Legislative Roundup Part II: Examining Colorado's Response to the Affordable Housing Crisis

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A recent Multifamily Matters blog post examined several state's legislative efforts to address the affordable housing crisis by cutting through local regulations and increasing the rate of housing development. Since that publication, Frost Brown Todd announced its expansion into Colorado, resulting in the addition of several attorneys to our multifamily housing industry team. The firm's expanded footprint provides an appropriate opportunity to update the prior blog post as Colorado's legislature recently passed several bills designed to address the state's housing shortfall, estimated in one recent study to be just over 100,000 housing units. Below is a brief overview of each bill passed by the Colorado legislature this year.

House Bill 1313: Increasing Housing Density in Transit Corridors

House Bill 1313, signed into law by Governor Jared Polis on May 13, provides financial incentives including grants to improve infrastructure and a new low-income housing tax credit for certain "transit-oriented communities" that increase zoning density along transit corridors. To qualify as a transit-oriented community, a city must be located within a federally designated metropolitan planning organization, have a population of 4,000 or more, and have at least 75 acres of land falling within a quarter mile of a bus stop or a half mile of a train station (these areas being referred to as "transit corridors"). Around 31 local governments will be classified as transit-oriented communities, most of which are located along Colorado's Front Range.

Affected communities will be required to amend their land use codes to allow for an average of at least 40 units per acre in certain areas within the transit corridors, allowing developers to build more residential units in these areas. The bill's findings point to an intent to lower barriers for developing housing near transit to improve

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affordability for residents.

While the original measure would have withheld highway maintenance funding from cities that failed to comply with the density requirements, punitive measures were eliminated in favor of financial incentives. Specifically, the bill provides $35 million in grants over four years for eligible local governments to improve infrastructure near their transit corridors. Additionally, the bill established a new tax credit over the course of five years for low-income housing developments within transit corridors, to be administered the same as Colorado's existing affordable housing tax credit. Transit-oriented communities are tasked with implementing a plan by December 31, 2024, and will report every three years beginning in 2026 on their progress. These reports will determine a community's eligibility for grants and the new tax credit.

House Bill 1304: Eliminating Parking Minimums in Some Areas

House Bill 1304 was signed on May 13 and will take effect June 30, 2025. This legislation, which also applies to local governments within federally designated metropolitan planning organizations, prohibits the enforcement of minimum parking requirements in connection with the approval of certain land uses. These uses include multifamily residential and mixed-use development where at least 50% of space is residential.

One of the bill's findings states that half of parking spaces go unused on average and some local parking minimums require up to five times the actual need for a given use. The intent is to decrease housing costs and improve the efficiency of land use by giving developers more flexibility over how to design multifamily residential sites. Federal parking requirements for individuals with disabilities will not be impacted.

House Bill 1175: Right of First Refusal

House Bill 1175, which passed the state legislature but has not been signed at the time of this writing, would give local governments a right of first refusal to purchase publicly subsidized affordable housing properties when the rental restrictions expire. This applies

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to multifamily rental properties with a recorded use covenant or similar restriction related to affordability that contain at least five units. Owners of these properties that intend to sell must notify the local government and the Colorado Housing and Finance Authority (CHFA) within two years prior to expiration of the affordability restrictions, along with a second notice within six months of expiration. The local government may choose to purchase the property if they commit to preserving it as long-term affordable housing.

Additionally, local governments would have a right of first offer for the sale of other multifamily rental properties that are 30 years old and have between 15 and 100 units. Sellers must notify the local government of their intent to sell prior to listing the property, and the local government will have seven days to waive their right or indicate interest in receiving due diligence to evaluate the property. In this case, the local government would exercise its right of first offer for the purpose of providing affordable housing or mixed-income housing.

In both cases, the local government may assign its rights to CHFA or a local/state housing authority, and it may partner with CHFA and certain other entities to finance the transaction. There are a few exemptions from this requirement, including foreclosure sales, resyndications, and sales to entities related or under common control with the seller. If this legislation is signed into law, multifamily developers and investors will need to understand whether it has any implication for their projects. The bill would sunset after five years.

Senate Bill 174: Housing Needs Assessments

Senate Bill 174, which passed the legislature but has not been signed into law at the time of this writing, would require periodic housing needs assessments and action plans that could serve as guidance for stakeholders in the multifamily industry to understand where housing demand exists and how local governments are looking to prioritize investments.

This bill would create a requirement for cities and counties to conduct local housing needs assessments every six years beginning

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in 2026. These assessments would report on current housing stock and estimate future needs based on economic and population trends. In view of these assessments, local governments would be required to create housing action plans by January 1, 2028, and every six years thereafter. These plans would act as advisory documents to develop legislative priorities, promote regional coordination, and inform the public of efforts to address housing needs in the local government's respective jurisdiction.

Colorado's Department of Local Affairs (DOLA) would be responsible for administering grants out of a $15 million fund and providing technical assistance to support local governments in conducting assessments and developing housing plans. The grants can be used toward efforts to support local governments in implementing policies that promote diverse housing types and subsidized affordable housing. Additionally, DOLA would be responsible for compiling a comprehensive statewide housing needs assessment every six years beginning in 2027.

House Bill 1152: Accessory Dwelling Units

House Bill 1152 will promote diverse housing types in certain communities by banning restrictions on accessory dwelling units (ADUs). ADUs are independent residential dwelling units located on the same lot as single-family homes. They may be attached or detached from single-family homes and are commonly referred to as carriage houses, in-law suites or granny flats.

This bill was signed by the governor on May 13 and will take effect June 30, 2025. The only communities affected by these requirements are cities and counties located within a federally designated metropolitan planning organization. These jurisdictions must revise their land use codes to allow one accessory dwelling unit to be constructed for each single-family home anywhere the code allows single-family homes. The bill also creates an $8 million fund to provide loan assistance for people with low to moderate income to construct ADUs on their homes. Low to moderate income is defined in the bill as up to 120% of area median income.

House Bill 1007: Ban on Family-Related Occupancy Limits

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Beginning July 1, 2024, local governments will no longer be allowed to enforce restrictions on the number of unrelated people living together in one residential unit. One example of a city with this law currently in place is Fort Collins, where it is a civil infraction for more than three unrelated individuals to live together. Cities are still allowed to maintain occupancy restrictions that are reasonably tied to health and safety concerns or derived from affordable housing requirements.

Frost Brown Todd counsels investors, developers and other key stakeholders on affordable housing transactions in states across the country. We stay at the forefront of all legislative efforts affecting the industry, and we are ready to assist clients with navigating the changing legislative environment. For assistance with interpreting this new legislation and understanding how it may apply to your projects, please contact the authors or any attorney on Frost Brown Todd's Multifamily Housing industry team.

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