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April 5, 2022

The Honorable Jared Polis
Governor of Colorado
136 State Capitol
Denver, CO 80203-1792

Dear Governor Polis:

On behalf of the Colorado Municipal League's 270 member cities and towns (including 69 home rule jurisdictions that define and collect their own sales and use taxes), we write to respectfully urge your veto of HB 22-1024 that purports to mandate an unprecedented exemption from sales and use taxes imposed by home rule municipalities as applied to construction and building materials used for public and public charter school construction. Specifically, HB 22-1024 imposes on home rule municipalities the state's Title 39 exemption on these materials, which conflicts with the Colorado Constitution as affirmed three times by the Colorado Supreme Court, even when considering taxation of activities argued to be a matter of statewide concern.

CML requests your veto of this bill to avoid forcing local taxpayers to defend their home rule rights yet again and to permit this localized problem, if it exists at all, to be appropriately addressed in city council chambers or at the local ballot box.

HB 22-1024 violates Article XX, Section 6 of the Colorado Constitution
HB 22-1024 is a blatantly unconstitutional attempt to exert state control over the taxing authority of home rule jurisdictions. The bill directly infringes upon the home rule powers of municipalities granted by Article XX, Section 6 of the Colorado Constitution and contravenes explicit precedent of the Colorado Supreme Court. Unless vetoed, HB 22-1024 will result in lengthy, costly litigation for municipalities. Home rule municipalities should not have to incur those expenses or be forced to change their tax codes to prevent such an egregious overreach.

The Colorado Constitution ensures home rule municipalities the rights of self-governance and freedom from State interference on matters of purely local and municipal concern. Article XX, Section 6 provides the citizens of home rule municipalities with "the full right of self-government in both local and municipal matters and the enumeration herein of certain powers shall not be construed to deny such cities and towns, and to the people thereof, any right or power essential or proper to the full exercise of such right." The

Supreme Court long ago recognized Article XX, Section 6 as the source of authority for a municipality to levy a sales tax on goods sold in the municipality or purchased outside of its boundaries for use within the municipality. *Berman v. City & Cnty. of Denver*, 400 P.2d 434 (Colo. 1965). The General Assembly does not grant taxing authority to home rule jurisdictions and cannot mandate exemptions from their taxes.

The power to levy sales and use taxes to raise revenue for and support municipal operations is essential to the full exercise of the right of self-government granted by Article XX, Section 6. *See Deluxe Theatres, Inc. v. City of Englewood*, 596 P.2d 771, 772 (Colo. 1979) (citing *Security Life & Acc. Co. v. Temple*, 492 P. 2d 63, 64 (Colo. 1972)). Sales and use taxes are a primary source of revenue for conducting municipal operations and providing municipal services, including the services that benefit schools, as discussed below.

In fifty years of uninterrupted precedent, the Supreme Court has refused to undermine "the complete autonomy of a home-rule city . . . in the enactment of purely local excise taxes and the sales tax . . ." *See Security Life & Acc. Co. v. Temple*, 492 P. 2d 63, 64 (Colo. 1972) (citing *Four-County Metro. Capital Improvement Dist. v. Bd. of Ct. Comm'rs,* 69 P.2d 67 (1962)); *see also Winslow Const. Co. v. City & Cnty. of Denver*, 960 P.2d 685 (1998); *Berman*, 400 P.2d 434 (Colo. 1965).

The Supreme Court has expressly rejected the argument that the nature of an activity taxed (and the General Assembly's interests in that activity) could preempt the taxing field. *Security Life & Acc. Co.*, 492 P.2d at 65. In *Security Life*, the General Assembly limited local government authority to impose taxes on insurance companies when it imposed a state tax on insurance company premiums. *Id*. at 63-64. An insurance company claimed that the State law superseded Denver's sales and use tax because of the State's interests in regulating insurance companies and establishing a uniform system of taxation. *Id.* at 64. The Supreme Court rejected even the premise that the General Assembly could prohibit a local excise tax on a type of entity because the entity was state-regulated and engaged in statewide, national, or international commerce. *Id*. at 64-65. In that case, Denver's local tax superseded any state exemption. *Id.* at 65.

A unanimous Supreme Court reaffirmed these precedents in *Winslow Construction Co. v. City & County of Denver*, 960 P.2d 685 (Colo. 1998), a decision reviewing the imposition of a local tax on equipment used by a contractor in Denver's own project, the construction of Denver International Airport. The contractor claimed that a state-granted exemption from local use taxes preempted Denver's sales and use tax ordinance. 960 P.2d at 692. In its analysis of the conflicts between statute and local law, the Supreme Court held that Denver properly exercised its taxing authority and refused to apply the State exemption to the home rule tax. *Id*. at 695. Notably, the Supreme Court noted that two factors of its analysis "weighed heavily" in Denver's favor because of the Colorado Constitution's specific commitment of local taxing authority to home rule cities and the traditional local control of local taxation. *Id.* at 694.

CML believes that the Supreme Court must resolve any dispute about HB22-1024 in favor of home rule jurisdictions that impose uniform taxes on construction that *may* impose a burden on school construction projects. Article XX, Section 6's specific grant of taxing authority and the longstanding determination that such matters are of local and municipal concern should be determinative. In addition, any obligation of the General Assembly to fund public education, in practice an incomplete endeavor anyway, is not solely vested in the State, is not harmed by local taxing authorities, and does not outweigh home rule municipalities' interests in defining their tax base to provide services (including those that support public education). Finally, as discussed below, any extraterritorial impact suggested by the General Assembly is either illusory or confined to very small areas of the State.

HB 22-1024 targets only a handful of municipalities and addresses a matter that is best left to local governments and their voters

HB 22-1024 suggests that the State's authority to interfere with home rule taxing authority arises from the State's involvement in public education under Article IX, Section 2 of the Colorado Constitution or a presumed extraterritorial impact in school districts that serve multiple jurisdictions. Both arguments are blatant and transparent efforts to undermine the express provisions and long-standing interpretations regarding taxing authority under Article XX, Section 6 and should be disregarded. *See Winslow Const. Co.*, 960 P.2d at 695 (noting that the Supreme Court is not bound by a legislative declaration of statewide concern, including a concern related to uniformity in local taxation).

First, HB 22-1024 is hardly directed at a statewide concern. Only 5 of 69 self-collecting home rule jurisdictions do not exempt school construction. Of those that do (Commerce City, Denver, Pueblo, Boulder, and Westminster), at least one shares the tax revenue with school districts for the joint benefit of the city and district (Commerce City). During testimony, a school district representative criticized a city's (Westminster) taxation but noted that the city made significant concessions and waived several hundred thousand dollars of tax owed on a project. New taxes that would cause the school construction to be taxed in other jurisdictions are unlikely, given the hurdles of TABOR, Article X, Section 20 of the Colorado Constitution. Because HB 22-1024 targets only a few Colorado cities and does not justify the blatant challenge to home rule authority, very few, if any, extraterritorial impacts are actually addressed by the bill.

Second, the state's funding of public education should not include raiding local government treasuries that are burdened with their own expenses in support of school operations. Municipalities offer many services that directly and indirectly benefit both schools and their students. Students and their families who reside outside of a municipality also benefit from these services. Roads, sidewalks, and other transportation facilities allow children to safely reach schools. Roads must be maintained and cleared of snow in the winter. Police and fire departments respond regularly to public safety issues at schools. Recreation programs offer after-school and weekend activities, and parks provide outdoor space for children to play. A home rule jurisdiction has the authority the

determine if their tax base to provide those services should include school construction costs.

Third, local governments and their voters are more capable of determining how to identify and resolve any concerns locally. Without the General Assembly's interference, 64 self-collecting home rule jurisdictions have resolved this issue. In those jurisdictions that do not provide this exemption, the municipality always has the option to modify their tax code or to engage in cooperative efforts to ensure that schools benefit from the city's use of the tax revenue. CML doubts the sincerity of the justification for unconstitutional state interference that is based on an unsubstantiated risk that municipalities will cause themselves to lose out on school construction to the detriment of their residents.

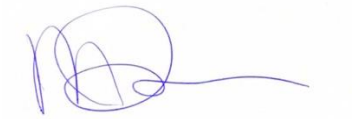
HB 22-1024 sets a dangerous precedent that would endanger home rule taxing authority

If enacted, HB 22-1024 could open the door to an onslaught of tax exemption bills to benefit special interests that have long sought to impose any of over 80 state tax exemptions on home rule tax codes. Title 39 of the Colorado Revised Statutes is riddled with sales and use tax exemptions and six sales and use tax exemption bills have been introduced this year. Any number of interest groups could concoct a clever statement of statewide importance or find a tangential constitutional reference to support such a statement. These efforts would not only attack home rule authority but the very existence of home rule municipalities and their ability to provide services to their residents. The Colorado Constitution requires more than this.

CML respectfully requests that you veto HB 22-1024 to defend home rule authority and to avoid an unnecessary constitutional conflict and the impact on local taxpayers that will be forced to defend their constitutional rights.

Sincerely,

Kevin Bommer, CML Executive Director



Meghan Dollar, CML Legislative Advocacy Manager

cc: Attorney General Phil Weiser
Rep. Shannon Bird
Rep. Dan Woog
Sen. Chris Hansen
Sen. Chris Kolker
Colorado Municipal League Executive Board