



## Please Support SB23-213 as Approved by the Senate

### State and Local Land Use Efforts to Enhance Affordable Housing

Sponsors: Sen. Moreno/Reps. Woodrow & Jodeh

CCI Position: MONITOR

As introduced, SB23-213 was an attempt to enhance the supply of housing in Colorado's municipalities by automatic upzoning of parcels and making accessory dwelling units a use by right. The legislation short-circuited local land use control and deprived local residents of their right to voice their concerns. The legislation was opposed by a host of municipalities, local government associations, water entities, local elected officials and community members.

Following introduction, CML, CCI, various stakeholders and members of the General Assembly worked with the sponsor and the Governor's Office toward a compromise that respects local control, places an emphasis on data-based policy making and seeks to enhance affordable housing efforts already underway around the state. That compromise was accomplished in the Senate Appropriations Committee with the adoption of a strike-below amendment that removed the problematic aspects of the legislation. **In this amended fashion, SB 213 no longer contains the preemption of local control that was drawing opposition from nearly every local government association in the state.**

As the bill passed the Senate, SB 213 does the following:

- Directs DOLA to conduct statewide, regional, and local housing needs assessments and displacement assessments;
- Requires some local governments to create housing needs plans, including implementation strategies;
- Directs DOLA to work with local governments to conduct a statewide summit on land use and affordable housing and a series of regional meetings around the state to get input on potential solutions;
- Creates a multi-agency committee (with local government membership) and rural resort area and urban area subcommittees to develop statewide strategic goals, reports, and recommendations to DOLA;

- Directs DOLA to conduct technical assistance and grant making to local governments to assist in housing needs assessment and planning for growth;
- Makes significant changes to local master planning laws by adding several mandatory plan elements (including housing, water, and natural and agricultural land priorities) and incorporating strategic growth concepts to focus on accommodating growth equitably;
- Establishes a menu of affordability and anti-displacement strategies for local governments to utilize as they create and implement plans to address housing needs in their communities;
- Directs DOLA to prepare a joint report with the Colorado Water Conservation Board on water availability that complies with basin plans and includes policy options to maximize efficiency of existing supplies;
- Appropriates \$15 million for local and state planning efforts;
- Ensures that manufactured/modular housing is considered at the local level as an affordable housing option and mandates equal treatment of that form of housing in local planning reviews;
- Guarantees that residential occupancy limits do not differ based on the relationships of the occupants; and
- Better aligns state funding of grants and projects in order to influence regional and local outcomes.

This amended version will enhance current affordable housing efforts at the local level by providing critical funding, technical assistance and data gathering that will inform local efforts. **CCI urges your support of SB 213 in its current amended form.** This will allow local communities to partner with the state as they work toward policies that will enhance the supply of affordable and attainable housing for all.

**CCI asks for your YES vote on SB23-213**

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CALIFORNIA

## A new California housing law has done little to encourage building, report says



A new duplex law once considered to be the end of single-family-home zoning in California has instead done little so far to encourage much housing construction. (Myung J. Chun / Los Angeles Times)

BY HANNAH WILEY | STAFF WRITER

JAN. 18, 2023 11:28 AM PT

Once seen as the death knell for single-family-home neighborhoods in California, a new law meant to create more duplexes has instead done little to encourage construction in some of the largest cities in the state, according to a new report published Wednesday.

Senate Bill 9 was introduced two years ago as a way to help solve California's severe housing crunch by allowing homeowners to convert their homes into duplexes on a single-family lot or divide the parcel in half to build another duplex for a total of four units. The law went into effect at the start of 2022.

The bill received bipartisan support and ignited fierce debate between its backers, who said SB 9 was a much-needed tool to add housing options for middle-income Californians, and critics, who blasted it as a radical one-size-fits-all policy that undermined local government control.

Neither argument has so far proved to be true.

Across 13 cities in the state, SB 9 projects are "limited or nonexistent," according to a new study by the UC Berkeley Turner Center for Housing Innovation.

The report focused on cities considered high-opportunity areas for duplexes because they've reported significant increases in the construction of accessory dwelling units — also known as granny flats, casitas or ADUs — in recent years and have available single-family properties for possible divided lots. ADUs are small, free-standing homes most often built in the backyards of existing single-family homes.

The cities are Anaheim, Bakersfield, Berkeley, Burbank, Danville, Long Beach, Los Angeles, Sacramento, San Diego, San Francisco, San Jose, Santa Maria and Saratoga.

By the end of November, the cities had collectively received 282 applications for SB 9 projects, and had approved only 53. Los Angeles accounted for the bulk of applications with 211 submitted and 38 approved, according to the report. San Francisco received 25 applications and had approved four, while San Diego received seven and had approved none.

Three cities received one application, and in Bakersfield, Danville and Santa Maria, zero were submitted.

Applications for dividing lots seem to be even less popular than for building duplexes. Just 100 applications were submitted, the report noted, and 28 had been approved.



HOUSING & HOMELESSNESS

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Sept. 17, 2021

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David Garcia, Turner Center's policy director, said SB 9 is only in its first year of implementation and should be given more time before it's judged as ineffective. But he added that lawmakers should consider whether the law needs tweaking.

"It doesn't seem like Senate Bill 9 in its first year has resulted in very meaningful amounts of new housing," Garcia said. "Pretty much everywhere you look, Senate Bill 9 activity is very marginal. It is nonexistent in some places."

Homeowners right now have an easier time building an ADU than a duplex, thanks to local and state laws that have eased barriers to construction in recent years, Garcia said. It took multiple rounds of legislation to see productive ADU development, and the same will probably be true for SB 9 projects, he said.

Recognizing that more was needed to speed up housing construction in California, the Legislature began overhauling state ADU laws in 2016, and cities followed suit with their own local ordinances to clear red tape in the building process, which has inspired a widespread ADU movement.

Between the start of 2017 and January 2023, the city of Los Angeles reported receiving 35,098 applications for ADUs. It has issued permits for 25,881 and 13,640 have been granted certificates of occupancy.

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Heidi Vonblum, San Diego's planning director, said the law is new and barriers to development are still being worked out. At the same time, the city has an ADU program that "has been very attractive to property owners," Vonblum said, while updated zoning rules and community plans have eliminated "the need to rely on other programs."

It's a similar situation in Sacramento, where homeowners are allowed to build up to two ADUs on their properties, said Kevin Colin, the city's zoning administrator. Colin's team handles one to two ADU applications "each working day," he said, because there's such high interest in the projects.

To replicate that success, the Turner Center report suggested cutting fees associated with new duplex development, or adding more uniform standards for SB 9 projects to ensure local governments can't attach subjective criteria that discourage applications, such as architectural design requirements or stringent landscaping rules. It also proposed revising a mandate that homeowners who split their lots must live in one of the units for at least three years, a key concession lawmakers made to reduce opposition from organizations worried about gentrification.

Senate President Pro Tem Toni Atkins (D-San Diego), author of the legislation, said SB 9 was "never intended to be an overnight fix to our housing shortage."

"We always said not every homeowner would be able, or want, to utilize the tools provided by the bill on Day One," Atkins said in a statement. "Subdividing a lot, or even just adding an ADU, is a big investment. This bill was never intended to be a sledgehammer approach — it was meant to increase the housing supply over time, and

as awareness of the law increases and more homeowners have the ability to embrace the tools, I'm confident that we will see results."



BUSINESS

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July 21, 2021

Garcia and other housing experts said slow progress could also be attributed to the effects of the COVID-19 pandemic, when prices for building materials shot up and homeowners and buyers faced significant market uncertainty. That was followed by high inflation and interest rates.

But other factors could be contributing to sluggish SB 9 interest.

Matthew Lewis, spokesperson for California YIMBY, a housing advocacy organization that supported SB 9, said both ADUs and duplexes have their financial and logistical pros and cons.

ADUs are an ideal way to generate some "passive income" from a renter, Lewis said, and make great homes for aging parents or young adult children. Duplexes are good for that too, but the additional units can be sold separately for even greater economic opportunity.

On the other hand, ADUs are typically a property extension of the main home, so it can be difficult or even impossible to separately sell the extra unit. Duplexes require significantly more financing, and the addition of a separate sewer line and water service.

"The reality is people will follow the path of least resistance to building the house they want," Lewis said, adding that it could be worth going back to the drawing board to

ensure local governments are doing what they can to ease burdens to duplex development.

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LIFESTYLE

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Dec. 13, 2022

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Although the Turner Center report offers legislators a limited snapshot of how SB 9 has worked so far, the state is also expected to have more robust data available this summer.

Any attempt to modify SB 9 this year, however, is sure to reignite opposition from many of the dozens of cities and neighborhood associations that tried to block its passage in 2021. Since then, some cities have gone to great lengths to avoid implementing the law, including the Silicon Valley suburb of Woodside, which declared itself a mountain lion sanctuary and invited a stern warning for compliance by the state attorney general's office.



Hannah Wiley

Hannah Wiley is a politics reporter for the Los Angeles Times' Sacramento bureau covering the California Capitol and state agencies.



# 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.