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Housing As a Matter of Statewide Concern:

Six Points to Consider in Upcoming Statewide Housing Policy Debate



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KEY FINDINGS

While a statewide housing reform bill has yet to be introduced, it is a point of significant concern for Coloradans, the talk of the Capitol and in every city hall across the state. In anticipation of its introduction, this report outlines six key issues for Coloradans to consider when reviewing any proposed policy.

Creating greater housing affordability across the state of Colorado is a top policy concern this year. As of 2021, **80% of Coloradans live in a county with an aggregate housing supply shortage.**^[i] As a result, home affordability has decreased by 85% since 2015. As of 2022, Colorado is the 8th-most unaffordable state for renters in the country.^[ii]

The current regulatory construct has **severely constrained the industry's ability to modernize, mitigating any opportunity** to harness economies of scale, resulting in housing being produced at max cost.

While there is significant upside to the deployment of statewide housing policies, it is not without risks. In particular, zoning and building code reforms focused on facilitating a regulatory environment will remain challenging for developers to bring to market, until the legislature addresses the ongoing impacts of Colorado's construction defect law. Furthermore, with over 55 pieces of legislation passed between the 2019 and 2022 legislative sessions focused on state greenhouse gas emission reduction requirements, lawmakers should resist utilizing this potential land use, planning, zoning, and building code legislation as a means to rapidly increase environmental requirements.



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INTRODUCTION

It will not surprise many to say that housing concerns are ubiquitous. As of 2021, 80% of Coloradans live in a county with an aggregate housing supply shortage. As a result, home affordability has decreased by 85% since 2015. Now, as of 2022, Colorado is the 8th-most unaffordable state for renters in the country.

As housing affordability remains elusive, Coloradans have grown impatient, demanding that local and state governments intercede. In November 2022, Colorado voters approved Proposition 123, which created the state's first affordable housing fund. While that program may be able to address a part of the issue, broader reform is needed to address housing development across the entire market. Lawmakers and citizens alike are bitterly divided over how this should be accomplished. Colorado's governing philosophy is deeply rooted in home-rule, local-control governance, which has resulted in

a highly fragmented, disaggregated market whereby each locality and county is governed by its own unique and complex land use, planning, zoning and building codes. The industry's lack of modernization has led to a failure to create the types of homes that Americans can afford in the communities where they desire to live.

The question is and remains: what can possibly be done to create greater housing affordability across the state of Colorado? Shall Coloradans proceed along the path of local control, or should they consider housing as a matter of statewide concern and look towards statewide housing and land-use policies to disrupt the status quo?

STATEWIDE HOUSING POLICY AS A MEANS TO INDUSTRY MODERNIZATION

In the 2021 report “From Conflict to Compassion: A Colorado Housing Development Blueprint for Transformational Change,” my Co-fellow Evelyn Lim and I wrote about the root causes of our housing supply unit shortfall. The report discussed zoning and building code changes, and also asked Coloradans to move up with us onto the balcony and view the housing value chain in totality. From this vantage point, the extreme variation of zoning and building codes in each local jurisdiction is impossible to ignore. The high degree of fragmentation creates a bespoke project-based building approach, severely limiting standardization and repetition across jurisdictions, resulting in a highly complex regulatory environment that limits productivity growth in the industry. Lacking a consistent regulatory framework, labor-hour productivity gains in the industry lag significantly behind all other sectors of the global economy—a paltry <1% over the last two decades, well below the 2.8% across all other sectors of the global economy combined. In essence, our non-regional, local-control housing regulatory construct has severely constrained the industry's ability to modernize, mitigating any opportunity to harness economies of scale, resulting in housing being produced at max cost.

While it is true that many Colorado local governments are working diligently to address their housing supply shortfalls, local governments have yet to join together regionally by sharing land use, planning, zoning and building codes at a meaningful scale. Rather, they continue to go it alone with wildly differing methodologies that result in continued non-standardization. The value proposition of designating housing as a matter of statewide concern is its potential to reverse this trend via the proven power of modernizing manufacturing methodologies.

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SIX KEY ISSUES TO MONITOR

State policymakers have taken note of Colorado's acute housing unit shortfall and the governor positioned housing affordability as a main priority this legislative session. While a statewide housing reform bill has yet to be introduced, it is a point of significant concern for Coloradans, the talk of the Capitol and in every city hall across the state. In anticipation of its introduction, see below for six key issues for Coloradans to consider.

1. HOUSING NEEDS ANALYSIS WITH "FAIR SHARE" HOUSING GOALS

Ask any Colorado mayor, council member, commissioner, representative, senator, or the Governor, what the state's housing production goal for 2023 is. Ask them how many starter homes the state has designated as the annual production goal. Ask them how many homes are being built to meet the needs of extremely low-income Coloradans. As it stands today, none of them could tell you; Colorado does not currently require local governments or the state to conduct a housing needs analysis nor a housing plan with fair share housing goals that serve the full spectrum of housing needs in their community or our state. This lack of data and transparency has created a knowledge gap that limits the ability of all stakeholders to make evidence-based decisions related to land use, planning, zoning, and building codes, which dictate where, how, and what housing is developed.

A local government housing needs analysis and housing plan should identify fair share housing goals over a designated time period. Fair share simply means that both the needs assessment and housing unit goals include details broken out across the housing continuum. Housing goals can not only help with eliminating supply gaps, but can also improve the ability of local governments to provide water, sewer and stormwater services, and to mitigate issues such as displacement.

2. LOCAL CONTROL FIRST - THEN A STATEWIDE MODEL CODE

Colorado has a proud history of home rule and local-control governance. Locally elected officials take great pride in their sworn duties and do not take kindly to state interventions. Because many Colorado cities and counties engage in zoning reforms to facilitate greater housing production, the state should empower local governments to continue to do so with the following caveats:

- The state should require local governments to conduct housing needs analyses with accompanied fair share housing goals as mentioned above. Local governments that complete their housing plans to include fair share housing goals, and which adopt land use, planning, zoning, and building code changes in support of their plans' goals, should continue forward without further state interventions.
- Local governments that fail to complete a housing plan by a designated deadline and/or fail to deploy or actively obstruct land use planning, zoning, and building code reforms in pursuit of their fair share housing goals should be subject to a statewide model housing code. This fair and just approach empowers local governments while ensuring that Coloradans have a failsafe option available to them should they require regulatory relief from the state.

3. ZONING CODE REFORMS

Although many Colorado local governments have or are introducing zoning code reforms, implementations are often piecemeal in distribution and deployment timelines are long. Statewide zoning policies can significantly expand the scope of land zoned for greater density in an expedited time frame. Take for example the City and County of Denver, which has been piloting accessory dwelling units since 2010—still, as of 2023, only 27% of single-family zoned land allows them. Here are a few key zoning code reforms that may be considered in 2023 legislation via a statewide housing model code.

Please note the zoning policies listed below will likely not be instituted across all single unit detached zoned jurisdictions, with differentiations taken into account regarding local governments unique population size, demographic, geographic, and infrastructure considerations.

- A statewide accessory dwelling unit (ADU) ordinance would allow, by right, the development of an ADU in any jurisdiction that currently allows single-unit detached housing, with no new additional off-street parking required, nor side or rear setbacks greater than 5 feet, and does not require owner occupancy when units are rented to local residents.

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- A statewide missing middle or “gentle density” housing ordinance would allow, by right, the development of duplexes, triplexes, and quadplexes in any jurisdiction that currently allows single unit detached housing, with no new additional off-street parking required,
- nor any greater restrictions than which is currently allowed for single unit detached family zoned jurisdictions.
- A statewide transit-oriented development housing ordinance would allow, by right, the development of multifamily and mixed-use communities of 40 units per acre within a specified distance of mass transit.
- A statewide commercial zoned lands housing ordinance would allow, by right, the development of multifamily and mixed-use communities along commercial corridors. An example Colorado might consider is from California, where AB 2011 allows for multifamily housing and mixed-use developments of four to six stories in which 15% of units are affordable to individuals earning 80% of the applicable county’s median income or less.

4. BUILDING CODE REFORM

Building codes are often overlooked as a key component of the current housing unit shortfall, taking a back seat to zoning codes. But to disregard building codes place in housing reform strategies would be a mistake. Building codes, coupled with land use, planning, and zoning codes, create the types of multifamily buildings, often referred to as “five over one” or “double-loaded corridors” in America today that are anomalous elsewhere in the world. These are multifamily buildings that are expensive to build, bulky, poorly daylit, lacking cross ventilation, disproportionately studios and one-bedrooms, and that most Coloradans despise from aesthetic and livability standpoints. If you desire better-looking, less dense, multifamily housing offerings that buck these outcomes, then you are a fan of building code reform. Here is one that may be considered in 2023 legislation:

- Point access block building codes allow for compact multifamily buildings with one egress, typically a stair and an elevator, with dwelling units that open to the stair column. This building type, which no Colorado local government currently allows, provides a host of benefits, specifically for missing middle, gentle density communities of four to six stories on small lots which are not feasible when two egresses are required. Eliminating an egress allows for the elimination of excess circulation space such as corridors, minimizing non-living space that must be built, heated, and cooled to the detriment of affordability. Point access blocks also allow for compact buildings with greater floor plate efficiencies. This reduces the embodied carbon of construction while delivering larger, family-sized units that are cross-ventilated, to the benefit of buildings’ greenhouse gas emission reduction capabilities. An example of a point access block bill was introduced recently in Washington State.

5. HOUSING AFFORDABILITY STANDARD CONSIDERATIONS

A point of significant consternation and conflict in Colorado concerns what exactly is affordable housing, who should pay for it, and just how affordable it is. Traditionally, affordable housing developments serve individuals and families earning between 30% and 60% of AMI, but, during the 2022 Colorado legislative session, the general assembly allowed for affordable housing funding to serve Coloradans earning up to 140% of AMI in rural resort communities, 120% AMI in rural communities, and 80% AMI in urban communities, signaling the far-reaching impacts of Colorado's housing supply shortfall. The following parameters should be considered if the bill is to include affordability requirements, such as inclusionary zoning, to trigger use by right, state zoning overrides.

- Housing is a continuum; for housing to be affordable, it must be abundantly available across all sectors. As such, land use, planning, zoning, and building code reforms should benefit the entire housing continuum to include both for-sale, specifically starter homes (<1,200 sq ft), and multifamily rental housing.
- Inclusionary zoning is likely being considered as a tool to influence market rate developers to either subsidize future affordable housing development via a fee in lieu or to include affordable housing units in market rate developments. Inclusionary zoning housing affordability requirements should be evidence-based, indexed to fair share housing needs as identified in local governments' housing needs analyses, incentivized by the state via funding criteria, to direct subsidies to projects that serve local governments specific affordable housing needs.
- To lead by example and facilitate a regulatory environment that delivers deeply affordable housing units, publicly owned land should be donated, leased, or sold for affordable housing and mixed-use affordable housing development. Local governments and the state should utilize these sites as innovation opportunities whereby public-private partnerships emerge to facilitate mutually beneficial outcomes via design build competitions that include for-sale, deed-restricted starter home (<1,200 sq ft) offerings.

6. PITFALLS TO AVOID

While there is significant upside to the deployment of statewide housing policies, it is not without risks.

- First, Coloradans should not be misled by promises of short-term relief via superlative pronouncements. Real estate is a costly and timely affair; project timelines average between three to five years from site selection to grand opening. Bringing on the required housing supply to bridge our gap will take time and products that come to market first will likely be at the upper end of the affordability spectrum, absent a whole of government approach via executive orders, public

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land donation, and streamlined funding allocations. If this is what Colorado lawmakers prioritize, review the 2021 Terry J. Stevinson Fellowship report, whose “Colorado Affordable Housing Crisis Challenge Grant” section outlines a plan for delivering deeply affordable housing units in an expedited fashion.

- Secondly, utilize caution against blanket upzoning of single-family-zoned jurisdictions absent design standard reforms, such as reductions of setbacks, parking requirements, floor area ratios, height limitations, roof pitch requirements, and easements. Failure to do so has resulted in a lack of desired building permits as demonstrated in cities like Minneapolis, MN.
- Additionally, Colorado lawmakers must closely evaluate the risk of displacement that upzoning poses to individuals and families living in upzoned jurisdictions. State and local governments should analyze the potential for displacement in their housing needs analyses and include anti-displacement policies within their housing plans to combat any potential negative externalities that zoning reforms may introduce to at-risk, low-income Coloradans.
- Additionally, the zoning and building code reforms focused on facilitating a regulatory environment that supports the development of party wall, attached housing offerings, will remain challenging for developers to bring to market, until the legislature addresses the ongoing impacts of Colorado’s construction defect law. While recent legislation like HB17-1279 has provided some relief, frivolous litigation continues to hamper developers’ willingness to produce this much-needed housing type.
- Finally, with over 55 pieces of legislation passed between the 2019 and 2022 legislative sessions focused on state greenhouse gas emission reduction requirements, lawmakers should resist utilizing this potential land use, planning, zoning, and building code legislation as a means to rapidly increase environmental requirements.

CONCLUSION

We Americans are quite exceptional when we put our minds towards solving a clearly defined problem. We are the country that first took flight, that sent the first man to the moon, that broke the speed of sound and just recently harnessed the power of the sun in a California laboratory. Colorado is more than capable of facilitating a regulatory environment that significantly increases the production of housing options across the continuum—the time for action is upon us. Housing policy as a matter of statewide concern and subsequent statewide housing policies, via a statewide model code with regional variations, are not meant to shame or blame cities. Rather, they represent a new, complementary strategy that places our most fundamental needs as the priority, providing Coloradans a failsafe option should they be required. The goal must be to end our housing depression. Let us start with the first point on the value chain, let us start with our codes, let us scrutinize our scale decisions, and let us build the homes that Coloradans need to thrive.

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