



SB 23-213 - Overall Key Concerns:

- Land use decision making should be determined *locally*. SB 23-213 removes the ability for local governments to direct growth and development to areas where infrastructure and services are available.
- This bill, rather than building on the years of effort to build the collaboration and partnerships, appears to replace or replicate them with a top down process, led and informed by four State agencies (without local or regional voices or collaboration).
- Does not provide opportunities for public engagement and input on changes that will impact local neighborhoods.
- Unfunded Mandates / Insignificant Funding Mandates
 - Results in financial impacts for Broomfield in regard to increases in infrastructure and service costs for additional residential density in areas previously developed or anticipated for a lower development density.
 - Results in financial impacts for local governments in regard to required studies and reporting to the state that will necessitate not only staff time but also outside consultants.
 - Results in financial impacts for Broomfield in regard to the staff time and resources needed to modify Broomfield's Code to meet the requirements of the bill and avoid being subject to the model code.
 - There is little detail as to how the identified funding of \$15.0M under this bill will be distributed.
- Does not include additional funding for transit service to support additional density being directed to areas without adequate transit service.
- Housing markets and their issues are localized in nature - both geographically and temporally. Communities, throughout Colorado, are already working together to address their shared housing market gaps and issues at local and regional levels. The State can and should support these efforts, rather than attempting to address through a top-down approach.

Comments Related to Multiple Sections of the Bill:

- The Multi-Agency Advisory Committee should include local government representatives also - at a minimum two from urban municipalities (one large, 100k+ and one medium/small (10-99k) and one from a rural resort job center municipality.
 - Selection process should be completed and made by non-State official (e.g. the appropriate stakeholder organization)
 - The multi-agency advisory committee referenced should also include experts in infrastructure/civil engineering and building codes.
- If DOLA rejects a jurisdiction's plan in regard to the "flexible" option, the model code goes into *immediate* effect. There is no time frame for appeal or discussion, which should be included. (Note: This language is also found in ADU's, Middle Housing, Transit Oriented Areas and Key Corridors)
- Concern regarding the number of reviews for DOLA and how will their staffing capacity be increased to ensure timely responses to jurisdictional reviews/questions (90 days currently listed for DOLA review; and 60 days to review master plans)
- The language is vague for terms such as "unreasonable", "infeasible", and "financially infeasibility" throughout the bill. In these references, standing or the definition should be specified; who is making the determination and how the determination is made.
- Without significant additional funding for regional and local transit service, it is not advisable to remove all parking minimums for ADUs and middle housing or remove off-street parking requirements for Transit Oriented

Areas. Adding density without increasing parking capacity will result in issues especially since these additional units are allowed regardless of whether there is adequate available on-street parking, close proximity to employment and commercial land uses. Furthermore, we anticipate an increase in transition to electric vehicles (EV) and most EV-charging occurs at a person's residence. Without requiring parking spaces, Broomfield will not be able to ensure adequate EV-charging access for residents in developments.

- Call for the multi-agency group to submit a report to the General Assembly (by 3/31/24), that assesses the impacts of development patterns, infrastructure, and fiscal health of... will this be specific to each locality - as each locality has very different fiscal realities (revenues, costs, and tax structures)?
 - Broomfield has (for nearly two decades) focused on the connection of fiscal impacts/health and development, and recognizes the limited fiscal impact from residential (due to the Gallagher Amendment impacts) - contributing to long-term fiscal health of school districts, primary service districts (fire, library and parks/recreation, and local governments).
- To implement the changes described in SB 23-213, the local government will need to hold a public hearing and provide notice to all property owners where their zoning is changing. Arguably, this needs to occur wherever single-family detached residential is permitted, so a large portion of Broomfield would be included. At that public hearing, if SB 23-213 is passed, the city can take public comment on why citizens don't want these revisions, but the city would need to approve the changes in any event. So, local government officials will have to say, I'd like to listen to you, local resident, but the state legislature has decided they know better and my hands are tied; we are required to adopt objective standards and we are required to adopt this legislation by state law. This is fundamentally different from how land use decision making has been approached in Colorado historically where local land use has been decided with subjective decision making by local government officials. (Note: Essentially all land use decisions that come before City Council currently would be considered subjective or unpermitted discretionary approvals under the SB 213 definitions.)
- Remove the word enforce from the general language, so that the jurisdiction will adopt or enact, but remain silent on enforcement (who and how). As written, the jurisdiction is required to enforce zoning which has not been adopted, as a result, the jurisdiction has no effective way to enforce zoning restrictions generally.
- Remove references to the ability of DOLA to update the minimum standards and model code.

Housing Needs Planning - Part 1 (Begins on page 21)

Staff has concerns on the lack of recognition of existing collaboration and planning occurring to address housing gaps and opportunities, and the connected elements (transportation, sustainability and the environment, land use, and open lands preservation).

This bill, rather than building on the years of effort to build the collaboration and partnerships, appears to replace or replicate them with a top down process, led and informed by four State agencies (without local or regional voices or collaboration). This bill requires duplication of existing and locally-driven assessment, plans and reports. Further, limited or no resources are provided to local governments to fulfill these requirements - rather funds are indicated, which will likely be used for un-defined technical assistance from state staff and state-contracted consultants.

Broomfield continues to be a thoughtful, data driven community for understanding our needs, goals and strategies. Broomfield is currently updating our Housing Needs Assessment (expected June 2023), has an existing Housing and Community Action Plan (HUD required), is developing a housing strategy in collaboration with key local partners, and works locally and regionally on housing, transportation and other related plans and strategies (with partners such as, Broomfield Housing (Authority) Alliance, Boulder Broomfield Housing Collaborative, Denver Regional Council of

Government, and many local and area stakeholders and non-profits). Rather than ignoring or replacing these efforts, Broomfield believes the best approach is to strengthen and support these efforts.

- The planning is top down, thus the needs and goals are determined at the State level, distributed to the regional level (Metropolitan Planning Organizations), and translated and directed to the local level.
- Counties should be included in the Housing Needs Planning. They are currently excluded, with no explanation or reason.
- Calls for an allocation of State-wide shares to local Housing Needs Assessment, based on factors in points I-VII (29-33-103, (2c)), which reflect a one-sided approach to the affordability and access gaps. If a community is already providing a disproportionate share of one element of the housing gap needs, this shared approach would require the community to still work to provide even more.
 - Additionally, there is ambiguity or different approaches for measuring and reporting several of these measures, specifically (III) how it is defined and measured and (V) a very ambiguous factor, which can be evaluated from a vast number of perspectives.
- This Housing Needs Assessment is completed for a twenty-five year period, based on DOLA's State Demographer (forecast) data. The housing needs assessment should be aligned with the housing needs study required through the HUD consolidated plan. There is overlap and will streamline the process for municipalities, counties and the state, recognizing HUD-required plan timing, plan elements, and outreach activities.
- Accept current needs studies if they have been conducted within the recent 3 to 5-year period as the initial submittal, and allow the required Housing plan to be built on any recently adopted housing plans.
- Financial support for administration of the required reports, assessments, and studies is a concern and is not clear. Consulting assistance and staff resources will be needed for several of the studies and assessment and the reporting requirements. A minimum of 0.25-0.5 FTE averaged annually, will be likely to track necessary data, review and manage assessments and studies. Consultant in range of +/- \$125,000.
 - Note: Is the identified funding of \$15.0M under this bill solely for local government grants - or will funding be used to fund DOLA or other State agency employees and consultants, and local governments will need to cover these unfunded mandates?
- The menu of affordability strategies is required to include, at least 2 or 3 depending, from a non-identified, detailed list of strategies (29-33-105) and displacement mitigation strategies.
- The plan requires reporting every year to DOLA of extensive information (permit issuance, workforce assigned, status, zoning including geospatial data, intergovernmental agreements entered into within the year, etc.).
- Required reporting will be challenging due to differences in the various municipalities.

ADUs - Part 2 (starts on page 45)

Since Broomfield already permits Accessory Dwelling Units, Part 2 of the Bill is not identified as an area of significant concern by staff. Comments are related to ensuring accessory dwelling units remain a secondary/accessory use on a property and to ensure they can be built without negatively impacting adjacent properties.

- To ensure the use remains accessory to the primary use and not a second dwelling unit on the property, a lower maximum size of 800 feet or fifty percent of the size of the primary residence, whichever is lesser would be appropriate rather than "whichever is greater" as currently worded.
 - It is important to ensure ADUs remain accessory in use since there are differences in how primary versus accessory uses are handled for public land dedication and utility licenses.

- Ensure cities can require adequate parking requirements for ADU not located within a quarter mile of available high-frequency transit service. It is also important to keep in mind there are limited on street parking in some areas.
- There should be clarification regarding who is responsible for determining what may be considered “unreasonable” in the regulation of permitting, siting, or construction of ADUs.
- Allow side and rear lot setbacks greater than five feet for ADU constructed in zoning districts with larger side yard/rear yard setback criteria. The criteria for ADUs should be similar to other accessory buildings (example: sheds and detached garages) for the single-family residential zoning district.
- There should be clarification regarding how the ADU section of the Bill relates to PUD zoned properties.

Middle Housing - Part 3 (starts on page 53)

Staff has significant concerns with this section. This blanket approach to allowing middle density without any discussion regarding anticipated densities or ability to direct development to areas with existing infrastructure capacity may create a financial burden for Broomfield.

- Broomfield has been proactively working to increase density in key areas.
 - Recommend revising the bill to focus on new development or areas identified by a local municipality as available for reinvestment/redevelopment.
 - In areas where there is already development, allow some ability to moderately increase density by right to ensure adequate capacity for service and infrastructure needs.
- Ensure cities can require adequate parking requirements when additional residential units are provided in areas without direct access (quarter mile) to high-frequency transit services.
- Revise the requirements regarding allowing middle density development in areas with single-family residential zoning as follows:
 - Allow cities to restrict density (example: Allow up to twice the current density allowed under the zoning code) when necessary due to existing utility infrastructure limitations.
 - Allow cities to restrict density when necessary to ensure adequate planning for water resources for the community.
 - Revise the requirements to be applicable only in areas within one quarter mile of existing transit or non-residential land uses to encourage higher densities in close proximity to other land uses.
 - Clarify that the use of the term “use by right” as defined in the bill is not intended to be applicable to PUD zoned properties which in many municipalities allow residential development only through a subjective public review process.
- Clarify that the requirement regarding the need to only adopt or enforce local laws concerning middle housing that use objective standards and procedures is intended to be applicable to those properties zoned after the effective date of this legislation.
- Clarify who is responsible for determining what may be considered unreasonable in the regulation of permitting, siting, or construction of middle housing.
 - Can utility studies be required?
 - Can improvements to existing infrastructure to serve increased density be required?
- Concerned about the determination (who and how/what) and potential conflict of “financially infeasible” resulting from requirements under a local IZO requiring the development to provide either units or cash-in-lieu.

Transit Oriented Areas - Part 4 (starts on page 63)

Part 4 is applicable to Transit Oriented Areas only. As defined in the bill, Broomfield does not have any Transit Oriented Areas as these areas must be at least 25% of their area within one half mile of an existing fixed rail transit station. Therefore, staff does not identify these areas as an immediate key concern for Broomfield. Comments are

provided as Broomfield may in the future have service at two fixed rail transit stations. Additionally there is no defined level of service required for the Transit Oriented Area rail station. Should RTD be able to implement "Peak Service" with three trips per day (directional) this section would apply as if Broomfield had a fully operational rail station with high levels of service.

- Clarify what is meant by "new" off-street parking requirements within transit-oriented areas. Are these additional off-street parking requirements not already covered in the development? What if this is vacant land that is being developed, there should be some minimum amount of parking permitted? What is the intent of this language? Broomfield would be very concerned if no off-street parking is required for any new development.
- Clarify that fees-in-lieu of affordable housing are allowed if permitted under the municipality's duly adopted inclusionary housing ordinance as well as different AMI thresholds and percentage of unit requirements.
- Clarify who determines if the inclusionary housing ordinance renders the development of multi-family residential housing in transit-oriented areas financially infeasible.
- Clarification regarding the minimum density of 40 du/acre for multi-family and 60 du/acre for mixed-income, multi-family housing. This is a "minimum" to be built. Can a property owner develop less than 40 du/acre, language suggests they could not.
- Definition of Transit Oriented Areas should define a minimum level of rail service to apply.

Key Corridors - Part 5 (page 72)

Staff has identified significant concerns with this section that we don't believe could be addressed through revisions or amendments.

- Conditions for being in the Key Corridor are not clear. As written, it suggests an existing, forthcoming or future planned transit service level of 15 minute frequency of service (29-33-503 (3c) – is the planned service in the fiscal-constrained Regional Transportation Plan or just planned? Secondly, what happens if CDOT/RTD does not deliver the planned service and/or does and then discontinues - the residents and businesses in the vertical buildings are then left with no service and likely very limited parking under the allowances of the Bill.
 - Is there guaranteed funding - and/or will there be funds from the State to remedy unserved areas (discontinuance funding)?
- Key corridors are yet to be identified and "frequent service area" maps will be created by DOLA. As part of the process the Multi Agency Committee will create a model code for "key corridors" within 1/4 mile of transit with at least 15 minute service. For Broomfield this is US 36.
- Concern that "Key Corridor" is a broad concept. Concern that densities will be applied in locations that are not served well by transit. Even if on a "key corridor" with transit may not necessarily be accessible. For example US 36 Bus Rapid Transit (BRT) will likely be identified as a key corridor but there are limited means to reasonably access the station without a vehicle. BRT works in suburban communities because there are limited stations or access points to the service. Density for suburban BRT works best around defined station areas, not necessarily the entire corridor..
- There is nothing in the Bill to ensure cities can protect planned non-residential areas to ensure adequate land areas are reserved for commercial and employment land uses.
- Concern regarding minimum residential density limits. Allowable density shall be 50% of the minimum in 2A.
 - Minimum standards to be set by DOLA for minimum density, zoning capacity, distinct size rather than established by local authority. Local law cannot unreasonable costs or delays, or cause infeasibility.
- Concern that no off street parking is required in the future identified key corridors to be identified by DOLA.

Sections 3, 4, 5, and 6 - Changes to 24-32-705 and 3301 – Factory Built Structures and Tiny Homes (starts at page 85)

Staff has not identified significant concerns with these sections.

- Would seek for clarification and unique separation of mobile, manufactured and tiny homes versus factory-built homes. The latter is different from the former three, and is often assembled on site (from factory-built sections/elements).
- Looking for clarification regarding mobile homes, etc. to understand inspection and compliance process - versus other locally built/assembled homes, which are permitted, reviewed and inspected by local building authority.

Section 7 - Section 24-67-105 Revisions - (starts at page 87):

Broomfield, as well as many other front range municipalities, heavily utilize planned unit development (PUD) zoning. There are specific requirements to changing PUD and staff has concerns regarding the intent to allow changes without proper process.

- Clarify that this applies to PUDs adopted after the effective date of this legislation. In order to change zoning on previously zoned property a jurisdiction must give notice and a public hearing to the property owners before the changes can be made. This provision will apply to PUDs in the future, but it cannot change existing PUDs without meeting the legal requirements of notice and public hearing for such a change. The PUD will be enforced as adopted.
- This section appears to provide that planned unit development (PUDs) with residential uses cannot restrict ADUs, middle housing, housing in TOD areas or housing in key corridors in a manner prohibited by the proposed article 33 of the title 29

Section 8 - Residential Occupancy Limits (starts page 88)

Staff did not identify this area as a key concern as occupancy could remain limited, but not by the relationship of the occupants.

Section 9 - Master Plans - Counties (starts page 89)

Staff has not identified key concerns for this section.

Section 10 - Power to Sell Public Property (starts page 91)

Staff has not identified key concerns for this section.

Section 11 - Requirements for Manufactured and mobile homes (starts page 91)

Staff recommends clarifying the language between manufactured and mobile homes. There are differences in regard to permitting/inspection and clarification is needed regarding whether there is an intent to change the current process.

Section 12 - Master Plans - Municipalities (starts page 94)

Staff has not identified key concerns for this section.

Section 13 - Minimum Square Feet for Residential Units (starts page 96)

Staff has not identified key concerns for this section.

Section 14 - Water Conservation and Drought Mitigation Planning (starts page 97)

Staff has not identified key concerns for this section.

Section 15 - Relationship of Regulations to HOA Requirements (starts on page 102)

Broomfield does not enforce HOA private covenants and therefore staff does not identify key concerns for this section for administration of Broomfield requirements. It should be noted the concerns staff identified above regarding middle housing and accessory dwelling units would be concerns for areas with and without HOAs and as proposed in Section 15, HOAs would not be able to moderate the mandated changes.

Section 16 - Transportation Commission (starts on page 103)

Staff has identified concerns.

- This section is a revision to CRS 43-1-106 which requires that the Transportation Commission ensure the State's Ten Year Transportation Plan projects that are "Regionally Significant" are prioritized consistent with the state strategic growth objective.
 - Regionally significant projects are any projects on an arterial that increase roadway capacity for over 1 mile. This would include improvements needed for Wadsworth Interchange, US 287, 120th Ave., CO 7, I-25, and I-25/CO7 interchange to support all modes, including lane capacity expansion to support multimodal convenience and reliability.
- The State strategic growth objectives have not been determined and will be determined by DOLA by March 2024. It is unknown how state priorities will impact state projects of interest to Broomfield will be affected by this change.

Section 17 - Prioritization Criteria for Grants (starts on page 104)

Staff has identified concerns.

- This section is a revision to CRS 43-1-113 and ensures that prioritization for grant programs administered by the Transportation Dept are consistent with state growth objectives.
- Staff is concerned that the State strategic growth objectives have not yet been determined and will be determined by DOLA. Broomfield does not know what these objectives will be or how they may impact access to transportation funding for Broomfield.

Section 18 - Transportation Planning (starts on page 104)

Staff has identified significant concerns. This section is a revision to CRS 43-1-1103 and enforces that any Regional Transportation Plan (RTP) must be consistent with the State strategic growth objective.

- Broomfield is part of the DRCOG Metropolitan Planning Organization (MPO) and Regional Transportation Plan. The State strategic growth objectives have not yet been determined and will be determined by DOLA by March 2024.
- It is not known how the state objectives will supersede the DRCOG planning process, which is collaboratively developed relying on data, knowledge and best modeling technologies and practices. DRCOG has a robust planning process that is considered nationally as an innovative planning model for MPOs.
- The DRCOG Metro Vision Plan and Regional Transportation Plan are thoughtful and strategic to include local values into the regional planning process and do not aim to supersede local control of land use or transportation.

Section 19 - Multimodal Transportation Options Fund (starts on page 105)

Staff has identified concerns.

- This section is a revision to CRS 43-4-1103. Starting in 2025 use of the Multimodal Transportation and Mitigation Options Fund (MMOF) shall only be used for multimodal projects consistent with the state strategic growth objective.
- Again, the State strategic growth objectives have not yet been determined and will be determined by DOLA by March 2024.
- It is unknown how this change will impact Broomfield’s access to MMOF funds. So far Broomfield has been able to access MMOF for Airport Creek Trail Underpass, CO 7 Starter Transit Service, and likely MMOF will be applied to the Midway Blvd design activities.

Section 20 - Appropriation (starts on page 105)

It is unclear how the funds appropriated will be utilized.