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MEMORANDUM

TO: Daniel Hayes and Julianne Page
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: August 1, 2016
SUBJECT: Proposed initiative measure 2017-2018 #3, concerning the Colorado growth initiative

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Purposes

The major purposes of the proposed amendment to the Colorado constitution appear to be:

1. To reserve the right to limit housing growth without legislative inhibition or penalty by initiative and referendum;

2. To reserve the right to limit housing growth on a countywide basis whereby electors throughout a county may elect to limit housing growth uniformly in every city, town, city and county, local county, and any part of such, whether statutory or home rule, within such county;
3. To specify that privately owned residential housing growth in the counties of Adams, Arapahoe, Boulder, Douglas, El Paso, Jefferson, Larimer, and Weld shall not exceed one percent annually for the years 2018 and 2019;
4. To specify that in specified counties each local government and any part of such, whether statutory or home rule, shall allot building permits so that housing growth does not exceed a one percent annual growth in the total number of dwelling units in each specified calendar year;
5. To specify that at least thirty percent of the housing subject to the limitation shall be affordable and affordable senior housing; and
6. To specify that no permits to build new privately owned residential housing units shall be issued within specified counties.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. What will be the effective date of the proposed initiative?
3. With respect to subsection (1) of the proposed initiative:
 - a. What does it mean to state "the electors of every city, town, city and county, or local county...reserve the right to limit housing growth...."? Would voter approval of the proposed initiative result in adoption of a limitation or is some other action required before such a limitation would become effective?
 - b. What does it mean to give the people a right to enact a limitation "without legislative inhibition or penalty"? What is a "legislative inhibition or penalty" for purposes of the text of the proposed initiative? If it became part of the Colorado constitution, how would the proposed initiative be inhibited by a legislative body? Are the proponents referring to the General Assembly or the governing body of particular local

governments? Are there any restrictions on legislative action that would be permitted under the proposed initiative? Would the proponents consider clarifying their intent with respect to these issues?

- c. Are there any limitations on the type of growth restrictions the electors may vote to adopt under subsection (1)? Specifically, are the electors restricted to approving a uniform limitation on housing growth as is authorized on a countywide basis in the last sentence of this subsection or are other forms of growth limitations permitted? Could the electors, for example, ban any increase in housing growth for an indefinite amount of time? What would happen if a large number of counties in a metropolitan area adopted such restrictions? Would the proponents consider clarifying their intent with respect to these issues?
- d. What do the proponents mean by "electors" for purposes of the proposed initiative? For example, do the proponents intend this term to mean "registered electors" or is some other meaning intended? Would the proponents consider adding a definition of this term?
- e. What do the proponents mean by "referendum" in this context? How would the power of referendum be exercised?
- f. How would the restrictions required by subsection (1) be applied? Are the growth restrictions that would be required by the measure restrictions on the issuance of building permits by local governments or is some other meaning intended? If the term refers to building permits, to what extent are building permits granted before the effective date of the proposed initiative, if adopted, subject to its requirements?
- g. Does the "right to limit housing growth" refer only to privately owned residential housing growth or is it the intent of the proponents to include other forms of housing growth in this right? Would the proponents consider clarifying their intent with respect to this issue?
- h. What does it mean to refer to "housing growth uniformly in every city, town, city and county, local county, and any part of such...within such county"? Do the proponents mean that housing growth may be limited in some uniform manner throughout the land area located within the territorial boundaries, in whole or in part, of each form of local

government listed? If so, would the proponents consider clarifying their intent?

- i. What specific measures do the proponents intend a uniform restriction on housing growth to mean or include?
- j. What do the proponents intend the term "uniformly" to mean? Does the term "uniformly" refer to a percentage of the population of a local government or does it require a numerically consistent housing growth limitation across the county? Does subsection (1) mandate that limits be uniform or is merely an authorization that uniform limits may be adopted? Would the proponents consider clarifying their intent with respect to these issues?
- k. Subsection (1) appears to restrict and, thereby supersede, the home rule power of Colorado municipalities. Is this the proponents' intent?
- l. How will the county exercise the power to limit growth in accordance with the last sentence of subsection (1)? By a vote of the county electors? Resolution of the board of county commissioners? Would the proponents consider clarifying their intent with respect to this issue?
- m. Assuming the proposed initiative permits a county to adopt some level of uniform growth limitations affecting every local government within the county, what is the rationale for giving this power to the county? Why should there be a uniform requirement across the county if different areas of the county are experiencing disparate growth rates?
- n. What does the term "signature requirements" apply to? Could a local county approve a signature requirement that allows a single person from anywhere in the state to file a valid initiative? What is the purpose of including this requirement?
- o. What does the last clause of subsection (1) after the words "within such county" add to the rest of the subsection? It seems to repeat other requirements stated earlier in the subsection.
- p. What happens if electors approve conflicting restrictions, either within the same local government or there are different restrictions between a county and other local governments within the county? How would these conflicts be addressed?

4. With respect to subsection (2) of the proposed initiative:
 - a. Subsection (5) of the proposed initiative defines "privately owned residential housing" and "annual growth". What is meant by "privately owned residential housing growth" as used in subsection (2)? Is this the same as "annual growth rate in the total number of dwelling units" or is some other meaning intended?
 - b. Why are the requirements of this section imposed only upon certain counties? How did the proponents decide which counties are to be covered by the requirements of subsection (2)? Why is the City and County of Denver omitted from this list?
 - c. How did the proponents arrive at the years 2018 through 2019 as the years during which the one percent limitation is to apply?
 - d. How did the proponents arrive at the one percent annual growth figure required by subsection (2)? Does this requirement mean that privately owned residential housing growth shall only increase by one percent or less as compared with the prior year in the specified counties for the specified years indicated or is some other meaning intended?
 - e. In the second sentence of subsection (2), what does "any part of such" reference? Would the proponents consider modifying the language of this subsection to make their intention on this point more clear?
 - f. How are local governments to allot building permits under the requirements of subsection (2)?
 - g. How are the limits contained in subsection (2) to be enforced?
 - h. To what extent to the requirements of subsection (2) constrain county, as contrasted with municipal, governments?
 - i. What is the basis for restricting growth based on the number of dwelling units? Would this cause local governments to favor allowing large multi-bedroom homes rather than single bedroom apartments to allow as much growth as possible? Is this consistent with the proponents' intent?
5. As a general proposition, it is the law in Colorado that land use planning and zoning matters are held to be matters of local control, which means that local governments are generally free to act in such a sphere independent of the state

- government. Have the proponents considered whether and to what extent the proposed initiative contravenes principles of local control?
6. With respect to subsection (4) of the proposed initiative:
 - a. What is the relationship between "privately owned residential housing" and "dwelling units"?
 - b. What kinds of "permits" are given for "residential housing units" as contrasted with the entire development project?
 - c. What is the relationship between the restrictions specified in subsections (1) and (2) and (4) of the proposed initiative? Specifically, does the restriction in subsection (4) add to or merely qualify the restrictions specified in subsections (1) and (2)?
 - d. What does it mean for the "section" to be "fully enacted"? When does this happen?
 7. Have the proponents considered how the proposed initiative would affect the powers of home rule cities and home rule counties?
 8. What is the relationship, if any, between the limitation authorized under subsection (1) of the proposed initiative and the limitation authorized under subsection (2)? Is it fair to say that the limitation authorized in subsection (2) is an additional and more precise requirement directed to particular local governments that flows from the general powers granted under subsection (1)? If not, please describe the relationship between these two subsections in more accurate terms.
 9. In subsection (3) of the proposed initiative, what does it mean to state that "[a]t least thirty percent of the housing subject to the limitation shall be affordable and affordable senior housing"? What is the proponents' intent in making this requirements part of the proposed initiative? Could all thirty percent be affordable senior housing, or must the thirty percent include both affordable and affordable senior housing? How did the proponents arrive at the thirty percent figure?
 10. With respect to the definition of "affordable housing" specified in subsection (5) (a) of the proposed initiative:
 - a. How did you come up with your definition? It doesn't seem to match commonly used definitions, e.g., affordable housing is "housing for which the occupant(s) is/are paying no more than 30 percent of his or

her income for gross housing costs, including utilities." *See* https://www.huduser.gov/portal/glossary/glossary_a.html

- b. If the sales price of average comparable newly constructed housing in a particular fire district is \$1 million, then affordable housing would mean houses with a sales price of \$750,000. That wouldn't seem to constitute affordable housing in any meaningful sense of the term. Why is this not a correct reading of the plain meaning of the proposed initiative?
 - c. What is the purpose of connecting affordable housing to the cost of housing in "the same fire district"? What if the affected jurisdiction is in an incorporated municipality that provides its own fire services and, therefore, there is not a relevant fire district for comparison purposes? In such circumstances, how will affordable housing be calculated?
11. With respect to the definition of "local county" under the proposed initiative:
- a. Does "local county" mean the same thing as the unincorporated portion of a county? If not, how would these terms differ? If so, why not use the more commonly accepted and understood phrase?
 - b. What is the "unincorporated or statutory county"?
 - c. What do the proponents mean by "a distinct zoning jurisdiction"?
12. With respect to the definition of "dwelling unit", it appears that each dwelling unit is given the same value under the proposed initiative. If so, why is each dwelling unit considered to have the same value when different dwelling may pose different societal costs in terms of such factors as increased sprawl and infrastructure?
13. With respect to the definition of "privately owned residential housing", what is a "summation of dwelling units"? Would the proponents consider clarifying their language on this point?
14. The limitations contained in subsections (1) and (2) (and subsection (3) with respect to affordable housing requirements) of the proposed initiative mandate a specified uniform percentage across the state and across the specified counties, as applicable. Accordingly, under the proposed initiative, a county seeking the infusion of new residents would be governed by the same limitations as a high-growth county overwhelmed with high-growth impacts. In light of the diverse interests and needs of the state, have the proponents

considered allowing differing growth limitation requirements for different political subdivisions?

15. The proposed initiative adds new requirements to the Colorado constitution instead of the Colorado Revised Statutes. Among other things, this means any changes to the text of the proposed initiative, including any changes made to better effectuate the proponents' intent, shall only be accomplished upon voter approval in a general election. In drafting the proposed initiative, have the proponents considered statutory changes instead of a constitutional amendment?
16. What portion of the proposed initiative will still be in effect after 2019?
17. The proposed initiative will not be on the ballot until the 2018 general election that will take place in November of that year. It will not become law until the governor's proclamation in December of 2018 or January of 2019. As such, how will it be possible to enact the residential housing growth restrictions specified in subsection (2) of the proposed initiative for the years 2018 or 2019?

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. Each constitutional and statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. For example, "In the constitution of the state of Colorado, **add** section __ to article X as follows:".
2. Section 15 of article XVIII of the Colorado constitution already exists. Please consider adding a new section 17.
3. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate. The following should be large-capitalized:
 - a. The first letter of the first word of each sentence;

- b. The first letter of the first word of each entry of an enumeration paragraphed after a colon; and
 - c. The first letter of proper names.
- 4. In subsection (4) of the proposed initiative, please consider changing "Section" to "section".
- 5. The fifth subsection in the proposed initiative is currently labeled as subsection "(3)". This should be changed to subsection "(5)".
- 6. It is standard drafting practice to set off nonessential phrases (i.e., introductory, parenthetical, or prepositional phrases) with commas.
- 7. In subsection (5) (a) of the proposed initiative, would the proponents consider changing "'Affordable housing' is" to "'Affordable housing' means" to conform with the language throughout the rest of the subsection and with standard drafting practices?