



April 5, 2023

Members of the Senate Local Government and Housing Committee:

County officials across Colorado recognize the need for affordable housing in their communities and have been working hard – often in conjunction with municipal partners - on developing land use solutions and approaches that address this challenge. This is not a partisan issue - it cuts across political lines and impacts our entire state.

The causes of the affordable housing crisis in Colorado are myriad – one can point to any number of factors: historically low interest rates, the COVID pandemic, supply chain issues, changes in construction defect liability, increased use of housing in resort regions for short term rentals, scarcity of construction labor, statutory assessment cycles, explosive growth along the Front Range, etc. And just as the reasons behind the housing crisis are numerous, so too must the fixes be to address this problem.

**Upholding local control is paramount.** Land use and housing development is an incredibly complex process and remedying the housing availability/affordability issue will require an array of solutions that encompass both local and state government regulatory oversight. Colorado is an incredibly diverse state. The demographics, geography, topography, and political makeup is different in every single one of our counties and these solutions must recognize these differences and provide flexible tools that can be customized at the local level to strengthen our communities and take our state forward.

**We share the General Assembly’s sense of urgency and commitment to addressing the affordability crisis in our state.** We also commend the Polis administration for the amount of work and research that went into the drafting of SB23-213. There are a number of policy recommendations in the legislation to recommend, and we appreciate the collaboration that has happened to date.

However, we still have serious concerns about the legislation and are in opposition to the bill as it was introduced. We are seeking amendments to the bill that either remove or greatly modify the areas of opposition/concern outlined below.

- CCI **supports** the statewide housing inventory and needs assessment in the bill, and also supports local/regional housing inventories if they are fully funded now and in the future.

- CCI **supports** the creation of a multi-agency advisory committee that will work to break down silos and streamline permitting processes at the state level that are leading to delays. CCI **opposes** the creation of top-down strategic growth objectives that will dictate how counties are supposed to develop their communities in the future.
- CCI **supports** the appropriation of \$15 million for state and local planning needs in the bill and urges the sponsors to amend the bill to ensure that the planning dollars will not expire before the studies and planning are complete.
- CCI **supports** methods to incentivize manufactured/modular housing and tiny homes as affordable alternatives.
- CCI **opposes** the creation of a “Holistic Statewide Water Management System.” This concept has not been vetted with the various basins and other water stakeholders and is causing a lot of concern in our headwaters counties.
- CCI **supports** the mandatory adoption of county master/comprehensive plans, while still preserving local discretion on whether the plan is advisory or regulatory in nature. CCI **opposes** adding mandatory elements in master/comprehensive plan.
- CCI **opposes** altering the historic role of the Department of Local Affairs (DOLA). DOLA has traditionally been an agency that partners with local governments. The legislation would change DOLA’s role to one with regulatory oversight of local governments.
- CCI **opposes** the automatic upzoning of property and establishment of ADUs as a “use by right.” Additional density and housing variety, while desirable from a planning perspective, must be conducted in a context-sensitive manner to ensure that it enhances a community and guarantees affordability.
- CCI **opposes** the lack of ability or venue for public comment in the legislation. Citizens, especially those with neighboring properties, must be allowed to voice their opinions on any changes to zoning or density as it could negatively impact their home’s value.
- CCI **opposes** the watering down of a local jurisdiction’s ability to enact inclusionary zoning ordinances.
- CCI has **concerns** about the lack of guaranteed affordability and/or guaranteed creation of workforce housing in the legislation.
- CCI has **concerns** that the legislation lacks an attempt to modify construction defect law and the effect these policies have had on the construction of middle housing in our communities.

- CCI has **concerns** that the language on occupancy limits in the bill, while well intentioned, could be problematic in rural areas where residences are on septic systems with limited capacity.

CCI looks forward to continued dialogue on this legislation as it moves forward in the process and we thank you for your time and consideration of these concerns.

Sincerely,

Steve O'Dorisio, President  
Colorado Counties, Inc.

cc: Honorable Dominick Moreno, Colorado Senate  
Honorable Steven Woodrow, Colorado House of Representatives  
Honorable Iman Jodeh, Colorado House of Representatives  
Honorable Jared Polis, Governor of Colorado





# Statement of Principles on Land Use & Housing Affordability

- **LOCAL GOVERNMENT'S ROLE** — Local governments are uniquely positioned to help address the housing crisis because of their understanding of their communities' needs and their understanding of planning, land use, infrastructure, and community development. Many local governments already have robust programs in place to promote safe, healthy, equitable, and affordable living.<sup>1</sup>
- **STATE GOVERNMENT'S ROLE** — State government impacts local efforts to promote safe, healthy, equitable, and affordable living through its role in administering water rights,<sup>2</sup> supporting integrated transportation systems,<sup>3</sup> protecting public health and the environment,<sup>4</sup> establishing building codes<sup>5</sup> and the use of state lands.
- **NO ONE-SIZE-FITS-ALL APPROACH** — There is no top-down, one-size-fits-all solution that is going to solve the housing crisis in Colorado. While commonalities may exist amongst some local jurisdictions or within certain regions, Colorado communities are quite diverse and have unique challenges and opportunities. Land use and housing development are incredibly complex processes that require local planning, oversight, and implementation; but these processes are also impacted by state government policies and distribution of resources. A top-down approach can't balance the needs of each Colorado jurisdiction and does not consider how local government can provide thoughtful, community-based decision making.
- **INCREASING HOUSING SUPPLY (QUANTITY) DOESN'T GUARANTEE AFFORDABILITY, EQUITY OR EFFICIENCY** — Merely increasing the amount of housing does not guarantee affordability will be achieved. Nor does it protect against displacement of residents or promote smart, efficient growth practices. In fact, simply increasing quantity without considerations could actually lead to more inefficient urban sprawl, displacement of under-represented communities, and higher cost of living for those displaced into remote areas of the state. Deed restrictions and other regulatory mechanisms to promote affordability should be considered in any proposed solutions, as well as policies that promote smart, efficient growth while taking into account equity and displacement risks.

1 See the **2018 Local Government Handbook** at [https://leg.colorado.gov/sites/default/files/2018\\_local\\_government\\_handbook\\_with\\_cover\\_0.pdf](https://leg.colorado.gov/sites/default/files/2018_local_government_handbook_with_cover_0.pdf)

2 See Colorado Division of Water Resources, Department of Natural Resources at <https://dwr.colorado.gov/services/water-administration>

3 See Colorado Department of Transportation at <https://www.codot.gov/about/mission-vision> and <https://www.codot.gov/about/transportation-facts>

4 See Colorado Department of Public Health and Environment at <https://cdphe.colorado.gov/strategic-plan>

5 See Colorado Energy Office, Building Energy Codes at <https://cdphe.colorado.gov/strategic-plan> and Colorado Wildland-Urban Interface at <https://csfs.colostate.edu/wildfire-mitigation/colorados-wildland-urban-interface/>

● **INCREASING DENSITY DOESN'T GUARANTEE AFFORDABILITY, EQUITY OR EFFICIENCY** —

Increasing density may be an appropriate planning strategy in some urbanized neighborhoods – especially those with access to transit and workplaces; but density may not be possible or appropriate everywhere, especially in rural or suburban communities that lack adequate infrastructure, transit, government services and employment centers. Further, density does not necessarily lead to affordability; rather, density in costly areas could increase property values and rents. Any considerations of density must be context sensitive.

● **MANDATORY USE BY RIGHT CONFLICTS WITH COLORADO'S TRADITION OF LOCAL CONTROL**

— State preemption of land use authority by mandatory “uses by right” will hinder local governments’ ability to incentivize affordability and private investment in community development. Simply put: “use by right” preemption removes all local government “carrots,” leaving local governments with only “sticks” to require affordability and additional private investment. When carrots are removed, private sector investors and developers will focus efforts in areas that don’t have affordability or investment requirements (the “sticks”). In addition, mandatory “use by right” should not be a means to by-pass state and local requirements that protect health, safety, and sustainability (e.g., DNR -Water, CDPHE, CDOT, building codes, setbacks, and bio-hazards/environmental protections). Finally, allowing lot splits, upzoning, and other development as “use by right” doesn’t guarantee affordability and it doesn’t increase capacity to meet the increased demand from expanded density.

● **LEVERAGE AND EXPAND EXISTING AND NEW STRATEGIES** — Many public and private sector strategies exist to address affordable housing. Recently, Colorado voters approved Prop. 123, which is just beginning implementation; while HB21-1271’s innovative affordable housing strategies are just gaining traction<sup>6</sup> and the Middle Income Housing Authority is just opening for business. In addition, there are many existing programs designed to increase affordable home ownership, such as first-time homebuyer savings accounts,<sup>7</sup> down payment or closing cost assistance programs,<sup>8</sup> and more.<sup>9</sup> Other programs help reduce cost of development, such as low interest loans, tax credits, trusts, funds, grants, and bonds.<sup>10</sup> Many of these proven resources are underutilized (and should be promoted) or overburdened (and should be given more support). State programs for promoting regional cooperation and providing technical support for local governments need to be prioritized to enable local governments to best meet the current challenge.

● **PLANNING IS KEY** — Local governments have a statutory duty to make and adopt master/comprehensive plans for the development of the jurisdiction. While not currently required, local government master plans can include a variety of elements that encourage a jurisdiction to address important factors impacting housing, growth, natural resources, and the environment.<sup>11</sup> It may be worth exploring opportunities to enhance the effectiveness of local plans to promote affordability, smart and efficient growth practices, water and other resource allocation/conservation, and environmental protections. The state should support such efforts by providing technical and financial assistance to increase local government planning capacity and promotion of best practices.

6 See Innovative Affordable Housing Strategies, Colorado Department of Local Affairs at <https://cdola.colorado.gov/1271>

7 See Colorado Association of REALTORS, First-Time Homebuyer Savings Accounts at <https://www.coloradorealtors.com/wp-content/uploads/2017/01/First-Time-Homebuyer-QA.docx.pdf>

8 See Colorado Housing and Finance Authority (CHFA) Down Payment Assistance Grant and Second Mortgage Loan at <https://www.chfainfo.com/homeownership>

9 See HUD's State Directory of Homeownership Assistance programs at <https://www.hud.gov/states/colorado/homeownership/buyingprgms>

10 See <https://developers-guide.chfainfo.com/funding-sources-inventory>

11 See Colorado Department of Local Affairs, Master Plan Primer at <https://drive.google.com/file/d/0B-vz6H4k4SESZ1ZJTg0cXNIRIk/view?authuser=0&sourcekey=0-MDnVzpcstC1ttWotN5pRYA> and <https://law.justia.com/codes/colorado/2020/title-30/article-28/section-30-28-106/> and <https://law.justia.com/codes/colorado/2016/title-31/powers-and-functions-of-cities-and-towns/article-23/part-2/section-31-23-206>

● **WATER AND SANITATION ARE AN ABSOLUTE NECESSITY** — Diminishing water availability is a limiting factor in future development. Access to public water and sanitation is a challenge in many communities, while reliability of ground water (wells) is uncertain due to diminishing ground water sources. Water and sanitation tap fees have increased dramatically in recent years as water and sanitation providers struggle to keep up with growth, comply with increasingly stringent State and Federal water quality standards, maintain existing infrastructure, recoup expenses for acquiring water rights, and build out new infrastructure. Arbitrary upzoning and lot splits do not magically create more capacity or access to water and sanitation services. Instead, they will put greater demands on existing systems. Careful, context-specific planning needs to occur around the topic of water and sanitation services.

● **UNFUNDED MANDATES CREATE UNWANTED FAILURE** — Local governments oppose unfunded mandates or restrictions on cost recovery that require local governments and their taxpayers to bear the direct and indirect costs of development.

● **EVERYONE CAN PROMOTE MORE RESPONSIBLE GROWTH MANAGEMENT PRACTICES** — Local governments in Colorado acknowledge the need to improve growth management and are already responding to the problem. Discouraging urban sprawl, encouraging efficient use and conservation of natural resources, and investing in public infrastructure and transit can help promote affordable, safe, and healthy living, while addressing serious long-term environmental risks.



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2 See Colorado Division of Water Resources, Department of Natural Resources at <https://dwr.colorado.gov/services/water-administration>  
3 See Colorado Department of Transportation at <https://www.codot.gov/about/mission-vision> and <https://www.codot.gov/about/transportation-facts>  
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● **EVERYONE CAN PROMOTE MORE RESPONSIBLE GROWTH MANAGEMENT PRACTICES** — Local governments in Colorado acknowledge the need to improve growth management and are already responding to the problem. Discouraging urban sprawl, encouraging efficient use and conservation of natural resources, and investing in public infrastructure and transit can help promote affordable, safe, and healthy living, while addressing serious long-term environmental risks.



## SUGGESTED LAND USE AND HOUSING AVAILABILITY/AFFORDABILITY STRATEGIES

Local government officials in Colorado recognize the need for additional housing in their communities and have been working hard on developing land use solutions and approaches that address this challenge. Local governments are *uniquely* positioned to help solve this problem, as community development is the purview of county commissioners and town and city councils and they understand their communities and the resources that are available better than anyone. This is not a partisan issue - it cuts across political lines and impacts our entire state.

The causes of the housing crisis in Colorado are myriad – one can point to any number of things: historically low interest rates, the COVID pandemic, supply chain issues, increased use of housing in resort regions for short term rentals, scarcity of construction labor, statutory assessment cycles, explosive Front Range growth, tax breaks that incentivize keeping houses vacant, etc. The list goes on and on. And just as the reasons behind the housing crisis are numerous, so too must the fixes be to bring this problem under control.

There is no top-down, one-size-fits-all solution that is going to solve our attainable/affordable housing issues in Colorado. Land use and housing development is an incredibly complex process and remedying the workforce housing availability issue will require a wide array of solutions that encompass both local and state government oversight of development. Colorado is an incredibly diverse state. The demographics, geography, topography, and political makeup is different in every single one of our counties and these solutions must recognize (and celebrate!) these differences and provide flexible tools that can be customized at the local level to strengthen our communities and take our state forward.

Water must play a major role in any discussion on new development. “Paper water” can no longer be used in proposals for growth in Colorado. Real analysis must be done. Rural living with septic systems and wells make carve outs and exceptions appropriate – there are very real consequences to the environment, health, and safety for any uninformed decision to increase density in rural residential parcels. Identified growth areas contained in the plans of our rural counties should be the focus of state resources and assistance. We need a holistic approach that examines what role each of us play in the construction of housing and the infrastructure that supports it.

CCI has been meeting since last October to work on bipartisan solutions and approaches to our state’s affordable/attainable housing issue. The policy ideas presented below are put forth in the hope that they can be incorporated into a legislative package that enhances local government authority, addresses infrastructure concerns (including water availability), acknowledges the issue of climate change and attempts to align local land use practices with state goals to reduce greenhouse gas, incentivizes additional housing construction and streamlines the approval of new development at the state, county and city level.

We look forward to engaging with the administration, the General Assembly and other stakeholders as we work to craft solutions that will benefit all of Colorado.

## **1. Enhancing Planning Through Local Government Master/Growth Management/Comprehensive Plans**

The foundation of community planning is developing a long-range vision for the future and associated policy actions and programs that will help the community achieve this vision. These visions and action items are a part of what is called a master plan (sometimes referred to as a growth management or comprehensive plan). All municipal and county planning commissions are currently required to develop and adopt a plan, but adoption by the board of county commissioners or city/town councils is not required (although many already have).

- Require adoption of the master/comprehensive plan by elected boards, while still maintaining the local option on whether to make such plans advisory or regulatory in nature
- Require an affordable/workforce housing element in the master/comprehensive plan and corresponding zoning code for multi-family residential as appropriate in county land use regulations.

## **2. Expediting Development Review at Local Level**

The longer it takes to get approval for development, the higher the cost of the housing. There are a number of local government best practices that could be replicated around the state to streamline development review for affordable and multifamily housing.

- Shorten the time between planning commission and BOCC meetings to ten days
- Potential for holding joint public hearings with the planning commission
- Expediting Planned Unit Development (PUD) process – especially in cases where the development features multifamily and affordable housing options

## **3. Zoning for Density and Multifamily Dwellings**

Increasing density makes for more efficient use of developable land and prevents sprawl. Incentivizing accessory dwelling units can provide for additional housing options in existing neighborhoods. Ensuring that zoning schemes allow for multifamily development can also enhance available housing stock.

- Require that every local government have a codified zone in its land use regulations authorizing multifamily housing to allow for re-zoning to this category once infrastructure needs and approvals have been obtained
- Protect county authority to deed restrict bonus density approaches
- Ensure that modular/manufactured housing and tiny homes are not being prohibited in residential zones

## **4. Addressing State/Federal Regulatory Barriers**

State and federal agencies can play a pivotal role in the local development process and oftentimes these actions/review processes are not synchronized, causing delays and in some cases increased cost to local development. As we look at our local land use practices, we must also ensure that those state and federal agencies with intersecting oversight are reviewing their own processes to help streamline and expedite housing development. This may be accomplished through administrative review and might not require legislation.

- Breaking down silos and better coordination across agencies
- DOLA
  - Development of a statewide housing plan

- Administration of housing grants and prioritizing state grants over other sources
- CDOT
  - Multi-modal grant administration
  - Assistance on roadway capacity issues and expediting access permits
- DNR
  - State Engineer decisions on water availability - consider prioritizing affordable housing related requests
- CDPHE
  - Water quality, sewer and stormwater permitting processes
  - Implementation timelines, requirements and coordinated grant assistance to aid local governments in compliance
- Applying regional AMI model to all state programs
- Exploring opportunities to make state lands accessible to affordable housing projects where appropriate infrastructure exists, using inventory of non-developed state-owned land (NOTE: we believe this bill has already been introduced)
- Streamline and modernize permitting processes across agencies
- Expedite modular housing/manufactured housing inspection processes
- State should help locals in trying to similarly affect streamlining of USFS/BLM permitting and decision-making processes

## **5. Transit-Oriented Development (TOD)**

In many urbanized areas it makes sense to direct additional density to those communities that have transit options, as this will both enhance ridership and help these communities combat greenhouse gas emissions.

- Providing support to local governments to help them identify and incentivize “smart growth” areas for additional development (especially ones that are adjacent to transit options)
- Improving walkability/bike-ability of communities that lack transit options
- Intercounty transportation issues – seek funding assistance from the state to help get citizens to jobs across county lines in resort regions
- Issues with RTD discontinuing service to certain areas which hampers efforts to direct TOD development to these communities

## **6. Impact Fees for Housing and Infrastructure Like Water and Wastewater**

- A number of counties currently assess an impact fee, called a housing linkage fee, for new construction or expansion of residential and commercial buildings. There are exceptions for reconstruction of a damaged structure, small additions, mobile homes, and essential housing projects.
- Enhanced impact fee authority for counties

## **7. Addressing the Short-Term Rental Issue**

The proliferation of short-term rentals (STRs) in the rural resort region is one of the biggest reasons for the lack of workforce housing in these communities.

- Ability to tax and/or place fees on STRs and direct the funding to affordable housing and/or enhancing infrastructure development to support additional housing units.
- State licensing and inspection of STRs should be required.
- Primary residence requirements - similar legislative proposals in other states have required that one unit in a multiplex serve as a primary residence for the first three years

## 8. Removing Regulatory Barriers to Affordable Housing

- Many communities have eliminated regulatory barriers in their land use codes in order to bring down the cost of building affordable housing projects. This has been accomplished through a number of policy changes, including:
  - Increases in allowable residential building area and building heights
  - Reduced setback requirements
  - Modified design and development standards (with exceptions for public health, safety, and welfare-protective regulations)
  - Reduced parking space requirements
- Local inventory of housing? Could state funding be made available for this? Better data can show where there is sufficient state-directed funding for affordable housing and where gaps still remain
- Property tax credits for homeowners who rent long-term.
- Property tax credits for homeowners who sell second homes to middle income locals (first responders, teachers, nurses, etc.)
- Property tax credits for homeowners who build properly-approved and permitted ADUs and rent them to middle income tenants
- Actions that may dissuade frivolous NIMBY lawsuits (CCI is convening a subgroup to look at some possible solutions)
- Housing Authority requirements: local governments should be able to operate and own without having to create an authority
- Requiring utilities (water/sewer) to provide service to affordable housing projects when capacity to serve is available or can be made available.
- Maintain viability of mobile home parks
  - Possible redevelopment within the parks (allowing modular products or tiny homes alongside existing mobile homes).
  - Adoption of zoning that protect these parks.
  - Letting older mobile homes serve as transitional housing or emergency shelter.
- Acknowledge that newly adopted energy codes and proposed fire mitigation building codes in the WUI may actually drive up the cost of housing
- Risk mitigation/reduction for developers (perhaps looking at construction defect statutes)
- Look at revising the definition of “family” as it is oftentimes an impediment to rental opportunities (and may in fact be a violation of federal law)
- Allow shared parking and shared drainage
- Incentivize/encourage the use of “eco-taps” that yield lower amounts of water