



City Manager's Office

MEMORANDUM

To: Members of Council's Intergovernmental Affairs Committee

From: Chris Meschuk, Deputy City Manager
Brad Mueller, Planning & Development Services Director
Natalie Stiffler, Interim Transportation & Mobility Director
Carl Castillo, Chief Policy Advisor

Date: April 3, 2023

Re: Initial Analysis of SB23-213, State Involvement in Local Land Use Matters

Executive Summary

Boulder City Council's Intergovernmental Affairs Committee (IA Committee) is scheduled to meet on Wednesday, April 5, 2023, to discuss [SB23-213](#), concerning state involvement in local land use matters. This memo is intended to assist the IA Committee in its preparations for this discussion. It includes highlights of the bill's *potential*¹ impact on the city. In recognition of City Council's stated preference to support a bill of this sort, it also contains suggestions for amendments that the IA Committee may consider requesting. The memo concludes with an analysis of the potential nexus between the bill's current provisions,² and the direction provided by City Council with regards to land use legislation, as described in the [2023 Policy Statement on Regional State and Federal Issues](#).

Background

Colorado's [Greenhouse Gas Pollution Reduction Roadmap](#), released in January 2021, called on state agencies to explore options for "smart land use decisions." Over the next two years, three laws ([HB21-1271](#), [HB22-1304](#), [Proposition 123](#)) were enacted to

¹ The actual impact to municipalities that may result from this legislation will likely be determined by the courts. Any speculation in this memo about potential impacts should not be read as the city relinquishing its authority to legally challenge the applicability of one or more provisions of the bill, should it be enacted.

² Note that the bill is expected to be heavily amended as it goes through the legislative process. The analysis provided here is relevant only to the version of the bill as it was upon introduction.

incentivize local governments to adopt land use strategies. In July 2022, a multi-departmental state group released *[Land Use in Colorado: Research Report on Challenges Outcome, Benefits and Policy Tools](#)* following a stakeholder process involving 35 local governments and stakeholders. It included a review of other states' land use policies. Then, during the Fall of 2022, the Governor's Office established an Interagency Work Group composed of the Department of Local Affairs, Colorado Energy Office, Colorado Department of Transportation, Colorado Department of Public Health and Environment, the Department of Natural Resources, Governor's Office policy staff and legislative experts. The group:

- Consulted with experts from Brookings, Sightline Institute, Mercatus Institute, and other states who have undertaken land use reform.
- Used model code language from the American Association of Retired Persons, the American Planning Association, and others to meld a framework that could work for Colorado.
- Conducted a [study](#) evaluating the influence of potential statewide housing policies on housing production opportunities, including unit type and geography.

Since the beginning of the 2023 legislative session, the Interagency Working Group has worked on the development of what is now SB23-213. It continues to work on proposed revisions to the bill as it works its way through the legislative process. City officials have participated in several meetings with various members of this team over the past month.

The bill is scheduled to receive its first hearing in the Senate Local Government and Housing Committee on Thursday, April 6 (Senate Conference Room 352) upon adjournment of the full Senate (a.k.a., at a yet to-be-determined time in the morning).

Highlights of SB23-213's Potential Impacts on the City of Boulder

Given its extensiveness and the potential interconnectivity of its various provisions, city staff has not had time to conduct an exhaustive analysis of how SB23-213 could impact the city. Nevertheless, city staff has highlighted below some of the most significant changes that the bill could result in. Below each section are potential amendments to the bill that the IA Com may choose to advocate for.

1. **ADUs as a Use by Right** – Boulder would need to permit ADUs in any location where it allows single-unit detached dwellings as a use by right.
 - Size - Boulder currently limits detached ADUs to 550 sf and is reviewing potential regulatory changes allowing them up to 800 sf (detached) and half of the principal structure or 1000 sf (attached), with more square footage allowed as an affordability incentive. The bill would require that the city allow larger ADUs than the current regulations dictate, but similar to the potential regulatory changes currently under review. The bill might

not allow for meaningful size differences to be regulated for the purpose of incentivizing affordability.

- i. ***Potential Amendment*** - The city could ask that the bill be amended to strike the reference to ADU size limits.
- Design Standards – The bill would require no additional design standards be imposed greater than the primary structure. Boulder currently has a screening standard for the second door for the ADU which would be prohibited by this bill.
 - i. ***Potential Amendment*** - The city could ask that the bill allow for some design standards, with language to be crafted in guidance, or to strike the restriction that would prevent screening standards.
- Owner-Occupied – Boulder currently requires that either the primary dwelling or the ADU be occupied by the property owner. The bill would not allow Boulder to require ADUs to be contingent upon the primary residence being owner-occupied.
 - i. ***Potential Amendment*** - The city could ask that the bill be amended to allow communities to impose some sort of reasonable inclusionary housing restriction or allow the owner occupancy requirement in areas of high rental housing, so that local communities could impose additional limitations.
- Setbacks – The bill would prevent side or rear setback requirements greater than five feet for an ADU. Setback needs in Boulder (and most communities) vary based on a site-specific difference such as grade, easement demands and solar access requirements.
 - i. ***Potential Amendment*** - The city could ask that the bill be amended to strike the setback language or, failing that, that it be amended to read “setbacks cannot be more restrictive than those of the associated principal dwelling unit.”
- Parking Requirements – The bill would prohibit Boulder from requiring new off-street parking in exchange for approval of an ADU. Currently, Boulder requires one additional off-street parking space for an ADU, as well as the required parking for the principal unit. The parking requirement for the ADU can be waived if the property owner signs a Declaration of Use stating that the rent will not exceed maximum rents for households earning 75% of Area Median Income. The ADU parking requirement is also waived for designated historic properties. Since 2019, about 1/3 of ADU owners have opted to build an affordable ADU and a 2022 survey of ADU owners noted that about 40% of owners chose to designate their ADU as an affordable unit to qualify for the reduced

parking requirement. Removal of parking requirements by the state bill may eliminate one of the existing incentives for ADU owners to designate their ADU as an affordable unit.

- i. ***Potential Amendment*** - The city could ask that the bill be amended to allow for additional parking to be required when the ADU is not deed-restricted as affordable.

2. **Middle Housing** – The bill would require Boulder to allow “middle housing” as a use by right anywhere single-unit detached dwellings are a use by right as of Jan. 1, 2023. The definition of “middle housing” refers to “duplexes”, “triplexes”, “quadplexes”, “cottage clusters”, “townhomes”, and “multiplexes” (defined as 6 units).

- **Multiple Units** – The bill would require more housing units to be allowed in the RR-1, RR-2, RE, and RL-1 zoning districts, where currently only single-family residences are allowed. These zoning districts comprise 75% of residentially zoned land in the city (“R” districts).

- i. ***Potential Amendment*** - The city could ask for an amendment to lower the number of units required to be allowed by deleting what types of housing are allowed in the definition of middle housing.

- **Lot Splitting** – The bill would require Boulder to allow properties on which middle housing is allowed to be split by right using objective standards and procedures. Currently, Boulder requires a minimum lot size in each of the affected zoning districts as the primary tool to determine the intensity of the development in that area. For example, the Rural Residential (RR-1 and RR-2) districts are defined as a minimum lot size of 30,000 square feet per dwelling unit. The Low Density Residential 1 (RL-1) zoning district is defined as a minimum lot size of 7,000 square feet and per dwelling unit. Although many would-be homeowners would like to own both the structure and the land, it would be theoretically possible to devise a system of ownership of two structures that didn’t require land ownership (via condominiumization, for example).

- i. ***Potential Amendment*** - The city could ask for an amendment to the bill that strikes the lot splitting language.

- **Off-Street Parking Requirements** – The bill would prohibit Boulder from requiring new off-street parking in connection with permitting of middle housing. Regulations regarding off-street parking can be an important tool to address areas of the city where on-street parking is already in high demand, or where a higher number of units are proposed.

- i. ***Potential Amendment*** - The city could ask that the bill be amended to allow for additional parking when a certain threshold of new units is reached.

3. **Density Along “Key Corridors”** – The state would develop by rule minimum residential density limits for a yet-to-be determined area along Commuter and Urban BRT routes and local high frequency transit (15-minutes or less) routes. City staff created a very rough [map](#) that depicts the current density in Boulder,³ with high frequency transit routes designated using pink lines. By using the back-and-forth arrows on the top right of the map users can switch between the following views.

- View 1 shows all parcels in blue that are currently over 20 DU’s/Acre in blue. Everything under is yellow.
- View 2 shows gradients of under 20, 20-29, 30-39, and over 40. To see how the proposed revision would play out in Boulder.
- View 3 is just a detailed gradient.
- View 4 is a hex grid that also gives a good pulse on how density plays out across the city.

If the state requires an upzoning that results in too dramatic of a change in density allowances, the results could conflict with the city’s height limitation, and impact other aspects that are related to important community values. It is unknown what infrastructure impacts related to local water or sewer system capacity could occur.

- **Potential Amendment** - The city could ask that the bill be amended to specify only modest increases in gross density averages (e.g., 20 DU/acre or below) along Key Corridors, and/or focus the requirement only on fixed rail and Commuter/Urban BRT (such as the Flatiron Flyer) while delaying more ambitious increases (such as along local high-frequency transit routes) until such changes can be further evaluated and their implications understood.

4. **Occupancy Limits** – The bill would prohibit Boulder from enacting or enforcing residential occupancy limits that differ based on the relationships of the occupants of a dwelling. Similar laws have been enacted in [Washington](#) and [Oregon](#). California has the same restriction, resulting from a court decision (finding that local occupancy laws that treat unrelated people differently than related violate the state constitution). These states’ laws are relatively new, and evidence regarding their impacts is still emerging. It is unclear how existing federal and state case law would interact in Colorado with the elimination of a related persons allowance. Under SB23-213, the city would still be allowed to adopt limits based on health and safety concerns, indexed to objective standards like minimum square footage per person, or a maximum number of people per bedroom.

³ Views 1-3 are net measurement calculation, and do not include ROW. View 4 is a gross density calculation. This map is a very rough analysis based on city data of dwelling units and lot size.

Boulder Occupancy Standards – In Boulder, there is no limit on the number of family members that occupy a dwelling unit. The current limit on unrelated people living in a dwelling unit is three in zoning districts that largely only permit single-family homes, whereas all other zones cap the number of unrelated to four people. Boulder is going through a community process this year to consider whether to increase these limits on unrelated people to either four people per unit city wide or five people per unit citywide. City Council is currently scheduled to vote on this in August. The bill could prohibit the city from enacting or enforcing occupancy limits that differ based on relationships of the occupants, which would impact both the existing and proposed restrictions based on unrelated occupants.

- **Potential Amendment** - The city could ask to amend the bill to strike this provision.

Consistency with Council's Policy Direction

On February 9, 2023, the City Council was briefed on the likelihood of a state land use bill being introduced in the 2023 session of the Colorado legislature. In anticipation of such bill, council approved a revision to Position 22 of its [2023 Policy Statement and Regional, State and Federal Issues](#). That position now reads as follows:

22. Qualified Support for State Involvement in Land Use Matters That Furthers the City's Housing Affordability, Transportation, Climate and Equity Goals

The General Assembly is expected to consider a series of bills over multiple sessions that would result in the state assuming some level of authority or oversight on zoning and land use matters currently under the exclusive control of local governments. The city is traditionally reluctant to cede local control, especially when it results in unfunded mandates. The justification for such hesitancy is rooted in a view that local problems demand local solutions, and that one size cannot fit all. However, under circumstances where the problems sought to be addressed by the state overlaps with city goals that transcend local borders and which cannot be achieved by acting alone, Boulder has supported the creation of minimal state standards narrowly tailored to meet those goals. A prime example of such a problem is the housing affordability crisis in and around Boulder. Addressing this crisis, especially when doing so advances climate, transportation and equity goals, is a city priority. Like many of its neighboring cities, Boulder has dedicated a substantial amount of attention and resources toward achieving this goal and has seen some progress. However, making a meaningful impact will require a coordinated and shared commitment among all local governments.

For these reasons, the city supports state policy changes that encourage local governments to adopt land use policies that reduce greenhouse gases and discourage single occupancy vehicle travel. The city may also support state policies that go beyond incentives if narrowly targeted to further the goals of the Boulder Valley Comprehensive Plan, if they take into account the range of land use priorities throughout the state, if they allow for flexibility in implementation and if

they provide clarity on how local governments already meeting state standards can be exempted. The following are four policy categories that the city expects will soon be considered by the statehouse. To the extent that they are consistent with the above qualifications and the below descriptions, the city will support them.

- a) *Reduce barriers to development of accessory dwelling units and multiplexes.*
- b) *Create minimum average housing density standards along high-frequency transit corridors and multimodal transit stations.*
- c) *Reduce the number of parking spaces that can be required.*
- d) *Create regional housing assessments that identify housing needs, local housing targets proportional to the needs of all income levels, and a requirement that local governments develop housing production strategies to meet these targets.*

Before recommending a position on SB23-213, council's IA Committee will want to consider whether it has a sufficient nexus to the council-provided policy direction. The following are arguments for and against the existence of such nexus.

1. ***“[F]urther the goals of the Boulder Valley Comprehensive Plan,”***

- Pro: The bill furthers the following stated core values:
 - Compact, contiguous development and infill that supports evolution to a more sustainable urban form.
 - A diversity of housing types and price ranges.
 - A welcoming, inclusive and diverse community.
 - An all-mode transportation system to make getting around without a car easy and accessible to everyone.
- Con: The bill would be inconsistent with the BVCP's designation of a substantial portions of the city for single family residences. Some of the bill's provisions may go beyond the scope and scale of what was envisioned for specific goals and policies of the BVCP at the time of its adoption. A detailed analysis of all of the potential impacts would have to be studied by staff for a complete understanding and has not been undertaken at this time.

2. ***“[T]ake into account the range of land use priorities throughout the state,”***

- Pro: The bill applies policies differently to different tiers of municipalities, specifically “Urban Municipalities (Tier 1);” “Urban Municipalities (Tier 2);” “Rural Resort Job Center Municipalities;” “Non-Urban Municipalities;” “Small or Rural Municipalities,” and; “counties.” Boulder is designated as a Tier 1 Urban Municipality.
- Con: The bill is not specifically tailored for the unique needs of each municipality.

3. ***“[A]llow for flexibility in implementation”***

- Pro: For each of the housing policy areas listed below (ADUs, Middle Housing, Transit Oriented Communities, and Key Corridors), Boulder would have a choice between a Flexible Option that sets minimum standards, or a Default Option with a Model Code.”
- Con: The state’s minimum standards do not allow for complete flexibility in implementation.

4. ***“[P]rovide clarity on how local governments already meeting state standards can be exempted.”***

- Pro: As described above, the bill’s minimum standards are an exemption from the model code. Moreover, the bill allows for exemptions from the housing requirements for hazards and sensitive areas and also for lack of water supply or infrastructure.
- Con: Minimum standards are not the same as an exemption.

5. ***“Reduce barriers to development of accessory dwelling units and multiplexes.”***

- Pro: The bill requires that ADUs be a permitted use approved through administrative review in all eligible zoning districts where single-unit dwellings are a permitted use.
- Con: None

6. ***“Create minimum average housing density standards along high frequency transit corridors and multimodal transit stations.”***

- Pro: The bill would result in the adoption of minimum residential density standards along “Key Corridors.”
- Con: None

7. ***“Reduce the number of parking spaces that can be required.”***

- Pro: Urban municipalities may not require new off-street parking for the housing types that must now be allowed.
- Con: Preventing cities from requiring any new parking stations goes beyond a “reduction.”

8. ***“Create regional housing assessments that identify housing needs, local housing targets proportional to the needs of all income levels, and a requirement that local governments develop housing production strategies to meet these targets”***

- Pro: The bill requires that the state create various housing needs assessments and that cities each create a housing needs plan, as described above.
- Con: None