single detached dwelling units and must apply the same design standards that apply to single detached dwelling units.

Municipalities cannot have local laws that treat ADUs more restrictively, "create unreasonable costs or delays" or make ADUs "infeasible," require that primary residences be owner-occupied, require new off-street parking (in T1UM and T2UM), or require side or rear setbacks of more than 5 feet unless needed for health or safety standards.

Zoning preemption No. 2:
"Middle housing" — T1UM and RRJC

The bill declares "an increased supply of housing through middle housing" to be a matter of mixed state and local concern but reflects inadequate study of how "middle housing" is treated in all subject jurisdictions or what the supply would look like if the bill is enacted. Under the bill, "middle housing" is either a single structure with 2-6 separate dwelling units (duplex through sixplex), a townhome, or cottage cluster. A townhome is a dwelling unit in a row of 2 or more attached dwelling units on individual lots with common walls. A cottage cluster is a grouping of at least 4 detached units with a common courtyard, with each unit being smaller than 901 square feet.

By December 31, 2024, a T1UM, and by December 31, 2026, a RRJC, must change their local laws concerning middle housing to meet the bill's minimum standards (as may be modified by DOLA) or adopt DOLA's model middle housing code. The municipalities must report their compliance by that date, subject to DOLA review and approval. Failure to adopt the minimum requirements by June 30, 2025, for a T1UM, or by June 30, 2027, for a RRJC, or DOLA's rejection of the jurisdiction's report, means the model code goes into effect immediately; no provision is made for who makes this determination or whether it can be disputed. If the model code is adopted, it must be implemented using "objective procedures" and the municipality cannot have any "local law" that would contravene it. The bill does not account for potential citizen referendum and expressly seeks to preempt local zoning ordinances enacted pursuant to Article XX, Section 6 of the Colorado Constitution.

Developed by June 30, 2024, DOLA's model middle housing code will allow middle housing as a "use by right" anywhere the municipality allows single-unit detached dwelling units as of January 1, 2023. The code will provide "objective standards" for approval of the units, so that officials cannot evaluate local conditions to determine if the housing will cause an unfair burden or be incompatible. The model code cannot require new off-street parking in any subject jurisdiction, even if the housing is in an area without adequate parking or transit. The model code is not subject to the same minimum standards that apply to municipalities that do not adopt the model code.

The bill establishes minimum standards that attempt to preempt local law if the model code is not voluntarily adopted.

Minimum Standards for Middle Housing

Middle housing of at least 125% of the building area of a single-unit detached dwelling must be allowed as a "use by right" anywhere the T1UM allows single-unit detached dwelling units as of January 1, 2023, or wherever designated in the RRJC's regional housing needs plan (even if the RRJC did not approve it).

Only "objective standards and objective procedures can apply," meaning that officials cannot evaluate local conditions to determine if the middle housing type will cause an unfair burden or be incompatible.

Municipalities must allow additions to or conversions of existing single detached dwelling units and must apply the same design standards that apply to single detached dwelling units.

Municipalities must allow properties to be subdivided using objective standards and procedures.

Municipalities cannot have local laws that treat middle housing more restrictively, "create unreasonable costs or delays" or make middle housing "infeasible," apply minimum setbacks, lot widths, lot depths, lot size standards, or maximum height standards that are more restrictive than single-unit detached dwellings on the same property, require new off-street parking, or impose footprint restrictions differently than single-unit detached dwellings.

DOLA can update minimum standards through rulemaking under an ambiguous "public hearing and comment process." Middle housing is not required to be permitted on the same lot or parcel as an ADU. Other exemptions apply for parking spaces required by the Americans with Disabilities Act, short-term rental rules, and historic districts. Middle housing requirements will not affect an inclusionary zoning ordinance unless it renders the "development of middle housing financially infeasible." The bill does not define "financially infeasible" and does not explain how a developer must prove that the ordinance makes said development financially infeasible. This could make inclusionary zoning ordinances moot.

Zoning preemption No. 3:
Housing in "transit-oriented areas" — T1UM with fixed rail

The bill declares "an increased supply of housing in transit-oriented areas" to be a matter of mixed state and local concern but reflects no study of how any of the subject jurisdictions treat the topic or what the supply would look like if the bill is enacted. Under the bill, a "transit-oriented area" is a one-half mile boundary from some part of a fixed-rail transit station, including parcels that have at least 25% of their area within the boundary. Unincorporated parcels are not included.

The focus of this part of the bill is on multifamily housing (one or more buildings on one lot with separate living units for 3 or more households) and mixed-income multifamily housing (at least 10% of units are set aside for households earning no more than 80% AMI). Although municipalities with inclusionary zoning ordinances can establish their own threshold and set asides, the bill interferes by setting density standards and inconsistently restricts local inclusionary zoning ordinances based on the financial effect on developers.

By December 31, 2024, a T1UM with a transit-oriented area must change their local laws concerning housing in transit-oriented areas to meet the bill's minimum standards (as may be modified by DOLA) or adopt DOLA's transit-oriented area model code. The municipalities must report their compliance by that date, subject to DOLA review and approval. Failure to adopt meet the minimum requirements by June 30, 2025, or DOLA's rejection of the jurisdiction's report, means the model code goes into effective immediately; no provision is made for who makes this determination or whether it can be disputed. If the model code is adopted, it must be implemented using "objective procedures" and the municipality cannot have any "local law" that would contravene it. The bill does not account for potential citizen referendum and expressly seeks to preempt local zoning ordinances enacted pursuant to Article XX, Section 6 of the Colorado Constitution.

Developed by June 30, 2024, DOLA's transit-oriented area model code will prohibit new-off street parking in transit-oriented areas for multifamily or mixed-income multifamily development, allow minimum density as a "use by right" for multifamily residential (at least 40 units per acre net density) and mixed-income multifamily (at least 60 units per acre net density). Affordable units must be a similar size. This prevents T1UM jurisdictions from influencing multifamily development according to local standards.

The bill establishes minimum standards that attempt to preempt local law if the model code is not voluntarily adopted.

Minimum Standards for Transit-Oriented Areas

A T1UM must legislatively create a zoning district for the transit-oriented area to allow multifamily housing as a "use by right" with a minimum gross density of 40 units per acre for all eligible parcels. Districts can extend outside the transit-oriented area to meet gross density requirements based on development constraints or other planning for transit-compatible uses.

Municipalities cannot have local laws that apply to "create unreasonable costs or delays" or make multifamily in a transit-oriented area or the residential density limits "infeasible" or require new off-street parking.

DOLA can update minimum standards through rulemaking under an ambiguous "public hearing and comment process." Other exemptions apply for parking spaces required by the Americans with Disabilities Act, short-term rental rules, and historic districts. Transit-oriented area requirements will not affect an inclusionary zoning ordinance unless it renders the "development of multifamily housing financially infeasible."

Zoning preemption No. 4:
Housing in "key corridors" — T1UM and RRJC

The bill declares "an increased housing supply in key corridors" to be a matter of mixed state and local concern but reflects no study of how any of the subject jurisdictions treat the topic or what the supply would look like if the bill is enacted. Under the bill, a "key corridor" is an extraordinarily broad concept that is not limited to transit corridors and could undermine the zoning and land use plans of an entire municipality. Key corridors include "frequent transit service areas" as mapped by

DOLA (including in some cases anything within one-quarter mile of a bus route with certain service levels). Key corridors also include any parcel in zone districts that permit commercial uses that are supposedly compatible with residential uses and public or institutional uses. Key corridors also include anything zoned for a mix of uses other than industrial. The definitions used in this part are likely inconsistent with many local zoning codes and could capture very large parts of a community.

The bill suggests some option for the municipality that does not adopt a model code to designate their own key corridors. The bill extent of this discretion is not clear, and all minimum standards described for key corridors apply.

The focus of this part of the bill also focuses on multifamily housing (one or more buildings on one lot with separate living units for 3 or more households) and mixed-income multifamily housing (at least 10% of units are set aside for households earning no more than 80% AMI). Although municipalities with inclusionary zoning ordinances can establish their own threshold and set asides, the bill interferes by setting density standards, set asides, and AMI requirements, and inconsistently restricts local inclusionary zoning ordinances based on the financial effect on developers.

By December 31, 2026, T1UM and RRJC must change their local laws concerning housing in key corridors to meet the minimum standards that DOLA must develop or adopt DOLA's key corridor model code. The municipalities must report their compliance by that date, subject to DOLA review and approval. Failure to adopt and meet the minimum requirements by June 30, 2027, or DOLA's rejection of the jurisdiction's report, means the model code goes into effective immediately; no provision is made for who makes this determination or whether it can be disputed. If the model code is adopted, it must be implemented using "objective procedures" and the municipality cannot have any "local law" that would contravene it. The bill does not account for potential citizen referendum and expressly seeks to preempt local zoning ordinances enacted pursuant to Article XX, Section 6 of the Colorado Constitution.

Developed by June 30, 2024, DOLA's key corridor model code will set minimum residential density limits for multifamily housing as a "use by right," an allowable minimum residential density limit for mixed-income multifamily housing at least 50% greater than the multifamily minimum density as a "use by right," requirements for set asides for low- and moderate-income households.

By June 30, 2025, DOLA will establish key corridor minimum standards that attempt to preempt local law if the model code is not voluntarily adopted. The minimum standards appear to be targeted to take over municipal land use planning in broad swaths of territory and must include: guidance to encourage regional strategies for key corridors, a "net residential zoning capacity" for each municipality based on that municipality's local housing needs assessment, and "any additional standards" that DOLA "deems necessary," like a minimum residential density limit and minimum district size.

Minimum Standards for Key Corridors

A T1UM must legislatively create a zoning district within key corridors to allow multifamily housing as a "use by right" that satisfies DOLA's mandated net residential zoning capacity and requirements that DOLA may impose.

A RRJC must allow multifamily housing as a "use by right" wherever a key corridor is designated in the RRJC's regional housing needs plan (even if the RRJC did not approve it).

Municipalities can allow different density within the key corridor if minimum standards are satisfied.

Municipalities cannot have local laws that apply to "create unreasonable costs or delays" or make multifamily in a key corridor "infeasible."

For key corridors only, the bill prohibits new off-street parking in key corridors ***for any use***.

Other exemptions apply for parking spaces required by the Americans with Disabilities Act, short-term rental rules, and historic districts. Key corridor requirements will not affect an inclusionary zoning ordinance unless it renders the "development of multifamily housing financially infeasible."

What's exempt from SB23-213?

Each part of the proposed article 33 of title 29 includes varying degrees of exemptions. Except for ADU requirements, a common exemption is for "standard exempt parcels," or those that are outside an urbanized area, not served by domestic water or sewer treatment, have an agricultural zoning designation as of January 1, 2023, are noted as a "high risk, high very high, or very high risk" for wildfire by the state forest service (which does not appear to include much land covered by the bill), or in a floodway or 100-year floodplain identified by FEMA. The bill does not account for other local conditions.

For transit-oriented areas, standards also do not apply in park and open space or on properties subject to conservation easements. For key corridors, standards also do not apply on a site that is on or adjacent to a site used or permitted for industrial use or designated for heavy industrial use in a master plan adopted before 2023.

"Unreasonable costs or delays" and feasibility

Each of the zoning preemptions includes a dangerous concept that preempts any local land use law that "individually or cumulatively create unreasonable costs or delays" or that would make the permitting, siting, or construction of the housing type "infeasible." This language recklessly exposes municipalities to significant liability, could undermine local efforts to create affordable housing, and risks forcing the public to bear burdens that should be borne by developers. It is unclear whether safety standards, impact fees, fees for water or municipal services, or other important local standards could fall prey to this type of language. Several provisions in the middle housing, transit-oriented areas, and key corridor parts also suggest that financial burdens on developers imposed by local inclusionary zoning ordinances will invalidate those local laws.

Interference

Each of the zoning preemptions includes another dangerous concept that would preempt a municipality from amending, developing, or even interpreting a local law "in a manner that would interfere with the intent" of the part. Broad and careless language could have significant unintended consequences and expose municipalities to significant risk.

Parking burdens

Each zoning preemption prohibits a municipality from requiring new off-street parking as part of a housing development approval. The "key corridor" provision appears to prohibit parking requirements for any development approval in a key corridor, not just housing. The bill does not limit these restrictions to any guarantee of public transit availability. The bill does not identify where cars will go or how municipalities are to address the burdens on public streets, public safety, and quality of life. Each zoning mandate permits parking standards required by the Americans with Disabilities Act.

Water, wastewater, and stormwater burdens

Each zoning preemption allows a municipality to apply to DOLA for an unclear "extension of applicable requirements" based on deficient water, sewer, or stormwater "services." The bill does not seem to account for any other burden on public infrastructure or services. To obtain the extension, the municipality must have a plan to remedy the deficiency on a specific timeline and must show that it cannot serve other, less efficient housing types than those provided in the mandate. The provisions do not account for pre-existing service obligations to those other housing types or rights of their owners. These provisions also do not consider long-term planning and suggest that municipalities must fund development to accommodate the state mandate.

Manufactured & modular housing

Section 3 requires the division of housing to create a report by June 30, 2024, on "opportunities and barriers" in current state law concerning manufactured homes, modular homes, and tiny homes.

Sections 4 and 6 remove financial assurance requirements for manufacturers of factory-built structures (not necessarily limited to residential structures). Under current law, those assurances are payable to the division if the manufacturer fails to deliver a structure or refund a down payment or ceases doing business.

Section 5 adds "final construction plan reviews" to the scope of quality assurance representatives approved by the Division of Housing relating to factory-built structures. The impact of this addition is not clear.

Section 11 amends current law to mandate that municipalities address manufactured and modular housing in the same manner as site-built homes. Municipalities must use "objective standards" and an administrative review process equivalent to site-built homes, unless a subjective review process is used for site-built homes. More restrictive standards than are applied to site-built homes are prohibited, including zoning and subdivision laws and "other regulation affecting development" such as requiring permanent foundations, minimum floor space, home size or sectional requirements, "improvement location standards," and side yard or setback standards. Despite allowing for equivalency with site-built homes, the bill removes existing language that ensures authority to enact consistent zoning, developmental, use, aesthetic, or historical standards that are applicable to existing and new housing. The categorization of municipalities in Section 2 does not apply to these amendments.

Preemption of planned unit development zoning

Section 7 amends the Planned United Development Act at CRS 24-67-105(5.5) to provide that PUDs with residential uses cannot restrict ADUs, middle housing, housing in transit-oriented areas, or housing in key corridors in a manner prohibited by the proposed article 33 of title 29. It is not clear whether this applies only to PUDs in jurisdictions covered by proposed article 33 or more broadly.

Preemption of residential occupancy limits

Section 8 creates CRS 29-20-110 that would preempt counties and municipalities from placing residential occupancy limits on "dwellings" that differentiate between occupants based on family relationship (other than short term rental restrictions). Here, a "dwelling" is defined as any improved property used or intended to be used as a residence, but in Section 2 a different definition of "dwelling" is used. (a single unit providing complete independent living facility

No commitment to use state-controlled property for affordable housing

Section 10 permits statutory municipalities to sell municipal property held for a government purpose (other than park property) without an election if the purpose is to develop affordable housing. The categorization of municipalities in Section 2 does not apply to these amendments. The state makes no commitment to the use of state-controlled property for affordable housing in the bill.

A narrowing of municipal zoning authority

In addition to Section 2's broad preemptions and mandates, Section 13 bluntly narrows the traditional zoning authority of municipalities by prohibiting T1UM and T2UM from imposing minimum square footage requirements for residential units unless "necessary for health and safety" in the municipality. The bill would not allow those municipalities to address issues relating to their communities' welfare.

Undefined process for creating master plans

Sections 9 and 12 amend Titles 30 and 31 regarding county and municipal master plans. The categorization of municipalities in Section 2 does not apply to these amendments. Counties and municipalities must ensure an undefined "inclusive process" by consulting with housing authorities, nongovernmental organizations, and local governments in the creation of the master plan. Master planning already involves heavy public engagement.

Counties and municipalities must include, for plans after June 30, 2024, water items including the location and extent of water supply, a water supply element and conservation policies, and priorities for natural and agricultural land in accordance with the state's natural and agricultural land priorities report. Counties over 250,000 in population must include a "greenfield development analysis."

Section 12 also addresses the inclusion of housing needs plans, a greenfield development analysis, and a concept of natural and agricultural land priorities following the state's natural and agricultural land priorities report.

DOLA must receive draft and final plans and is required to review plans for compliance.

New reporting requirements for water loss accounting

Section 14 requires covered entities (including municipal and special district water providers) to provide and validate water loss audit reports to the Colorado Water Conservation Board. The board will adopt standards for validation of reports, technical qualifications, and methods by January 1, 2025. Some funding is provided for assistance in validation and for technical training and assistance to guide water loss programs.

Invalidation of HOA housing decisions

Section 15 would invalidate common interest community limitations on ADUs, middle housing, housing in transit-oriented areas, and housing in key corridors.

Transportation planning and grants. Section 16 requires the transportation commission to include "statewide strategic growth objectives relating to regionally significant transportation projects" in the ten-year plans for existing and future transportation systems created under CRS 43-1-106(15)(d). It is not clear whether those objectives are the same created by DOLA under Section 2.

Section 17 requires the department of transportation to ensure that grant prioritization criteria are "consistent with state strategic growth objectives" by December 31, 2024. It is not clear whether those objectives are the same created by DOLA under Section 2.

Section 18 requires regional transportation plans and the statewide transportation plan under CRS 43-1-1103, beginning December 31, 2024, to address and ensure consistency with state strategic growth objectives. At least for the regional plans, the objectives are those determined by DOLA under the proposed CRS 29-33-107.

Section 19 requires that projects funded from the multimodal transportation options under CRS 44-4-1103 be "consistent with state strategic growth objectives." It is not clear whether those objectives are the same created by DOLA under Section 2.

Inadequate funding

Section 20 appropriates $15 million for DOLA to provide technical assistance under the proposed CRS 29-33-111(3). The extensive amount of code revision, reporting, plan development, and compliance with various mandates required by the bill in covered municipalities has an unknown cost that would certainly exceed this funding. The funding will not address impacts

to infrastructure, public services, and quality of life in municipalities or litigation costs arising from the bill. The funding does not address the major overhaul of DOLA's mission and authority.

Safety clause prevents voters from weighing in

Section 21 includes a safety clause, preventing voters from exercising the right of referendum. Local zoning ordinances on the same issues covered by the bill are subject to the reserved constitutional power of referendum.

▶ SUPPLEMENTAL INFORMATION

Communities by tier level

Urban Municipalities Tier 1	Urban Municipalities Tier 2	Rural Resort Job Centers	Non-Urban Municipalities
Denver region: Arvada, Aurora, Boulder, Brighton, Broomfield, Castle Pines, Castle Rock, Centennial, Cherry Hills Village, Columbine Valley, Commerce City, Denver, Edgewater, Englewood, Erie, Federal Heights, Glendale, Golden, Greenwood Village, Lafayette, Lakewood, Littleton, Lochbuie, Lone Tree, Longmont, Louisville, Northglenn, Parker, Sheridan, Superior, Thornton, Westminster, Wheat Ridge **North Front Range:** Greeley, Fort Collins, Loveland, Windsor **Pikes Peak:** Colorado Springs, Fountain **Grand Valley:** Grand Junction **Pueblo Area:** Pueblo	**Denver region:** Dacono, Fort Lupton, Firestone, Frederick **North Front Range:** Evans, Berthoud, Johnstown, Tinmath, Eaton, Miliken, Severance **Pikes Peak:** Monument	Aspen, Avon, Breckenridge, Crested Butte, Dillon, Durango, Frisco, Glenwood Springs, Mountain Village, Silverthorne, Snowmass Village, Steamboat Springs, Telluride, Vail, Winter Park	Alamosa, Brush, Canon City, Carbondale, Cortez, Craig, Delta, Eagle, Fruita, Fort Morgan, Gunnison, Gypsum, La Junta, Lamar, Montrose, Rifle, Sterling, Trinidad, Wellington

This table lists communities by tier level, according to a document provided by Rep. Steven Woodrow.

Tier-level table published by Colorado Public Radio, *https://bit.ly/3FVlYio*.