

DISTRICT COURT, DENVER COUNTY, COLORADO 1437 Bannock St. Denver, CO 80202	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Plaintiffs: CITY OF GREENWOOD VILLAGE, a Colorado Home Rule City; CITY OF ARVADA, a Colorado Home Rule City; CITY OF AURORA, a Colorado Home Rule City; CITY OF GLENDALE, a Colorado Home Rule City; CITY OF LAFAYETTE, a Colorado Home Rule City; CITY OF WESTMINSTER, a Colorado Home Rule City.</p> <p>v.</p> <p>Defendants: STATE OF COLORADO; JARED POLIS, in his official capacity as Governor of the State of Colorado; COLORADO DEPARTMENT OF LOCAL AFFAIRS, an executive branch agency of the State of Colorado; and MARIA DE CAMBRA, in her official capacity as Executive Director of the Colorado Department of Local Affairs.</p>	
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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs City of Greenwood Village, City of Arvada, City of Aurora, City of Glendale, City of Lafayette and City of Westminster (collectively, the “Cities”), for their Complaint for Declaratory and Injunctive Relief (“Complaint”) against Defendants State of Colorado, Jared Polis, in his official capacity as Governor of the State of Colorado, the Colorado Department of Local Affairs, and Maria De Cambra, in her official capacity as Executive Director of the Colorado Department of Local Affairs, state as follows:

NATURE OF THE ACTION

This matter concerns the distribution of powers enshrined in the Colorado Constitution and citizens’ basic rights to participate in their own governance. Article XX, § 6 of the Colorado Constitution provides home-rule cities, like Plaintiffs, plenary authority in matters of local concern. In such matters, a home-rule city is not inferior to the General Assembly. To the contrary, when the General Assembly enacts legislation that infringes on a home-rule city’s authority over issues of local concern, local enactments preempt the offending state statute. *See, e.g., Denver v. Colorado River District*, 696 P.2d 730, 740 (Colo. 1985) (“In purely local and municipal matters, as contrasted with matters of statewide concern, the charter provisions and legislation of a home rule city such as Denver supersede conflicting state statutes.”)

Again and again, Colorado’s courts have recognized land use and zoning as core matters of local concern. *See, e.g., Town of Frisco v. Baum*, 90 P.3d 845, 850 n.6 (Colo. 2004) (“This court has definitively stated that zoning is generally a local and municipal matter under article XX, section 6.”); *Ryals v. City of Englewood*, 364 P.3d 900, 908 (Colo. 2016) (holding that “a zoning ordinance that regulates land use” is “an area traditionally of local concern,” and that this

was a “compelling consideration in favor of the City” when determining whether the issue before the Court was of local or statewide concern.)

The Fourteenth Amendment to the United States Constitution and Article II, § 25 of the Colorado Constitution both require local governments carrying out their land-use and zoning duties to honor citizens’ rights to due process of law. This includes, most fundamentally, the right to notice and an opportunity to be heard when a city makes a site-specific development decision. *See, e.g., Cherry Hills Resort Dev. Co. v. City of Cherry Hills Village*, 757 P.2d 622 (Colo.1988); *Native American Rights Fund, Inc. v. City of Boulder*, 97 P.3d 283 (Colo. Ct. App. 2004). For decades, courts have required, and local governments have provided, notice of major land use development proposals and a right for citizens to express their views at a public hearing.

Article V, § 1(9) of Colorado’s Constitution reserves the right of referendum to the electors of every city, town, and municipality. The same section authorizes cities, towns, and municipalities to provide for the manner of exercising the initiative and referendum powers as to their municipal legislation. To change its land development code, a city council must take legislative action. Article V, § 1(9) empowers registered municipal electors to overturn such legislative acts should they so choose.

Article II, section 11 of the Colorado Constitution states that “[n]o ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation . . . shall be passed by the general assembly.”

This case concerns two enactments that violate each of the foregoing constitutional principles: H.B. 24-1313 and H.B. 24-1304. The first commands the Cities to legislatively approve dense zoning in areas around transit stations without regard to the right of referendum;

purports to extinguish citizens' due process rights by forbidding public participation in major land-use decisions; and retrospectively invalidates existing development agreements and covenants. The second prohibits the Cities from requiring sufficient parking to avoid adverse impacts from dense new development or redevelopment, and retrospectively precludes enforcement of parking requirements in existing land use approvals and development agreements. The foregoing constitutional provisions mandate declarations that H.B. 24-1313 and H.B. 24-1304 have neither force nor effect in the Cities, and injunctive relief barring their enforcement.

PARTIES, JURISDICTION AND VENUE

1. Plaintiff City of Greenwood Village ("Greenwood Village") is a Colorado home-rule municipality. Section 1.02 of Greenwood Village's Home Rule Charter dated November 6, 1990¹ reserves to Greenwood Village "all power possible for a city to have under the Constitution and laws of the State of Colorado." Pursuant to Article III of that Charter, a Mayor and City Council govern Greenwood Village.

2. Plaintiff City of Arvada ("Arvada") is a Colorado home-rule municipality. Pursuant to the adoption of Home Rule by the citizens of Arvada, Colorado on January 7, 1963, Charter Convention Members were elected on April 9, 1963 as provided in Article XX of the Constitution of the State of Colorado. Section 2.2 of Arvada's Home Rule Charter dated November 6, 2001² provides that Arvada "shall have all powers which are necessary, requisite or proper for the government and administration of its local and municipal matters, and all powers

¹ The Greenwood Village Home Rule Charter is available at:
http://greenwoodvillage-co.elaws.us/code/mc_horuchcogrlico.

² Arvada's City Charter can be found here:
https://library.municode.com/co/arvada/codes/code_of_ordinances?nodeId=PTICH

which are granted to Home Rule Cities by the Constitution of the State of Colorado.” Pursuant to Chapter 2.1 of its Charter, Arvada utilizes a Council-Manager form of government.

3. Plaintiff City of Aurora (“Aurora”) is a Colorado home-rule municipality. Pursuant to Article XX of the Constitution of the State of Colorado, its Charter Convention Members were elected on February 28, 1961. The Home Rule Charter of the City of Aurora, Colorado was approved by the voters of the city on June 27, 1961. Section 1-3 of Aurora’s Home Rule Charter provides that Aurora “shall have all powers which are necessary, requisite or proper for the government and administration of its local and municipal matters, and all powers which are granted to home rules [rule] cities by the Constitution of the State of Colorado.” Aurora Charter Section 1-2 designates a “Council-Manager” form of government.

4. Plaintiff City of Glendale (“Glendale”) is a Colorado home-rule municipality. The citizens of Glendale approved its home-rule charter in an election on May 30, 1972.³ Chapter 2, Section 2.2 of the Glendale Charter provides that “the City shall have all the power of local self-government and home rule and all power possible for a city to have under the Constitution of the State of Colorado and the laws of the State of Colorado.”

5. Plaintiff City of Lafayette (“Lafayette”) is a Colorado home-rule municipality. The Lafayette Charter Convention was organized on January 2, 1958, pursuant to Article XX of the Constitution of the State of Colorado. A home-rule charter was passed by voters at a special election held on April 1, 1958. Section 2.2 of Lafayette’s Home Rule Charter provides that Lafayette “shall have all the power of local self-government and home rule and all power possible for a city to have under the Constitution of the State of Colorado. The city shall also

³ Glendale’s City Charter can be found at [Glendale Charter](#).

have all powers that now or hereafter may be granted to municipalities by the laws of the State of Colorado, and the enumeration of particular powers in this Charter is not exclusive of others.”

Lafayette has a “Strong Council Government” form of government. By Charter, Lafayette also has a planning commission which is charged with preparation of a comprehensive plan.

6. Plaintiff City of Westminster (“Westminster”) is a Colorado home-rule municipal corporation. Westminster’s home rule charter (“Westminster Charter”) was adopted on January 7, 1958. Section 2.1 of the Westminster Charter reserves to the City all the power of local self-government and home rule and all power possible for a city to have under the Constitution of the State of Colorado, along with all powers that hereafter may be granted to municipalities by the laws of the State of Colorado.

7. Defendant State of Colorado (the “State”) is a governmental entity whose activities are authorized by, and subject to, the Colorado Constitution.

8. Defendant Jared Polis is the Governor of the State. In his official capacity as Governor, he bears ultimate responsibility as the State’s chief executive for enforcing H.B. 24-1313 and H.B. 1304.

9. Defendant Colorado Department of Local Affairs (“DOLA”) is an executive branch agency of the State of Colorado. H.B. 24-1313 and H.B. 24-1304 both task DOLA with executing certain duties those statutes create.

10. Defendant Maria De Cambra is the Executive Director of the Colorado Department of Local Affairs. As Executive Director, she oversees the execution of DOLA’s statutory duties, including those at issue in this case.

11. This Court has jurisdiction over this action pursuant to Colo. Const. Art. VI, § 9.

12. Venue is proper in this Court pursuant to C.R.C.P. 98(b)(2) because the statutes at issue were enacted at the State Capitol in Denver, because the Governor's usual place of business is at the State Capitol, and because DOLA is headquartered in Denver.

GREENWOOD VILLAGE'S INTERESTS IN LOCAL PLANNING AND ZONING

13. Greenwood Village comprises just over eight square miles within the greater Denver metropolitan area, and shares part of its northern border with the City and County of Denver itself. According to the 2020 census, Greenwood Village's population is 15,691. Greenwood Village features significant areas of open space, and large areas of low-density residential development incorporating agricultural uses that give parts of it a more rural, small town character. Along the Interstate-25 corridor, Greenwood Village features areas of denser development. This area includes all of the city's multi-family dwelling units, which collectively comprise over 40% of its housing stock; the Denver Tech Center; a regional performing arts venue at Fiddler's Green Amphitheater; and areas of mixed commercial use.

14. Three light rail stations serve these areas along the I-25 corridor. Development in these areas took place long ago, and the underlying zoning has remained stable for decades. The Denver Tech Center and Fiddler's Green, for example, were substantially completed in the 1980s and 90s. The other commercial and business areas were similarly built out in the 1980s and 90s. There has been no significant change in their use, and any impacts on the region at large from those zoning designations and existing uses have likewise been stable for decades.

15. The Greenwood Village Comprehensive Plan ("GWV Comp Plan") discusses this area as "the primary employment district within Greenwood Village," that "provides a diverse

economic and employment base.” Greenwood Village has approximately 37,000 jobs within ½ to ¾ mile of the area served by I-25 and the three light rail stations. Aesthetically, the “Corridor sets high standards in site planning, architecture, landscaping, lighting, and signage amidst an open space, park-like setting with tree-lined streets.” *See* GWV Comp Plan at 135.⁴ The GWV Comp Plan finds that the “current mix of uses in the I-25 Corridor is considered appropriate. Development and redevelopment should principally be focused on commercial and employment aspects of the Corridor Planning Area.” *Id.* at 137. Among other things, development policies in this area include maintaining easy access to and within the corridor, including “ample parking.” *Id.*

16. “Due to the built-out nature of the I-25 Corridor, significant additional housing is neither anticipated nor encouraged” in this area. *Id.* The Comp Plan observes that limited additional residential developments may occur where there are vested rights, but that “[h]igher density residential development will be discouraged in the Corridor. For purposes of the Corridor Planning Area, higher density residential is a use that exceeds on average four dwelling units per acre.” *Id.*

17. Greenwood Village developed the Comp Plan through a collaborative public process that included many public hearings and opportunities for public involvement. Greenwood Village updates the Comp Plan regularly; it has been amended numerous times since its initial adoption in 1988.

⁴ Available at:
<https://www.greenwoodvillage.com/DocumentCenter/View/18538/2018-Final-Comprehensive-Plan>

18. Section 5.01 of Greenwood Village's Home Rule Charter creates several Departments. Among these is what is now known as the Community Development Department. Section 6.01 of the Charter directs that Greenwood Village's legislative enactments shall be in the form of ordinances.

19. Greenwood Village has enacted numerous ordinances that collectively comprise its Land Development Code ("LDC"). The LDC incorporates zone districts that establish uses permitted by right or special review; Greenwood Village's zoning map identifies those areas of Greenwood Village subject to the various zone districts. The LDC also provides the process and criteria for evaluating development applications.

20. Greenwood Village's Community Development Department processes development applications pursuant to a framework set forth in the LDC. For matters requiring rezoning, special review, site development plan approval, and Planned Unit Development ("PUD") approval, the LDC contemplates public hearings before both the Planning and Zoning Commission and the City Council.

21. The LDC includes multiple opportunities for public engagement in such a process. First, § 16-2-230 requires a Neighborhood Input Meeting for rezonings and changes in use. These meetings occur on a pre-filing basis, to provide applicants with a sense of the neighboring community's reaction to a development or redevelopment proposal.

22. Second, after a development application is filed, under § 16-2-260 the Community Development Department refers it for review and comment to other departments, service providers, outside agencies and organizations that may be affected by the development or redevelopment proposal.

23. Third, pursuant to § 16-2-270, the applicant sends public notice of the application and upcoming hearing dates by mail to neighboring landowners, and also posts notice of the application on each street adjoining the property at issue. Greenwood Village itself posts notice of the application on its website and notifies other interested parties through a community email list.

24. Fourth, Greenwood Village holds public hearings before both the Planning and Zoning Commission as well as the City Council. During the hearings, members of the public and representatives of entities have an opportunity to speak and provide evidence. *See* §16-2-280. Each of those bodies may hold multiple public hearings on an application.

25. The process requires Greenwood Village's decision-makers to weigh a variety of discretionary criteria when considering an application for rezoning, PUD, Master Development Plan ("MDP"), or site development plan. Those discretionary criteria include, among other things: (1) compliance with the GWV Comp Plan; (2) compatibility with surrounding land uses; and (3) whether the proposed development or redevelopment adequately mitigates any adverse impacts it causes, including those on traffic, views, noise, property values, and the provision of public services. *See, e.g.*, LDC § 16-2-60(e).

26. In the course of issuing certain approvals, Greenwood Village enters into Development Improvement or Subdivision Improvement Agreements. A PUD application, for example, will commonly involve a request to rezone property in the course of obtaining approval to develop or redevelop that property. Such developments regularly require street, parking, drainage and other infrastructure improvements. To ensure compliance with the requested rezoning, provision of required infrastructure, and other aspects of the relevant approval,

Greenwood Village forms a contractual relationship with the applicant. Compliance with the terms of any rezoning and other conditions of approval are contractually required. The covenants in these Improvement Agreements run with the land and remain binding on the parties and their successors in interest.

27. The process set forth above is hardly unique to Greenwood Village. To the contrary, it represents a typical land-use approval process in many local jurisdictions across Colorado, including in Glendale and other plaintiff jurisdictions as discussed below. The requirements for public notices and hearings reflect affected landowners' constitutional rights to procedural due process. *See, e.g., Cherry Hills*, 757 P.2d at 625-26; *Sundance Hills v. County Comm*, 188 Colo. 321, 325 (Colo. 1975).

GREENWOOD VILLAGE'S REGULATION OF PARKING

28. Through its zoning and land use powers, Greenwood Village has historically required new multifamily residential developments to provide off-street parking. The site and design standards in the LDC apply to both multifamily redevelopment and initial development. Its parking and loading regulations are designed to protect public safety, mitigate potential adverse impacts of parking on adjacent properties, create quality aesthetics for off-street parking areas and protect the appearance and value of the community.

29. The LDC's parking and loading provisions identify minimum off-street parking spaces required for particular uses. *See* LDC § 16-21-530. Multi-family developments or redevelopments must provide 2 parking spaces per dwelling unit, plus .25 guest spaces if on-street parking is unavailable.

30. Greenwood Village has consistently required land-use applicants to adhere to its off-street parking requirements for all uses covered by the parking and loading regulations, which include multi-family housing development or redevelopment. Maintaining this requirement has been vital to ensuring that new development or redevelopment mitigates the parking impacts of new or expanded uses, including the reduction of parking conflicts and minimizing the need for on-street parking enforcement.

MASS TRANSIT INFRASTRUCTURE IN AND AROUND GREENWOOD VILLAGE

31. The Regional Transportation District's light rail service incorporates stops at Orchard and Arapahoe Stations in Greenwood Village, and Belleview Station in Denver, all along the I-25 corridor. In addition, the Dayton light rail station and RTD Route 73 bus line also provide service in or near the northernmost areas of Greenwood Village near Cherry Creek Reservoir. This transit infrastructure bears on the discussion of H.B. 24-1313 and H.B. 24-1304 herein.

32. Areas of Greenwood Village within one-half mile of the Arapahoe, Orchard and Belleview Transit Stations are nearly all developed with existing business and commercial uses. The Denver Tech Center and Fiddler's Green Amphitheater comprise a significant proportion of the existing uses.

33. The relevant zone districts are primarily: (1) the Town Center zone district, which accounts for the Denver Tech Center and Fiddler's Green; (2) Business and Professional Zone Districts; and (3) Mixed Commercial. None of these zone districts permits residential development by right, and only the Town Center zone district permits it pursuant to special review. However, as noted above, the area is largely built out and the Comp Plan discourages

additional residential development throughout the I-25 corridor, primarily due to concerns regarding traffic congestion. Light rail ridership has not reduced demands on I-25 and adjacent arterial roadways.

34. Within a three-quarter mile perimeter of the three Transit Stations along I-25 there are limited residential zone districts, including the R-1 PUD zone district and the R-2.5 zone district. None of these zone districts permits development at a density of more than one unit per acre without special review through a planned unit development (“PUD”) process. Areas within Greenwood Village near Dayton Station are largely owned by RTD, encumbered by drainage, or comprise a public school campus. To accomplish the zoning densities mandated by H.B. 24-1313 anywhere in Greenwood Village under Greenwood Village’s current LDC, an applicant would need to obtain, among other things, rezoning, PUD and special review approvals. This process would require, among other things, a Neighborhood Input Meeting and hearings before the Planning and Zoning Commission and City Council.

ARVADA’S INTEREST IN LOCAL PLANNING AND ZONING

35. Arvada comprises 39.52 square miles within the greater Denver metropolitan area. According to the 2020 census, Arvada’s population is 124,402. Arvada features approximately 4,200 acres of parks and open space, and many distinct neighborhoods and areas including the historic downtown district of Olde Town Arvada, the commercial and industrial areas of Southeast Arvada, the suburban developments of Ralston Valley, the master-planned community of Lake Arbor, the improved Ralston Corridor using the City’s Urban Renewal authority, and the large metropolitan districts of Leyden Rock and Candelas. Some of the key transportation infrastructure serving Arvada includes Interstate 70 with three exits into Arvada,

the east-west arterial roadway of Ralston Road, Colorado State Highway 95 (Sheridan Boulevard), Colorado State Highway 72 (Indiana Street), the north-south thoroughfare of Highway 93, Highway 121 (Wadsworth Boulevard), Grandview Avenue, the Regional Transportation District (RTD) Gold Line commuter rail, and the freight rail lines of the Union Pacific Railroad.

36. In the 1860s, Arvada began as a mining town and small independent farming community. Until 1950, less than 3,000 people resided in Arvada. The City, with its agricultural history, has grown substantially in the past 70 years mainly as a suburban residential community. Arvada today is known for its Olde Town, Arvada Center for the Arts and Humanities, historic residential neighborhoods, easy access to the Denver metropolitan area, and its setting near the mountains.

37. Arvada’s Comprehensive Plan (“Arvada Comp Plan”) notes that Arvada, like many other Denver Metro Area communities, continues to approach full “buildout.”⁵ Arvada Comp Plan at 22. This means that the City has less physical room to expand outward because of neighboring communities, protected open space lands, or lands with development constraints. *Id.* For several reasons – environmental sustainability, fiscal health, the impending scarcity of raw land, and the Gold Line – Arvada is focusing more and more on redevelopment and infill for certain parts of the community that are already developed. *Id.*

38. Arvada’s Comp Plan has already re-evaluated Arvada’s existing mix of land uses and authorized revisions to provide for future economic development and housing needs.

⁵ Arvada’s Comprehensive Plan can be found here:
<https://www.arvadaco.gov/307/2014-Comprehensive-Plan>

Commercial development is aimed to be strategically located, as Transit Oriented Development (“TOD”) stations, western Arvada development, and the Indiana Corridor continue to be built out. *Id.* at 20. The Comp Plan designates appropriate locations for additional residential and mixed-use development near Gold Line transit stations and suggests more compact forms of housing and mixed-use neighborhoods in transit station influence areas. *Id.* Additional areas evaluated in the plan update include Indiana Street, Ralston Road, and Wadsworth Boulevard corridors. *Id.*

39. Arvada’s Comp Plan and City Code already contemplate opportunities for diverse housing types serving varied incomes, lifestyles and age groups by providing for:

(1) opportunities for affordable housing, senior housing, and housing of different tenure types; (2) development of apartments, condominiums, townhomes, patio homes, micro-housing, and different tenure types where appropriate; (3) where possible, incorporating new housing into redevelopment, infill, mixed use, TOD, and commercial areas; (4) designating redevelopment areas and focusing resources; and (5) locating affordable housing in new employment areas and near Arvada’s three Gold Line commuter rail stations. *Id.* at 119.

40. Arvada developed the Comp Plan through a collaborative public process that included many public hearings and opportunities for public involvement and provided updates on plan implementation in 2021.

41. Arvada’s housing authority supports affordable housing through special limited partnership agreements, tax exemptions to developers, loans and grants for affordable development, and housing assistance payments contracts. Arvada also requires deed restrictions in exchange for its partnership commitments. Arvada has a range of affordable housing spanning

from less than 30% Area Median Income (“AMI”) to 60% AMI.

42. Arvada has also shown its dedication to affordable housing through its filing of a commitment to Proposition 123, the Colorado State Affordable Housing Fund. Arvada’s commitment made it eligible to apply for some of the approximately \$300 million in affordable housing funding through programs implemented through DOLA. Arvada filed its commitment on July 17, 2023 with a baseline of 4,629 affordable housing units, a 3-year commitment, and a proposed increase of 417 units.

43. Section 5.7 of Arvada’s City Code directs that “[i]n addition to such acts of the City Council as are required by other provisions of this Charter to be by ordinance, every act making an appropriation, creating an indebtedness, authorizing borrowing of money, levying a tax, establishing any rule or regulation for the violation of which a penalty is imposed, or placing any burden upon or limiting the use of private property, shall be by ordinance.”

44. Section 2-95 of Arvada’s City Code established various departments including the Department of Community Development, which is composed of experts ensuring that land use rules and regulations are tailored to the needs and development vision for Arvada. Additionally, Arvada has enacted numerous ordinances that collectively comprise its Land Development Code (“LDC”). The LDC’s purpose and intent, among other factors, is to implement Arvada’s Comp Plan, ensure that all development in the City is consistent with the spirit and intent of other plans and policies adopted by City Council, and provide for the consistent, predictable, and equitable administration of City land use and development regulations.⁶ Arvada LDC at § 1-1-1-2.

⁶ Arvada’s LDC can be found here:

https://library.municode.com/co/arvada/codes/code_of_ordinances?nodeId=LADECOARCO

45. The Arvada LDC incorporates zone districts that establish uses permitted by right, or conditionally permitted, and has a zoning map identifying those areas of Arvada subject to the various zone districts. The LDC also provides the process and criteria for evaluating development applications. Section 8-2-3 of the LDC sets out the steps in the decision-making process for applications decided by the Community Development Director, the Planning Commission, the Board of Adjustment, or the City Council.

46. The LDC lays out eight procedural tracks for review and approval of development applications. Arvada LDC at § 8-2-2-2.

47. Arvada's LDC includes multiple opportunities for public engagement in these processes, including neighborhood meetings and notice requirements that educate and inform residents, businesses, and organizations about pending development proposals in and near their neighborhoods. Arvada LDC at § 8-2-3-4.

48. These neighborhood meetings and notice requirements: (1) encourage applicants to pursue early and effective communications with affected parties prior to submitting development applications, giving the applicant an opportunity to understand and attempt to mitigate any documentable adverse impact of the proposed development on the community; (2) provide residents and property owners a forum to work together to resolve potential concerns at an early stage of the process; and (3) facilitate ongoing communication between the applicant, interested residents and property owners, businesses and organizations, the Director, and City officials throughout the development review process. *Id.*

49. Depending on the type of development application filed, the Department of Community Development refers it for review and comment to other departments, service

providers, outside agencies and organizations that may be affected by the development or redevelopment proposal. Additionally, depending on the type of development application, Arvada may require public hearings before the Planning Commission, Board of Adjustment, Floodplain Administrator, and/or City Council. During the hearings, members of the public and representatives of entities have an opportunity to speak and provide evidence. Each of those bodies may hold multiple public hearings on an application.

50. The process requires Arvada's decision-makers to weigh a variety of discretionary criteria. Those discretionary criteria include, among other things: (1) compliance with applicable standards of the LDC, other adopted City regulations, any approved Master Plan that includes the property, and any conditions specifically applied to development of the property by the Planning Commission or City Council in a prior decision affecting the property; (2) consistency with the Comprehensive Plan; (3) existing infrastructure and public improvements; (4) improvement or expansion of multi-modal connections with adjacent sites, neighborhoods, and urban centers; (5) compatibility with surrounding land uses; and (6) whether the proposed development or redevelopment adequately mitigates any adverse impacts it causes. *See, e.g.*, LDC § 8-3-5.

51. Arvada has provided an additional due process procedure through its enactment of the "Call Up" provision that enables any member of City Council, prior to the effective date of any decision by the Director on a Track 1 application, to call up the development application for consideration within 17 days of the Director's decision thus enabling Council to approve, modify, or reverse the decision of the Director or remand the application back to the Director for further consideration. LDC at § 8-2-3-11-J.

52. As noted throughout this Complaint, Arvada's process represents a typical land-use approval process in many local jurisdictions across Colorado.

ARVADA'S REGULATION OF PARKING

53. Arvada sets out its parking minimums in its LDC, Chapter 4, Article 4-5. Section 4-5-2-2A contains a chart demonstrating the minimum parking for each residential land use. Of note, Arvada already reduces parking minimums for multi-family, affordable, and senior developments. *Id.* Developers, however, commonly exceed the parking minimums Arvada requires.

54. Arvada also allows reductions to these minimums through shared parking approvals or parking credits and reductions. LDC of the City of Arvada, Ch. 4, Art. 4-5, Sec. 4-5-2-4, 4-5-2-5.

55. Parking reductions for shared parking can be achieved by the applicant submitting a study showing that the parking required to serve mixed uses is less than the sum of the parking requirements for each individual use. LDC of the City of Arvada, Ch. 4, Art. 4-5, Sec. 4-5-2-4(B).

56. Parking credits and reductions are also approved for new on-street parking or for developments within designated Transit-Oriented and Urban Center areas. LDC of the City of Arvada, Ch. 4, Art. 4-5, Sec. 4-5-2-5.

57. H.B. 24-1304 would require Arvada to remove parking minimums entirely for multi-family residential, adaptive re-use for residential purposes, and adaptive re-use mixed-use purposes for areas delineated by Colorado Department of Local Affairs as transit service area. C.R.S. § 29-36-103(1).

58. Especially in Arvada's Olde Town area, despite having dedicated garage and lot parking, Arvada continues to struggle with parking availability and often faces shortages. H.B. 24-1304 would exacerbate the already difficult parking situation in Olde Town.

59. Furthermore, in order for Arvada to require a parking minimum of one space per dwelling on any twenty-unit or more multi-family development or affordable housing development, Arvada would have to publish written findings that demonstrate that not imposing or enforcing a minimum parking requirement would have substantial negative impacts. C.R.S. § 29-36-104(2)(a). The findings must be reviewed and approved by a professional engineer, include parking utilization data collected from the area within one eighth-mile of the housing development project, and demonstrate that the local government implementation of strategies to manage parking demand for on-street parking would not be effective to mitigate the substantial negative impact on parking. Arvada would also be required to submit an annual report to the Colorado Department of Local Affairs informing the Department of any parking minimum enforced. C.R.S. § 29-36-104(3). This would cost Arvada time, money, and resources.

60. Removing any parking minimums without consideration of the specific development application and surrounding area directly infringes on Arvada's home-rule powers to control land development within its borders and prevents Arvada from making decisions which affect the quality of life of its residents, a uniquely local concern.

MASS TRANSIT INFRASTRUCTURE AND ZONING IN ARVADA

61. The RTD's light rail service has stops at 60th and Sheridan, Olde Town Arvada, and Arvada Ridge stations. RTD Bus Route 51 services the Sheridan Boulevard corridor and RTD Bus Route 76 services the Wadsworth Bypass corridor. In addition, Arvada residents live

in the northeast quadrant located within one-half mile of Wheat Ridge's Ward light rail station. These areas will be referred to as "Arvada's Transit Oriented Communities." DOLA has designated 871 acres in Arvada as a transit area for purposes of H.B. 24-1313 and H.B. 24-1304.

62. Areas within one-half mile of Arvada's Transit Oriented Communities are zoned as Mixed-Use Transit, Mixed-Use Urban, Mixed-Use Suburban, Mixed-Use Neighborhood, Medium-High Density Residential, Low-Density Residential, Open Space, Olde Town Historic, or Commercial. Arvada's current zoning already includes high density in many of the areas within Arvada's Transit Oriented Communities.

63. In order to implement the zoning required by H.B. 24-1313, Arvada would need to perform the necessary calculations, which would require evaluating approximately 3,500 parcels, to ascertain its Housing Opportunity Goal and potentially rezone areas to increase density to forty units per acre. C.R.S. § 29-35-204(2). Much of Arvada's transit areas are already developed and already zoned for over forty dwelling units per acre. Arvada targets both affordable and market-rate development in these areas. It has done so on its own initiative, without the need for mandates from the State.

64. What is certain under H.B. 24-1313, is that Arvada would be required to revise its current LDC. The revisions would limit the public's ability to be heard on new developments and reduce City Council's ability to consider resident input and make a democratic decision.

65. For example, H.B. 24-1313 would require that Arvada repeal its conditional use process for Arvada's Transit Oriented Communities under its current LDC for Mixed-Use Transit, Mixed-Use Urban, and Mixed-Use suburban zones, and instead require administrative approval. LDC of the City of Arvada, Ch. 8, Art. 8-3, Sec. 8-3-5-1. The conditional use process

begins with a neighborhood meeting to inform the nearby residents of the requested use. Then, the developer submits the conditional use application to the Planning Commission for a recommendation to City Council. The public can submit written comment or comment in-person at the Planning Commission meeting for its consideration. Once the Planning Commission makes its recommendation, the conditional use application is then submitted to City Council for its consideration and approval. At the City Council meeting, the public again gets to submit written comment or comment in-person for City Council's consideration. The City Council, as the elected representatives of the people, gets to decide if the use is consistent with Arvada's Comprehensive Plan and LDC.

66. Another example of Arvada's current processes that would be impacted by H.B. 24-1313 is Arvada's City Council call up provision of the LDC. The call up provision allows City Council to call up to a public meeting an administratively approved development for further consideration and public input. LDC of the City of Arvada, Ch. 8, Art. 8-2, Sec. 8-2-3-11(J). This process allows elected officials to hear both concerns and support from their constituents by holding a public meeting to discuss and vote on the development. City Council votes to approve, modify, deny, or remand the development application by considering whether the application conforms with Arvada's Comprehensive Plan and LDC.

67. Removal of these types of provisions from Arvada's LDC in Arvada's Transit Oriented Communities invites due process challenges and infringes on Arvada's rights as a home-rule municipality under the Colorado Constitution, Article XX, Sec. 6.

AURORA'S INTEREST IN LOCAL PLANNING AND ZONING

68. Aurora comprises 164.83 square miles within the greater Denver metropolitan area and is the second largest city by land mass in Colorado. Per Aurora's city population estimate on July 1 2024, the population was 404,219. Aurora grew by 30,065 residents between 2019 and 2024, an average annual growth rate of 1.56%, which exceeds state and Denver metro area growth rates.

69. Aurora's Comprehensive Plan ("Aurora Places Comprehensive Plan") was adopted in 2018 after an extensive community engagement and public comment process. The plan describes a city in transition from a traditional suburb to a community with a variety of urban and suburban districts that provide a variety of housing, employment, shopping, entertainment, and public spaces for a growing and changing population. The comprehensive plan is built around seven guiding Community Principles upon which the planning, policies, placemaking, and recommended action items are built and linked.

70. Among the plan's guiding principles, or highest policy priorities, is "Housing For All," which posits that "high-quality housing options enable people across all socioeconomic levels, cultural practices, and stages of life to establish and manage households." Among the plan's goals are specific mentions that affordable and senior housing should be located with access to transportation options; that housing options at all price levels be located throughout the community; and that the city should address barriers to housing variety and neighborhood choices.

71. Planning for transit-oriented development predates the Aurora Places Comprehensive Plan, when a series of station area plans was developed in anticipation of the

RTD's light rail extension and R-Line and A-Line service through Aurora. The comprehensive plan builds upon these previous land use and transportation plans and identifies a series of higher-density, mixed-use districts around light rail stations and other major transportation and shopping corridors.

72. In 2019, the city adopted a new Unified Development Ordinance (UDO) that establishes a variety of zoning districts (Article 146-2), land use regulations (Article 146-3), and accompanying development standards (Article 146-4). The UDO is a result of a years-long process that included a robust community engagement process and extensive public input into all aspects of land use, planning, and development, and was written to reflect and support the planning goals and policies found within the city's comprehensive plan and other adopted land use and development plan and policies.

73. The UDO provides rules around review, notification, decision-making, and appeal processes related to planning and development (Article 146-5). This section describes the required review, decision, and appeal processes and authorities for each development review process. This section also describes the criteria for approval for various reviews and approvals.

74. This section also prescribes public notification and meeting requirements for various planning and development procedures, including those processes that require neighborhood meetings or public hearings before the Planning and Zoning Commission and/or City Council.

75. In 2020, the city adopted the Aurora Housing Strategy that further outlined the city's policy priorities, strategies, and targets for providing housing at all income levels and household types. Since adoption, the city has implemented many of the recommendations,

including establishing a land bank program, continuing to evaluate and amend the city's Unified Development Ordinance (zoning) related to housing, creating a rental housing search tool, and creating small area plans for new mixed-income or affordable housing development. The city's housing programs also include financial counseling, housing rehabilitation programs, homelessness assistance programs, foreclosure and eviction prevention, homebuyer education, and fair housing information. Between 2020 and 2024, the city has committed or contributed \$82.4 million toward the development or rehabilitation of 1,915 affordable housing units.

76. Aurora filed a commitment to Proposition 123, the State Affordable Housing Fund that was passed by Colorado voters in 2022. The city's commitment is 550 affordable units per year, or 1,650 affordable units over the three-year commitment period. Under this program, two land acquisition applications have been awarded funding in Aurora for an estimated 339 new affordable units.

AURORA'S REGULATION OF PARKING

77. The City of Aurora has minimum parking standards for multifamily residential development. Minimum parking requirements for various land uses, including multifamily residential development, are found in the Unified Development Ordinance (UDO), Section 4.6.3 and 4.6.4.

78. Aurora's market-rate multifamily developments often provide more than the minimum number of off-street parking spaces. Affordable housing projects, by contrast, are especially impacted by the cost of providing parking and generally prefer to reduce parking requirements as low as possible.

79. Section 5.4.4(D) provides for Major Adjustments to various sections of the zoning code, including minimum off-street parking required. Major adjustments require Planning and Zoning Commission approval and must meet criteria for approval described in subsection (D)(3). Subsection (D)(3)(iv) is specifically applicable to parking requirements and impacts.

80. Aurora provides parking reductions based on proximity to mass transit, housing affordability and for mixed-use transit oriented developments. UDO Section 4.6.4. These reductions can be performed through an Administrative Adjustment Process, pursuant to Section 5.4.4(F) or through a Major Adjustment Process, pursuant to Section 5.4.4(D).

81. Aurora has several approved, but unbuilt, Planned Developments. The Fitzsimons Innovation Campus is an example. Office, medical, and research are the predominant land uses in this planned area, but it also includes a limited amount of multi-family development. The approved master plan for this development includes minimum and maximum parking requirements -- specifically a minimum of 0.25 parking spaces per dwelling unit for multifamily development and 0.5 spaces per dwelling unit for single-family attached development.

82. Conversely, other Planned Developments in Aurora that are located in transit areas are largely or completely built out. Examples include Gardens on Havana, Kirkegaard Acres, and Saddle Rock North.

83. H.B. 24-1304 would require Aurora to remove parking minimums entirely for existing multi-family residential, adaptive re-use for residential purposes, and adaptive re-use mixed-use purposes for areas delineated by DOLA. C.R.S. § 29-36-103(1). To deviate from H.B. 24-1304's proscription on parking requirements would require of Aurora the same types of project-by-project studies and expenditures referenced by other jurisdictions herein.

84. Removing any parking minimums without consideration of the specific development application and surrounding area directly infringes on Aurora's home-rule powers to control land development within its borders and prevents Aurora from making decisions which affect the quality of life of its residents, a uniquely local concern.

MASS TRANSIT INFRASTRUCTURE AND ZONING IN AURORA

85. Approximately 14,676 acres (or 22.9 square miles) of land in Aurora is designated as a "transit area" under H.B. 24-1313. According to information provided by DOLA, Aurora ranks 2nd highest in the state for transit area acreage, nearly twice the designated transit area of the next largest jurisdiction.

86. City Staff is in the process of calculating Aurora's housing opportunity goal and transit centers/zoning capacity as H.B. 24-1313 requires. This includes assessment of the development status of the properties included. The bill's designated transit areas include a mix of "Mixed Use – Transit Oriented Development" zoning and other zoning districts, many of which also allow for mixed-use or medium- or high-density residential development. The Mixed Use – Transit Oriented Development zone district is generally located around many, but not all, of Aurora's light rail transit stations. It typically is not found in transit corridors only served by high-frequency bus service, however. The H.B. 24-1313 designated transit areas include a mix of Mixed Use – Transit Oriented Development zoning and other zoning districts, many of which also allow for mixed-use or medium- or high-density residential development.

87. In order to implement the zoning required by H.B. 24-1313, Aurora would need to perform the necessary calculations, which it has not yet done, to ascertain its Housing Opportunity Goal and potentially rezone areas to increase density to meet the required goal.

C.R.S. § 29-35-204(2). Aurora’s pre-existing zoning, however, already permits significant residential density near transit. Aurora put this zoning in place on its own initiative, without the need for mandates from the State.

88. However, H.B. 24-1313 also requires Aurora to establish an administrative approval process for multi-family residential development on parcels in the area that are no more than five acres in size. As alleged above by other jurisdictions, these revisions would limit the public’s ability to be heard on new developments and reduce City Council’s ability to consider resident input and make a democratic decision.

89. As such, the bill invites due process challenges and infringes on Aurora’s rights as a home-rule municipality under the Colorado Constitution, Article XX, Sec. 6.

90. Further, while use of the Planned Development zoning district in the city is fairly rare, especially after the adoption of the 2019 Unified Development Ordinance, this bill puts more limiting criteria on use of planned developments.

91. There are at least 61 major housing developments or significant development areas in Aurora, comprising 95,189 planned and/or approved, yet unbuilt, housing units as of the city’s last estimate in December 31, 2024. Thus, as discussed below, Aurora already has approved, and continues to approve, significant new housing in concert with other local jurisdictions in the Denver metro area.

GLENDALÉ’S INTERESTS IN PLANNING, ZONING AND PARKING REGULATION

92. Glendale comprises 369 acres and shares all of its borders with the City & County of Denver. Glendale’s housing stock is overwhelmingly multi-family; the City of Glendale has only one single-family home, and 3,067 multi-family housing units. According to the 2020

Census, Glendale has a population of 4,613. Glendale has 8,001 residents per square mile and approximately 41 units per acre of residential density.

93. Glendale has significant commercial areas along Colorado Boulevard and Leetsdale Drive. These commercial areas were developed many years ago and the commercial zoning has remained stable for decades due to Glendale's zoning code. Chapter 17 of Glendale Municipal Code⁷ lays out Glendale's zoning code which has served to maintain the characteristics of Glendale's residential and commercial areas without interference from the State.

94. Given Glendale's residential and commercial density, properly managed parking is essential to ensure the health, safety and welfare of both Glendale's residents and its substantial business community. Glendale has long recognized that residential development lacking sufficient parking of its own is likely to cause residents to park in commercial lots. This would detrimentally impact Glendale's business community, create conflicts between commercial and residential uses, and expose Glendale's residents to trespass claims. To avoid these outcomes, Glendale's Code, at § 17.20.030, requires 1.5 parking stalls per studio or 1 bedroom dwelling unit, 2 parking stalls per 2 bedroom dwelling unit, 2.5 parking stalls per 3 or more bedroom dwelling unit, with 1 guest space per 3 dwelling units. H.B. 24-1304 threatens Glendale's careful management of parking in the same manner described by other jurisdictions herein.

⁷ Glendale's Zoning Code can be found at: [Title 17 ZONING](#).

GLENDALÉ’S MASS TRANSIT INFRASTRUCTURE

95. The Regional Transportation District’s bus routes 3, 11, 31, 40, 46, 83D, and 83L run through and around Glendale’s 369 acres such that a majority of Glendale falls within DOLA-designed areas for purposes of H.B. 24-1313 and H.B. 24-1304.

LAFAYETTE’S INTEREST IN LOCAL PLANNING AND ZONING

96. Lafayette is located in eastern Boulder County and was founded in 1888 by Mary Miller, who filed the town plat. In February 1889, the Town of Lafayette was incorporated. From the late 1880’s until the 1930’s Lafayette was a major coal town. Mines supplied coal for heating and power along the Front Range. Lafayette currently comprises 9.3 square miles. The population of Lafayette has risen from 970 people in 1900 to 30,411 according to the 2020 census. The population increase has been especially notable since 1980 when the population was 8,985.

97. Lafayette solely owns 606 acres of open space and jointly owns an additional 1,134 acres of open space for a total of 1,740 acres of designated open space properties, which are home to hundreds of plant and wildlife species. Lafayette has 20 parks and over 20 miles of trails. Lafayette has a historic downtown area and a downtown development authority which was passed by voters in 2024. Although Lafayette is undercut with mines, relatively little subsidence has occurred.

98. Lafayette is served by State Highways 7, 42, and 287. Lafayette is part of the Regional Transportation District (“RTD”) and is served by the following RTD routes: Jump, 225, Dash and LD.

99. Lafayette Charter Sec. 4.14 provides that “the Planning Commission is charged with the preparation of a proposed comprehensive plan” and that “the commission shall make careful and comprehensive surveys and studies of present conditions and future growth of the municipality with due regard to its relation to neighboring territory. The Comprehensive Plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the municipality and its environs, which will, in accordance with present and future needs, best promote health, safety, morals, order, convenience, prosperity, and general welfare, as well as efficiency and economy in the process of development; including among other things, adequate provisions for traffic, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of healthful and convenient distribution of population, the promotion of good civic design and arrangement, wise and efficient expenditure of public funds, and the adequate provision of public utilities and other public requirements. The Planning Commission shall recommend the adoption of the comprehensive plan to the City Council, who shall adopt the same by ordinance.”

100. In 2021, Lafayette adopted the Legacy Lafayette Comprehensive Plan (“Lafayette Comprehensive Plan”), a periodic update (i.e., complete replacement and overhaul) of Lafayette’s prior comprehensive plan. It was developed through a highly collaborative two-year community engagement process, including numerous public meetings, and involved a community member steering committee, the Lafayette Planning Commission, Planning staff, and an outside professional consultant. The Lafayette Comprehensive Plan shapes policies and projects related to growth, development, housing, and transit. Lafayette has supplemented the 2021 Comprehensive Plan with the adoption of several supplemental plans since 2021, including

the Lafayette Economic Development and Housing Strategic Plan (adopted January 2023), Lafayette Multimodal Transportation Plan (adopted October 2023), Lafayette Open Space Wildlife Plan (adopted May 2024), and the Old Town Tomorrow Action Plan (adopted February 2025). Lafayette is currently implementing the Comprehensive Plan and supplemental plans through a new Development and Zoning Code (“DZC”), which is scheduled for completion in early 2026, area plans, and other City initiatives.

101. The Lafayette Comprehensive Plan guides decisions about land use, natural resource preservation, economic development, affordable housing, transportation, city resource and infrastructure planning, and other topics. It informs where and how the City provides services like transportation, utilities, police, and fire. City staff and officials rely on the Lafayette Comprehensive Plan when reviewing development applications and considering long-term investments in city facilities and capital projects.

102. Lafayette’s Comprehensive Plan and the Lafayette Code of Ordinances⁸ (“Lafayette Code”) already contemplate opportunities for diverse housing types serving varied incomes, lifestyles, and age groups by providing for: (1) opportunities for affordable housing, senior housing, and housing of different tenure types; (2) development of apartments, condominiums, townhomes, patio homes, micro-housing, and different tenure types where appropriate; (3) encouraging transit-supportive development of sufficient density near transit corridors and stops; (4) designating redevelopment areas and focusing resources; and (5) preservation of mobile home communities through the mobile home land use ordinances

⁸ Lafayette’s Code of Ordinances can be found at:
https://library.municode.com/co/lafayette/codes/code_of_ordinances

which are intended to preserve the existing stock of mobile homes in Lafayette and enhance mobile home communities to meet the same standards of quality set for all of Lafayette; and (6) encouragement of accessory dwelling units, a strategy that the City has supported for over 20 years. Lafayette also has a long-standing commitment to affordable housing, with 9% of the current housing stock being deed-restricted affordable (the highest in Boulder County).

103. The guiding principle identified for “Community Character” in the Comprehensive Plan states, “Lafayette will grow and reinvest strategically to complement the community’s small town and historic character, strengthen its unique neighborhoods, and maintain its focus on arts, culture, and the natural environment.” Regarding “Neighborhood and Local Design,” the Comprehensive Plan gives this objective: “Lafayette desires the development of sustainable neighborhoods and districts with unique character that distinguish the community from the sameness that permeates so many cities and towns across the country.”

104. In January 2023, the Lafayette City Council approved an Economic Development and Housing Strategic Plan. This plan builds on the Comprehensive Plan by identifying specific short- and long-term actions to help create a more resilient, sustainable, and vibrant economy that allows people of all backgrounds and incomes to live, work, and thrive close to home in Lafayette. The plan is centered on the understanding that the economy and housing are linked together in many ways, with decisions about one often impacting the other. Evaluating economic development and housing together gives Lafayette a cohesive plan with complementary strategies for achieving the City’s goals in both areas.

105. Lafayette supports construction and preservation of affordable housing through financial support of the Boulder County Housing Authority (“BCHA”), preservation of existing

mobile home parks, and by the introduction of "soft density" (such as duplexes and townhomes) in existing residential neighborhoods.

106. Affordable housing in Lafayette is not a uniquely limited resource such as oil or natural gas deposits. The Lafayette Comprehensive Plan creates opportunities for affordable housing through policies that reflect community input, respect for Lafayette's historic character, and balance other community needs such as limited service areas and capacity for Lafayette's aging water treatment and wastewater treatment facilities.

107. Lafayette has also shown its dedication to affordable housing through its commitment to Proposition 123, the Colorado State Affordable Housing Fund. Lafayette's commitment made it eligible to apply for some of the approximately \$300 million in affordable housing funding through programs implemented through DOLA. Lafayette filed its commitment in July 2023 with a baseline of 750 affordable housing units and committed to create or convert 115 units into affordable housing by 2027. Separately, the City has committed to ensuring that 12% of its affordable housing stock is affordable by 2035. Furthermore, to encourage the construction of accessory dwelling units ("ADUs" or "ADU" in the singular), Lafayette generally does not assess additional water and sewer tap fees (with limited exceptions that are unlikely to apply to most ADUs).

108. Willoughby Corner is a planned neighborhood of permanently affordable homes located southwest of the intersection of 120th Street and East Emma Street in Lafayette. The neighborhood, developed by the Boulder County Housing Authority ("BCHA"), proposes approximately 400 permanently affordable homes in a variety of building types including duplexes, townhomes, and apartments, as well as senior housing, and neighborhood amenities.

In addition to new affordable workforce housing, the 24-acre neighborhood will include community gardens, a community building, dog park, trails, and park space. The first phase of construction is already completed and fully occupied by qualifying tenants.

109. BCHA anticipates that approximately 20% of the homes in Willoughby Corner will be for sale to those earning between 60-120% of the Area Median Income. Approximately 80% of the homes will be for rent to those earning between 30-60% of the Area Median Income.

110. Section 6-1 of the Lafayette Code, in accordance with section 4.6 of the Lafayette Charter, establishes administrative departments including a Planning Department composed of professional planning staff who ensure that Lafayette's land use rules and regulations are administered and enforced to implement the development vision set out in Lafayette's Comprehensive Plan and DZC.

111. Lafayette has enacted numerous ordinances that collectively comprise its current DZC (Chapter 26 of the Lafayette Code⁹). The DZC's purpose and intent is to implement Lafayette's Comprehensive Plan, ensure that all development in the City is consistent with the spirit and intent of other supplemental plans and policies adopted by City Council, and provide for the consistent, predictable, and equitable administration of City land use and development regulations.

112. Lafayette has also adopted "Community Development" ordinances in Chapter 28 of the Lafayette Code. Article II of Chapter 28 governs Lafayette's affordable housing

⁹ Lafayette's DZC can be found here:

https://library.municode.com/co/lafayette/codes/code_of_ordinances?nodeId=COOR_CH26DEZO

program, and establishes guidelines for administration of the program, including eligibility for households, a system for awarding housing, and pricing guidelines.

113. The DZC designates zoning districts where certain uses are permitted by right or conditionally permitted through special use review, and Lafayette maintains a zoning map identifying those areas subject to the various zone districts. The DZC also provides the process and criteria for evaluating development applications. Section 26-16 of the DZC sets out the review procedures for applications decided by the Planning Director, the Planning Commission, or the City Council.

114. Lafayette's DZC includes multiple opportunities for public engagement in these review procedures, including neighborhood meetings and notice requirements to educate and inform residents, businesses, and organizations about pending development proposals in and near their neighborhoods.

115. These neighborhood meetings and notice requirements: (1) encourage applicants to pursue early and effective communications with affected parties prior to submitting development applications, giving the applicant an opportunity to understand and attempt to mitigate any documentable adverse impact of the proposed development on the community; (2) provide residents and property owners a forum to work together to resolve potential concerns at an early stage of the process; and (3) facilitate ongoing communication between the applicant, interested residents and property owners, businesses and organizations, the Planning Director, and City staff and elected and appointed officials throughout the development review process.

116. Depending on the type of development application filed, the Planning Department refers it for review and comment to Lafayette's Technical Review Committee which is comprised of various departments impacted by development applications such as the fire department and public works. Additionally, depending on the type of development application, Lafayette's Code requires public hearings before the Planning Commission, and/or City Council. During the hearings, members of the public and representatives of entities have an opportunity to speak and provide evidence to the decision-maker on the record. For some applications, there may be multiple public hearings on a proposed development before the final decision is made.

117. Similar to the other plaintiffs in this matter, Lafayette's land use review procedures require public notices and hearings to ensure residents' constitutional right to procedural due process are incorporated into the Code and that all interested parties have the opportunity to be heard.

118. Lafayette's revenue is predominately derived from its local sales and use tax. This creates a need for commercial land uses to ensure Lafayette has the revenues necessary for municipal operations and services to the community.

119. The Lafayette Comprehensive Plan supports the development of commercial spaces through an "adaptable commercial" land use typology that encourages existing and new commercial centers to be designed as walkable, high-quality districts located near major transportation corridors. Additionally, an "eclectiflex" land use typology rethinks traditional industrial sites by allowing for a greater mixture of retail, entertainment, and live-work units.

These Comprehensive Plan goals will be implemented through the new DZC Lafayette is currently in the process of drafting.

120. The prominent commercial areas in Lafayette are Old Town (along South Public Road), South Boulder Road, US Hwy 287, 95th Street & Arapahoe Road, and Lafayette's southern gateway along US Hwy 287 north of Dillon Road, including Medtronic, Kaiser Permanente, and the Intermountain Health Good Samaritan Medical Center.

121. Commercial development sustains Lafayette's budget by maintaining and growing Lafayette's primary revenue stream. Tax revenues represent 40% of the forecasted revenue for Lafayette's 2025 budget. Sales and use taxes are the most significant source of tax revenue and make up two-thirds of the City's tax revenue, and property taxes make up the other third. Lafayette projects its sales and use tax revenues based on analysis of economic conditions at the national, regional, and local levels as well as knowledge of upcoming development-related activities and economic development initiatives.

LAFAYETTE'S REGULATION OF PARKING

122. Lafayette's parking requirements for different land uses are outlined in Section 26-20 of the DZC. Lafayette uses different calculations for required off-street parking based on the use (e.g., residential uses by type, various types of commercial and industrial uses, mixed uses, etc.) or based on the unique area of the City (e.g., specific off-street parking regulations in Section 26-20-2.1 of the DZC for Old Town to reflect the unique mix of commercial and residential uses and structures that have developed in this historic neighborhood).

123. Lafayette's DZC already allows significant reductions to parking minimums of up to 70% for certain public benefit projects such as senior housing. Lafayette's City Council may

also allow reductions to parking minimums after taking into consideration the following factors:

(1) expected number of cars owned by occupants of dwellings in a planned unit development; (2) parking needs of any non-dwelling uses; (3) varying time period of use; (4) conveyance, dedication or lease to the city, or to the Lafayette Urban Renewal Authority, of real property for the purpose of providing public parking in a location, and under conditions, as are approved by City Council.

124. HB 24-1304 would require Lafayette to repeal its parking minimums entirely for multi-family residential, adaptive re-use for residential purposes, and adaptive re-use mixed-use purposes for areas delineated by the Colorado Department of Local Affairs as a transit service area. C.R.S. § 29-36-103(1).

125. Furthermore, for Lafayette to require a parking minimum of one space per dwelling on any twenty-unit or more multi-family development or affordable housing development, Lafayette would have to publish written findings that demonstrate not imposing or enforcing a minimum parking requirement would have substantial negative impacts. C.R.S. § 29-36-104(2)(a). The findings must be reviewed and approved by a professional engineer, include parking utilization data collected from the area within one-eighth mile of a housing development project, and demonstrate that the local government implementation of strategies to manage parking demand for on-street parking would not be effective to mitigate the substantial negative impact on parking. Lafayette would also be required to submit an annual report to the Colorado Department of Local Affairs informing the Department of any parking minimum enforced. C.R.S. § 29-36-104(3).

126. Lafayette is traversed by several state highways and, therefore, Lafayette has several “transit corridors” per the state law’s definitions, within its city limits. As a smaller city with substantially fewer staff and financial resources than other municipalities impacted by the state’s laws (e.g., Denver or Boulder), Lafayette is especially impacted by the state’s unfunded cost and resource mandates in H.B. 24-1304 requiring impacted cities to conduct parking studies, prepare professionally reviewed written findings regarding parking minimums, and prepare annual reports to DOLA. Lafayette lacks in-house staff and financial resources to conduct the parking studies contemplated by H.B. 24-1304, and thus would suffer significant negative financial and staffing impacts to comply with that statute..

127. The mandates in H.B. 24-1304 to remove parking minimums without consideration of a specific development application and surrounding area directly infringes on Lafayette’s home-rule powers to regulate and control land development within its borders and prevents Lafayette from making decisions that directly affect the quality of life of its residents, a uniquely local concern. Moreover, Lafayette is in the process of re-writing its DZC, including its parking regulations, to reduce and simplify minimum parking requirements, to add shared parking reductions, and to add bicycle parking requirements.

MASS TRANSIT INFRASTRUCTURE AND ZONING IN LAFAYETTE

128. Lafayette is part of the Regional Transportation District (“RTD”) and is served by the following RTD routes: Long Jump, 225, Dash and LD. The Long Jump bus service has stops along Arapahoe Rd (State Highway 7) and 111th Street, and continues along South Public Road through Old Town to a Park-n-Ride facility. The Park-n-Ride facility is also served by the 225 Route, DASH, and LD routes. The LD route runs between Longmont and Denver via Lafayette.

The LD route travels along South Public Road through Old Town. The DASH connects Boulder and Lafayette and travels South Boulder Road with a side trip through Louisville. The 225 Route also connects Boulder and Lafayette and runs along Baseline Road (State Highway 7) and Public Road. These areas will be referred to as “Lafayette’s Transit Oriented Communities.”

129. Areas within one-half mile of Lafayette’s Transit Oriented Communities are zoned a mix of regional commercial, business, residential, public, and industrial districts. The City is currently rewriting its DZC to implement the Comprehensive Plan’s vision for transit-supportive development in a manner that suits the capabilities of Lafayette to provide infrastructure and municipal services for development.

130. Lafayette adopted a new Multimodal Transportation Plan in 2023, which includes a transit plan. The transit plan identified over 20 projects to support first and final mile connections to transit, transit infrastructure, and operations improvements and expansions and additional plans and studies.

131. In the Comprehensive Plan, there is also a Multimodal Mobility objective which Lafayette proactively plans for the safe and efficient movement of people and goods using all modes of travel. It commits the City to collaborating with the Denver Regional Council of Governments (“DRCOG”), the Colorado Department of Transportation (“CDOT”), and other local and regional partners focused on transportation issues to establish regional plans and strategies and identify funding for transportation improvements. The Comprehensive Plan states that that City “will provide for regional transportation connectivity through Lafayette while meeting the community's objectives for enhancing connectivity between different neighborhoods, providing for safety, and providing choices for all modes of travel.”

132. In order to implement the zoning required by HB 24-1313, Lafayette would need to perform the necessary calculations, which would require evaluating approximately 2,440 parcels in the City, to ascertain its Housing Opportunity Goal and potentially rezone areas to increase density to 40 or more dwelling units per acre. C.R.S. § 29-35-204(2).

133. Under HB 24-1313, Lafayette would be required to revise its current land use code. The revisions would limit the public's ability to be heard on new developments and reduce the City Council's ability to consider resident input.

134. For example, H.B. 24-1313 would require that Lafayette repeal its special use process for Lafayette's Transit Oriented Communities under its current DZC for Mixed-Use Transit, Mixed-Use Urban, and Mixed-Use suburban zones, and instead require administrative approval. Lafayette's current conditional use process begins with a neighborhood meeting to inform the nearby residents of the requested use. Then, the developer submits the conditional use application to the Planning Commission for a recommendation to City Council. The public can submit written comment or testify in-person at the Planning Commission meeting for its consideration. Once the Planning Commission makes its recommendation, the conditional use application is then submitted to City Council for its consideration and approval. At the City Council meeting, the public again gets to submit written comments or comment in-person for City Council's consideration. The City Council, as the elected representatives of the people, is empowered by the Colorado Constitution through the Lafayette Charter to decide if the use is consistent with Lafayette's Comprehensive Plan and Code.

135. Removal of these types of provisions from Lafayette's Code invites due process challenges and infringes on Lafayette's constitutional powers as a home-rule municipality under the Colorado Constitution, Article XX, Sec. 6.

WESTMINSTER'S INTEREST IN LOCAL PLANNING, ZONING AND PARKING REGULATION

136. The Westminster Charter directly addresses planning and zoning, providing for a Planning and Zoning Commission in section 4.16 and detailed discussion of such powers in section 11.5.1. The Westminster Charter authorizes the Westminster City Council to establish, by ordinance, procedures and requirements for the use, division and development of land; use, construction, alteration and removal of structures; and the pattern, location, and rate of growth of the community; all for the general purpose of protecting the public health, safety and welfare.

137. Westminster Charter section 11.5.1 provides, among other things, that: (1) "Land Development within the City may occur as provided by [the] City Council by ordinance"; and (2) "Provision for land use and development within the City may include use, design, location, construction and bulk of buildings and other structures, intensity of use or density of development, utilities, private and public streets and avenues, parking facilities, drainageways, pedestrian areas, parks and common open space, ownership organizations, educational facilities, recreational facilities and other public improvements and facilities."

138. The same section authorizes Westminster to "require agreements concerning land use and development and public improvements and facilities as a condition of approval of development. The City may require providing public improvements and facilities it deems reasonably necessary as a condition of approval of land use and development."

139. The Westminster Charter claims full authority over these matters pursuant to the Colorado Constitution and statutory law and provides that it shall be liberally construed to accomplish its purpose of requiring new development, not current citizens, to bear the proportionate share of costs of benefits of public improvements and facilities reasonably necessitated by growth, mitigating the adverse effects of land development and promoting coordinated, innovative, high-quality planning to produce a well-balanced, technologically advanced City.

140. Only nine percent of the area that H.B. 24-1313 and H.B. 24-1304 purport to control in Westminster is undeveloped. This amounts to 123.5 acres. Meanwhile, the former statute purports to require Westminster to zone for 50,506 new housing units. Westminster's entire existing housing inventory is 50,323 units. The legislation accordingly contemplates significant redevelopment of existing established neighborhoods, or extremely high densities on the few vacant properties available.

141. Westminster's current zoning around transit stations generally already permits the highest densities in the City. Westminster authorized this zoning on its own, without the need for State mandates. However, the statutes also require zoning changes to account for a ¼ mile corridor along six miles of Federal Boulevard in Westminster. This corridor includes existing, long-established residential and commercial areas where existing zoning does not permit the densities H.B. 24-1313 mandates.

142. H.B. 24-1313 purports to require Westminster to rezone significant portions of the City and to amend its Comprehensive Plan. The existing Comprehensive Plan identifies –

citywide – the potential for only 8,913 additional housing units. The total area of Westminster greatly exceeds the size of the areas H.B. 24-1313 targets for the creation of 50,506 new housing units.

143. Certain of Westminster’s zone districts, including areas around its existing transit stations, also provide for multi-family development as a use authorized for review through an administrative review process. The Planning Commission or City Council can, however, “call up” an application subject to such administrative review and hold a public hearing. At other locations within Westminster, multi-family housing development would typically require a discretionary PUD approval process involving a neighborhood meeting and public hearings by the Planning Commission and City Council. Eliminating City Council and Planning Commission involvement would conflict with Westminster Charter sections 4.16 and 11.5.1, which set forth City Council’s role in adopting ordinances that govern planning and development in Westminster.

144. Westminster actively supports the creation of affordable and workforce housing. The City has incentivized affordable and workforce housing in Downtown Westminster, in the area around Westminster Station, and in projects along and near Federal and Sheridan Boulevards. Westminster has partnered with multifamily developers to generate projects that are 100% affordable and others that commit to workforce housing in at least 10% of the units in market-rate projects. Affordable housing projects primarily target households earning 30% to 60% of area median income (“AMI”), but can go up to 80% AMI. Workforce housing targets 80% AMI to 120% AMI.

145. Westminster’s contributions to affordable housing projects have included cash, land, access and connection to Westminster city facilities, community development block grant (“CDBG”) and HOME investment partnership funding, fee waivers, use tax rebates, tax-exempt private activity bonds, and low-income housing tax credit (“LIHTC”) support. Westminster partners with both the Jefferson County and Adams County housing authorities to facilitate affordable housing projects located in Westminster.

146. Between 2016 and 2024, Westminster added over 2,000 new units to its housing stock. Westminster also has a substantial number of approved but unbuilt multi-family housing units within its jurisdictional boundaries. At present, 11 projects with a total of 746 units have approvals in place, but have not yet proceeded to construction.

147. Westminster regularly enters into development agreements which, among other things, provide Westminster with a contractual interest in zoning and parking requirements. H.B. 24-1313 and H.B. 24-1304 purport to retrospectively abridge those contractual rights.

148. New market-rate multi-family developments in Westminster feature higher average rents than the overall market. This trend aligns with broader patterns where newly constructed properties, especially those with modern amenities, often command premium rents compared to older units. Designated affordable housing developments are an exception to this general rule.

149. Westminster’s Municipal Code, section 11-7-4, requires one parking space for efficiency and 1-bedroom units; a minimum of 1.5 parking spaces for units with two or more bedrooms; plus one additional space for every five units for guest parking. Westminster has

permitted deviations from these requirements, and has also supported reduced parking minimums through the provision of public parking facilities.

150. At the same time, certain market-rate developments have chosen to voluntarily exceed parking minimums, such as a recent townhome project along Harlan Street in Downtown Westminster, an area subject to H.B. 24-1313 and H.B. 24-1304. There, the developer exceeded the parking minimums by 58%, providing 68 spaces instead of the required 43.

151. Westminster lacks in-house staff resources to conduct parking studies contemplated by H.B. 24-1304, and thus would suffer the same negative financial impacts identified elsewhere herein in order to comply with that statute.

152. As elsewhere, RTD usage within Westminster has fallen precipitously since 2019. The Sheridan Park-n-Ride in Westminster, for example, had nearly 80% utilization in 2019. As of 2023, it stood at only 14.5%. Similarly, while 4.11% of travelers used RTD in 2019, that figure now stands at 1.81%.

THE GENERAL ASSEMBLY’S EFFORT TO DISPLACE LOCAL ZONING AND ELIMINATE PUBLIC PARTICIPATION

153. As the preceding allegations indicate, H.B. 24-1313 departs from time-tested approaches to resolving local land-use decisions. In a move without precedent in Colorado’s history of planning and zoning, the General Assembly mandated site-specific zoning changes in select urban Colorado communities, including the Cities, that the General Assembly dubbed “transit-oriented communities.”

154. It did not require these zoning changes statewide. Instead, it restricted them to certain communities along Colorado’s front-range urban corridor, directing communities with “transit areas”—defined in the statute to include a ½ mile radius around certain transit stations

and a ¼ mile-wide corridor along certain public bus routes—to calculate a “housing opportunity goal” (hereinafter, “HOG”). The statute sets the HOG at 40 residential dwelling units per acre. *See* § 29-37-204(2), C.R.S. (2024).

155. Rezoning by one or more of the Plaintiffs would be required to meet the HOG requirement of H.B. 24-1313 and, in some cases, would require a massive change from current development patterns and comprehensive planning efforts that contain the vision for each community. For instance, forty dwelling units per acre is ten times more dense than the densest zoning currently permitted by the Greenwood Village LDC. To comply with H.B. 24-1313, Greenwood Village will need to create an entirely new zone district that is decidedly out of step with Greenwood Village’s existing zoning, Comp Plan goals, employment center identity, and community character. It is also out of step with existing zoning in certain other plaintiff Cities, as discussed above.

156. Section 29-37-204(4) contains a blueprint for implementing the HOG that sets up clear conflicts with longstanding zoning and planning practices used in many home rule municipalities, including all Plaintiffs, and violates basic constitutional powers of local governments. Among other things, it:

- In § 29-37-205, requires the Cities to rezone areas up to ¾ of a mile from a transit station or ½ mile of a transit corridor at densities sufficient to meet each community’s HOG, and to be composed solely of zone districts that uniformly allow a net housing density of at least fifteen units per acre. In Greenwood Village, this would require zoning densities dramatically out of step with existing community character, violate GWV Comp Plan objectives, and greenlight

development at levels that would more than triple Greenwood Village’s existing housing stock. Other plaintiff Cities have similarly alleged above how such requirements may conflict with their existing zoning and comprehensive plans.

- In § 29-37-205, eliminates any opportunities for public participation in land use developments or redevelopments authorized by the HOG-dictated zoning in developments at or less than 5 acres in size. The statute mandates an “administrative approval process,” defined in § 29-37-103(2)(a) to expressly forbid: (a) public hearings; (b) discretionary decisions; and (c) consideration of comprehensive plans, compatibility with existing development, public welfare, community character, or neighborhood character.
- Purports to utilize state legislation to displace local authority over the duties of the Cities’ own officials and staff, in violation of an express constitutional grant in Art. XX, § 6(a). That constitutional provision vests the Cities with the “power to legislate upon, provide, regulate, conduct or control,” among other things, “the definition, regulation and alteration of the powers [and] duties . . . of all municipal officers, agents and employees.” By contrast, § 29-37-205(1)(a) imposes a state mandate commanding city councils to draft, and vote in particular ways on, specific zoning ordinances. Then, after commanding in subsection 205(1)(a), subsection 205(1)(d) forbids local elected city councilors and appointed planning and zoning commissioners from having any involvement in certain major development applications. The latter subsection requires the Cities to assign their staff to

perform functions the legislation requires through an “Administrative Review Process.”

- Disregards, eliminates, and undermines decades of comprehensive, thoughtful, resident-informed planning undertaken by the Cities in favor of a one-size-fits-all re-zoning scheme—without any *planning* whatsoever—that will change the character, liveability, and very essence of countless neighborhoods that many of the Cities’ residents have called home for years and even generations.

157. Sections 24-67-105(5.5) and 38-33.3-106.5(5) of H.B. 24-1313 retrospectively declare agreements, covenants and restrictions that would prohibit development or redevelopment permitted by HOG-dictated zoning void. This includes development improvement agreements running to the benefit of the Cities in connection with PUD approvals.

158. H.B. 24-1313 also imposes on the Cities various obligations to make submissions to DOLA in connection with its requirements, subjecting the Cities to cost and expense.

159. Because § 29-37-205 requires a process that violates citizens’ procedural due process rights under both the United States and Colorado Constitutions, jurisdictions that comply with it may face litigation from citizens pursuant to 42 U.S.C. § 1983 and under Colorado law. Thus, the statute exposes local jurisdictions to claims for both damages and attorney fees from affected landowners and will result in further legal challenges creating uncertainty around land use approvals.

160. To comply with HOG-dictated zoning, the Cities must amend their respective codes. Zoning amendments require legislation, and are therefore subject to referendum under

both Colo. Const. Art. V, § 1(9), and charter provisions such as Greenwood Village Home Rule Charter section 7.03 and Westminster Charter section 8.9.

161. Implementing § 29-37-205 also requires the Cities to undertake legislative action to eliminate current public notice and hearing requirements, replace them with an administrative approval process, strike the consideration of discretionary criteria, and eliminate City Council call-up provisions. This sort of legislative action is likewise subject to referendum under both Article V, § 1(9) and relevant charter requirements. H.B. 24-1313 purports to abrogate those referendum rights by making no provision for voter rejection of legislation the General Assembly demands the Cities pass.

162. During proceedings concerning H.B. 24-1313 before the Senate Local Government and Housing Committee on April 23, 2024, a member of that Committee asked how H.B. 24-1313 affected the local referendum rights just discussed. The sponsors of the legislation had no answer to this question. H.B. 24-1313 itself contains no solution to this constitutional problem it creates.

H.B. 24-1304's ATTEMPT TO ASSERT CONTROL OVER LOCAL PARKING

163. The General Assembly compounded H.B. 24-1313's problems with H.B. 24-1304. Its provisions too apply only to certain local governmental entities that fall within an Applicable Transit Service Area and in a Metropolitan Planning Organization as depicted in mapping subsequently created by DOLA. Again, as a practical matter, the statute applies only to certain urban front-range communities. Portions of the Cities fall within the defined H.B. 24-1304 Transit Service Area mapped by DOLA. DOLA has identified the Cities in a list of jurisdictions subject to H.B. 24-1304.

164. H.B. 24-1304 purports to preempt and negate the Cities' existing minimum parking requirements applicable to multi-family housing development or redevelopment. It would, for example, preclude Greenwood Village from enforcing its 2 space/unit and .25 guest space regulations applicable to multi-family developments under the Greenwood Village LDC's parking and loading regulations discussed above. It further restricts the Cities from enacting future parking minimums for multi-family housing. These restrictions take effect on June 30, 2025.

165. H.B. 24-1304 provides a limited exception: a local government may require a 1 space/unit minimum for free market multi-family housing over 20 units or for affordable housing. It may do so, however, only after proving through an onerous study that the requirement is needed to avoid a substantial negative impact on safe pedestrian, bicycle or emergency access to the housing development project, or on existing on- or off-street parking spaces within 1/8 mile of the project. The study must be based upon parking utilization data, reviewed and approved by a professional engineer, and demonstrate that certain DOLA-outlined strategies to manage parking would not be effective to mitigate the identified negative impact of allowing no parking minimum on a development.

166. The onerous study must be completed and published by the local government within 90 days after receipt of a complete application for the proposed multi-family development. This is an unrealistic time frame for local government engineering departments that are already burdened with existing caseloads and projects. The practical effect of this requirement would mandate that such studies be completed by outside professional engineers on an expedited and costly basis. The time frame is additionally unworkable as the 90-day mandate

for the published study would occur prior to the affected local governmental bodies, such as planning commissions and city councils, even considering whether to pursue the 1 space/unit exception.

167. H.B. 24-1304 also interferes with approved but unbuilt free market multi-family housing developments. Section 29-36-103(1) purports to prohibit both the enactment and enforcement of local laws establishing minimum parking requirements that apply to multi-family residential development or redevelopment, adaptive re-use for residential purposes, or certain adaptive re-use mixed-use purposes. Thus, H.B. 24-1304 purports to not only eliminate parking requirements applicable to future land use developments, but also to nullify parking requirements already negotiated or required as part of prior land use approvals.

168. As a result, H.B. 24-1304 upends carefully crafted and negotiated pre-existing approvals; parking designs and associated traffic flows are commonly woven into the overall land use designs of a multi-family development. H.B. 24-1304 purports to prohibit enforcement of parking requirements contained in existing development agreements running to the benefit of the Cities, in violation of Colo. Const. Art. II, § 11.

169. H.B. 24-1304 injures the Cities by purportedly preempting their existing parking requirements. The law's intent is to remove and hamper local jurisdictions' abilities to require off-street parking in multi-family development and redevelopment. This includes mixed-use development with multi-family housing within designated Transit Areas within municipal boundaries. As discussed above, the prohibition applies to future land use approvals and existing, but unbuilt, land-use approvals on properties subject to H.B. 24-1304. Without any parking minimums, multi-family residential developers may seek to dispense with off-street

parking, leaving residents who require vehicles for commuting, schooling, and daily living to compete for street parking within these Transit Areas.

170. If future development and redevelopment proceeds without sufficient parking, the Cities will incur additional costs associated with policing over-congested street parking and the quality of life within the Cities will suffer.

171. Should the Cities try to hold future multi-family development to a 1 space/unit parking requirement, they face the cost and staffing burden of creating technical studies needed to justify H.B. 24-1304's limited 1-space exception within the 90 day window mandated by H.B. 24-1304's terms.

THE FAULTY GROUNDS FOR THE GENERAL ASSEMBLY'S ASSERTED HOUSING INTERESTS

172. H.B. 24-1313 is entitled "An Act Concerning Measures to Increase the Affordability of Housing in Transit-Oriented Communities, and, in Connection Therewith, Making an Appropriation." The General Assembly's means for accomplishing this objective, as discussed above, is to mandate dense upzoning around transit centers and forbid public participation in land use decisions. H.B. 24-1313 contains no mandate for specific affordability measures and provides no guarantee of funding for affordable housing or protection for existing low-income residents. Its underlying premise, instead, is known as "trickle-down" housing affordability: the theory posits that greenlighting massive amounts of dense new market-rate development will ultimately result in housing units elsewhere becoming more affordable.

173. Contemporary literature from both housing economists and land-use planners broadly challenges this trickle-down theory as unlikely to contribute meaningfully to affordability. Instead, contemporary studies indicate that targeted up-zonings like those H.B. 24-

1313 mandates result in: (1) little new construction; (2) what construction does occur generates luxury units accessible only to high-income households; (3) loss of existing affordable housing, as free-market redevelopments tend to target existing affordable parcels due to their lower land costs; (4) property values in upzoned areas rising rather than falling; (5) tempering of rent increases is limited to luxury properties, with rents actually rising at affordable properties; (6) any trickle-down affordability for lower-income households may take decades to materialize, if it materializes at all; and (7) by redeveloping lower-value parcels and increasing neighborhood property values, lower-income households find themselves displaced from existing affordable housing and affordable neighborhoods. *See, e.g.*, Exs. 1-5 (studies containing these findings).

174. Recognizing that H.B. 24-1313 violates Article XX, § 6, the General Assembly made legislative findings designed to bolster its trickle-down theory enough to support a cognizable state interest. These legislative findings cite studies that tend to be older and “static” in nature—they draw their conclusions by comparing zoning regimes in different communities to determine whether zoning affects housing prices. Contemporary literature cited herein, by contrast, compares zoning changes within a single community, such as up-zonings Minneapolis and Chicago pursued during the 2010s. These studies focus on the actual mechanism H.B. 24-1313 advances. Their results provide a more reliable metric for gauging the effectiveness of up-zonings than the literature upon which the General Assembly relied.

175. Exhibit 4 provides a striking example. Published in 2020, it examines a series of transit-oriented up-zonings in Chicago virtually identical to those H.B. 24-1313 mandates. *See* Ex. 4. The author concluded that transit-oriented up-zonings led to higher property prices but no new additional housing construction. *See id.* at 1.

176. Contemporary studies recognize that because modern construction costs are high, markets will generally produce dense multi-family housing only for market segments that tend to be unaffordable for lower-income households. *See, e.g.*, Ex. 3 at 12 (noting that new construction unit costs are much higher than existing structures); Ex. 6 (noting that construction costs and interest rates accounted for development community's failure to actually build previously-approved projects in Boston). Dense multi-family housing in particular requires more expensive materials, more complex techniques and higher-paid tradespeople than typical single-family construction. *See, e.g.*, Ex. 5 at 1055-56.

177. Recent housing statistics from the Denver metro area align with these conclusions. The Cities and other metro area jurisdictions have already authorized significant amounts of new multi-family housing. Between 2021 and 2023, multi-family buildings with five units or more comprised over 50% of the housing stock entering the metro Denver market. *See* Ex. 8 (DRCOG Housing Needs Assessment, App. B) at 11. In 2024, some 20,800 new apartments entered the metro Denver market. Another 30,000 remain under construction. Thus, despite H.B. 24-1313's legislative findings of a housing shortage, the multi-family market that H.B. 24-1313 seeks to stimulate already stands oversupplied. *See* Ex. 9.

178. This increase in supply caused average rents to fall from \$1875 per month to \$1819 per month. The vacancy rate has also risen to 7%, a level not seen since the aftermath of the Great Recession. *See id.*

179. The average rent reduction, however, obscures important details. Rents fell most for newer buildings, which tend to serve the upper end of the market. Units built since 2020,

which have the highest average rents, saw a 7% reduction. At the most affordable tiers of the apartment market, however, rents actually *rose* by more than 4%. *See id.*

180. Constructing new housing that is affordable to lower income households requires subsidies. *See* Ex. 7 at 9. H.B. 24-1313 provides very little in this regard. Given that limited funds exist to support affordable development, jurisdictions like the Cities have cooperated to pool available resources in order to make selected projects in one jurisdiction viable. This partnership approach has successfully generated affordable housing where a less coordinated approach could not. H.B. 24-1313 threatens this regional cooperation. Because each and every jurisdiction must legislate massive up-zonings, each jurisdiction may need to reserve available subsidies for use within its own territorial boundaries.

181. The means the General Assembly has selected in H.B. 24-1313 is likely to make matters worse for housing affordability rather than better. The market-rate housing it contemplates will serve only luxury segments of the housing market. The market is already capable of meeting demand for this luxury segment in compliance with existing local zoning and land-use laws, as the oversupplied multi-family market demonstrates. The Cities have provided that supply while maintaining laws respecting community character and citizens' constitutional due process and referendum rights.

182. H.B. 24-1313's finding that zoning and land use laws are a significant cause of housing cost increases is inconsistent with contemporary empirical research. The housing market is a complex area of the economy. Empirical studies examining up-zonings enacted in the wake of the Great Recession indicate that interest rates, construction costs, low-interest-rate

mortgage lock-in, and construction defect liability provide more robust causal explanations of housing cost increases and depressed housing starts than land use regulations.

183. Examining the inventory of existing but unbuilt development approvals provides an additional window into this reality. Projects with existing approvals have already surmounted any obstacles zoning may have posed. If those projects languish unbuilt, it signals factors exogenous to zoning bear responsibility for the failure to proceed to construction. Arapahoe County, for example, testified during hearings on H.B. 24-1313 that it has some 90,000 approved but unbuilt housing units. Westminster provides additional data in this regard above.

184. Boston investigated whether property-tax exemptions might help spur actual construction on its approved-but-unbuilt inventory. *See* Ex. 6. A panel of economists concluded that construction costs and interest rates, along with rational developer decisions to maximize profit through a metered absorption rate of new units, explained the backlog of unbuilt units, and that tax subsidies to spur construction would both be expensive and unlikely to contribute to affordability. *See* Ex. 6 at 39 (“At the current levels of construction costs and interest rates even a full tax abatement in perpetuity could not unfreeze the entire pipeline.”)

185. H.B. 24-1313 rests on a faulty premise that the Cities are failing to produce enough multi-family housing. In fact, the multi-family housing market is oversupplied and many of the Cities already have in place zoning that will allow the market to continue generating abundant multi-family housing if market conditions make it rational for developers to do so.

186. A 2024 regional housing needs assessment demonstrates that the vast majority of unmet demand for housing is at levels of affordability that require subsidies. *See* Ex. 7 at 9.

H.B. 24-1313 provides nowhere near the amount or type of funding necessary to produce a meaningful amount of subsidized housing.

187. By mandating up-zonings and administrative review near public transit, H.B. 24-1313 is more likely to result in the most desirable sites for development of affordable housing being consumed by market-rate development before funding for affordable housing becomes available.

188. The General Assembly's purported interest in improving housing affordability through H.B. 24-1313 is therefore illusory. Instead, the bill appears to be a political gesture designed to give the appearance of action. The real-world effects of the bill will be to: (1) deny the Cities and their citizens the ability to engage in responsible land-use planning in accordance with long-standing constitutional principles; and (2) raise the cost of housing around transit stations. These negative housing effects will, in turn, also negatively impact the General Assembly's second stated ground for H.B. 24-1313 and H.B. 24-1304: increasing use of mass transit.

THE FAULTY GROUNDS FOR THE GENERAL ASSEMBLY'S ASSERTED TRANSPORTATION INTERESTS

189. H.B. 24-1313 and 24-1304 both fault local land-use and zoning decisions for failures in the Regional Transportation District's performance. According to the General Assembly, if local governments authorize more dense development near transit stations, and eliminate parking requirements for such development, RTD's performance will improve and citizens will drive fewer cars.

190. Again the General Assembly assumes a cause-and-effect relationship that does not exist. In fact, to the extent that a causal relationship does exist between market-rate up-

zonings near transit centers and mass transit use, research indicates that the General Assembly's means will accomplish the *opposite* of its transit use objective.

191. RTD's challenges are well known. They most visibly concern passenger safety, reliability and, to a lesser extent, remote work.

192. RTD's ridership dropped precipitously after the COVID-19 pandemic. In 2022, RTD ridership stood at 54% of its 2019 level, after having already declined 5% between 2014 and 2019. *See* Ex. 10 at 4. Ridership has recovered only modestly since. *See id.* at 10. These ridership declines took place during a time of population growth in Colorado centered on the front range communities RTD serves, including dense infill development along RTD routes in Denver and other metro area communities. RTD's problems are not rooted in a lack of potential passengers.

193. Instead, RTD's principal problem is that passengers perceive RTD to be plagued by drug use and crime. *See, e.g.,* Exs. 11. Between 2019 and 2023, violent crime at transit terminals—including murder, sexual assault, aggravated assault and robbery—rose by 53%. *See* Ex. 10 at 5. Property crime rose by 89% during this period, drug crime rose by 248%, and drug paraphernalia violations rose by 858%. RTD Director Doug Tisdale acknowledged to the Denver Post that violence “has the compounded effect of deterring customers from using our buses and trains.” Ex. 11.

194. Another significant problem is mass transit's unreliability. In late February 2025, Westminster Mayor McNally and Westminster City Staff met with CDOT and Front Range Passenger Rail (“FRPR”) regarding rail station locations within Westminster. Since voters approved FasTracks in 2004, Westminster has anticipated stations in the northwest rail corridor

and facilitated Westminster's highest density multi-family projects around these future station locations. In February 2025, however, CDOT and FRPR informed Westminster that one of the two planned rail stations would not come to fruition. This exemplifies how H.B. 24-1313 and H.B. 24-1304 mandate high density, under-parked residential zoning in areas that may never actually receive transit service.

195. As for scheduling, FRPR plans three train runs per day. Similarly, the RTD B Rail Line now only operates once hourly after continued RTD service cuts. Citizens who commute to work, school, or appointments cannot rely upon a once-hourly service. Both the FRPR and RTD service schedules are inadequate to support resident decisions to shift from driving to rail travel. Thus, high-density, under-parked transit-oriented development is likely to significantly exacerbate traffic and parking problems for existing communities.

196. This may explain why, since opening in 2016, no transit-oriented multi-family projects have advanced around Westminster Station. The problem is not zoning; Westminster has had high-density residential and mixed-use zoning with streamlined administrative approvals in place since May 2017.

197. Meanwhile, DOLA's transit mapping for H.B. 24-1304 includes nearly all arterials in Westminster, including 72nd Ave, 92nd Ave, 112th Ave, 120th Ave, Federal Blvd, Sheridan Blvd, and Wadsworth Parkway. This mapping relies on RTD's System Optimization Plan, which carries no guarantee proposed transit services will actually be operational in the future. Existing RTD bus service for most of these corridors is hourly service that runs only 12 or 13 hours per day, and some routes have no weekend service. This level of service is inadequate to displace the need for on-site parking for residential development.

198. Residents and non-residents alike already frequently address Westminster's City Council with complaints about the lack of on-street parking and conflicts between residents and visitors. Increasing the number of vehicles parked on-street will exacerbate demands on parking enforcement staff who are not resourced to manage additional enforcement actions, and will hamper snow removal and street maintenance operations in Westminster.

199. RTD acknowledges that it relies on a ridership base concentrated among people toward the lower end of the AMI scale. *See* Ex. 12 at 5. This conclusion is consistent with national findings. *See* Ex. 13 at 3 ("Especially outside the central cities of legacy regions [New York, Chicago, Boston, Philadelphia, Washington, D.C. and San Francisco], transit functions primarily as a social service for people unable to afford or operate automobiles.") To increase public transit usage, therefore, communities should seek to concentrate housing affordable to lower income households near transit stations. RTD endorses this view. *See* Ex. 12 at 3.

200. Recent research indicates that as housing costs increase in a neighborhood, public transit use declines. *See* Ex. 13. New market-rate housing, as discussed above, is expensive to build and tends to target higher income households. Moreover, as Ex. 4 in particular shows, upzonings around transit stations raise housing prices.

201. H.B. 24-1313 requires local communities to upzone around transit centers to stimulate new market-rate development. These new market-rate developments will increase housing costs, and displace those most inclined to use public transit. Even if the General Assembly's trickle-down theory were correct, any increase in housing affordability will result away from transit centers with their new luxury housing, displacing existing low-income public

transit users to areas where they then have to drive. H.B. 24-1313 is accordingly likely to make matters worse for RTD.

202. The Cities' lived experience corroborates the likelihood of this dynamic. New free-market multi-family housing serves luxury segments of the housing markets; to make these developments attractive to prospective purchasers or tenants, developers often voluntarily *exceed* the parking requirements contained in local codes. In Greenwood Village, for example, a 2024 mixed-use multi-family development application near RTD's Orchard light rail station sought and obtained approvals for high-end luxury townhomes. The developer voluntarily chose to provide 22 more residential parking spaces in the 54-unit residential complex than Greenwood Village's LDC required, and requested to exceed the LDC's maximum permitted area in order to maximize parking on the property. Westminster's allegations above provide an additional example of this phenomenon.

203. The same pattern held true in the recent development of numerous multi-family complexes near the Belleview Transit Station in Denver. The most recent of these, completed in 2024 at 4875 S. Monaco St., is an 81-unit project. The local code required 81 parking spaces; the developer provided 188, making the building 132% over-parked. Other multi-family developments completed over the last ten years near Belleview Station range from 4% to 25% over-parked. None are under-parked.

204. Over-parked luxury developments serve households who avoid RTD. Even if RTD fixes its safety problems, studies cited in H.B. 24-1304 show that residents of these luxury, over-parked developments will simply use their cars like most metro area residents.

205. One of Colorado's greatest amenities is its outstanding outdoor recreation and access to the Rocky Mountains. These amenities are largely inaccessible by public transit, rendering citizen motivation to own vehicles in this State very high. The development community recognizes that reality and builds accordingly. H.B. 24-1313 and H.B. 24-1304 ignore it.

206. To actually advance its stated objective of meaningfully increasing public transit use and eliminating private vehicles, the General Assembly would likely need to *forbid* parking at any development near transit stations and mandate all such development be restricted to lower-income households.¹⁰ At present, no market exists to construct such buildings without significant subsidies. What limited subsidies do exist mean constructing a meaningful amount of such inventory will take time. H.B. 24-1313, however, stimulates market-rate development to consume available land well before such affordable inventory could materialize.

207. Waiving parking requirements for market-rate development as H.B. 24-1304 mandates will not materially affect the cost or production of housing, since the market often prefers more parking rather than less. H.B. 24-1304 thus advances no practical interest at all, much less the sort of state interest required to overcome decades of caselaw identifying zoning as a matter of local concern.

208. Since the market often exceeds local jurisdictions' parking requirements when constructing new multi-family development, and since the Cities provide parking exemptions when appropriate, local parking requirements have no extraterritorial impact. The only likely source of parking-related extraterritorial impact would be authorizing large new residential

¹⁰ The Cities neither suggest nor agree such action would be constitutional.

complexes near jurisdictional boundaries that do not address those developments' parking and transportation impacts. This could cause parking impacts from new developments in one jurisdiction to clog the streets and alleys of a neighboring jurisdiction. H.B. 24-1313 and H.B. 24-1304 may themselves trigger such negative extraterritorial impacts. The Cities' existing codes, by contrast, guard against them.

209. As for improving RTD's circumstances, H.B. 24-1313's requirement of mass upzonings around transit stations will result in market-rate development consuming what little developable land exists around such stations. Local zoning, by contrast, retains the opportunity to guide development in such areas in a way that emphasizes deed-restricted housing for citizens more likely to actually use RTD. Since local zoning is more likely to promote the General Assembly's claimed transportation objectives than H.B. 24-1313 and 24-1304, these statutes do not serve the General Assembly's claimed transportation interests.

THE CITIES' PARTICIPATION IN REGIONAL PLANNING EFFORTS AND COORDINATED LOCAL CONTROL

210. H.B. 24-1313 and H.B. 24-1304 do not apply uniformly statewide. Indeed, they do not even apply uniformly within the Cities. They apply, instead, only to specific areas within specific jurisdictions along Colorado's urban front range corridor. The purported statutory need for a unified approach in these areas ignores the fact that a coordinated regional approach already exists. Specifically, the Cities, and the vast majority of other affected jurisdictions, are long-standing partners in various coordinated land-use efforts. Greenwood Village, for example, is a member of the Denver South group of governments, which coordinate planning efforts along the 1-25 corridor south of Denver. And the Cities routinely refer land-use proposals within their

territorial boundaries to neighboring jurisdictions for comment so that any extraterritorial impacts may be considered and addressed.

211. The Cities are also all members in a regional planning commission that addresses, among other things, the concerns articulated in the legislative findings of H.B. 24-1313 and H.B. 24-1304. That regional planning commission is the Denver Regional Council of Governments (“DRCOG”). It encompasses all municipal and county jurisdictions within the greater Denver metro area. Indeed, the applicability of H.B. 24-1313 and H.B. 24-1304 turns in relevant part on DRCOG’s boundaries: it is the Metropolitan Planning Organization referenced in both statutes.

212. Consistent with § 30-28-110, C.R.S. (2024), DRCOG has produced a regional plan entitled “Metro Vision.”¹¹ It last updated that plan in 2024. The Cities’ own planning efforts account for Metro Vision goals. Greenwood Village’s Comp Plan, for example, specifies its consistency with Metro Vision, including Metro Vision’s approach to housing.

213. DRCOG organized the Metro Vision plan around multiple overarching themes. Of greatest relevance here are the first, second and fourth themes, which concern land development, transportation and housing respectively.

214. While the activities of each member entity of DRCOG may to some extent affect the other member entities, the coordinated regional approach to planning embodied in Metro Vision and existing Colorado law ensures that these impacts are neither serious nor adverse. Indeed, Greenwood Village and DRCOG’s other members have already identified strategies to address the concerns underlying H.B. 24-1313 and H.B. 24-1304, and have identified the

¹¹ Available at:

<https://www.drcog.org/sites/default/files/acc/RPD-RP-METROVISION-EN-ACC-24-06-20-V1.pdf>

maintenance of diverse communities as essential to maintaining a high quality of life in the greater Denver area. *See, e.g.*, Metro Vision at 21 (“Each of the region’s communities contributes in different ways to the region’s economy, resiliency, quality of life and sense of place. As the region continues to grow, maintaining these important distinctions will protect the ability of residents and businesses to choose the types of communities that meet their unique needs and values.”)

215. A key premise of the Metro Vision plan, therefore, is that zoning solutions that work well in one community may not work well in another. Metro Vision contemplates that the various partner members of DRCOG will work together to advance their shared objective of directing growth towards regionally-connected urban centers while maintaining a region “comprised of diverse, livable communities.” *See id.*

216. This objective, in DRCOG’s view, readily coexists with the broader objective of providing additional housing that is tied to the region’s multi-modal transportation system. *See id.* As Metro Vision notes, “[f]ocusing development in compact urban centers that are served by transit and other alternative modes of transportation reduces the need for vehicle trips, minimizes land consumption and ensures a variety of housing and employment options are accessible to people of all ages, abilities and income levels. Concentrating urban development within local and regional priority growth areas can help the region capitalize on available infrastructure and promote the efficient use of resources.” *See id.*

217. As the foregoing citations illustrate, DRCOG does not believe a one-size-fits-all approach to zoning is either necessary or advisable. *See id.* at 30. To the contrary, it views land use diversity as a strength. *See id.* at 23. Metro Vision contemplates no mandatory provisions

with respect to zoning in any particular community, but does contemplate cooperation designed to ensure that local jurisdictions' zoning and planning efforts complement each other to promote the overall region's quality of life.

218. The Metro Vision plan already addresses the objective of increasing housing and employment in urban centers located along transit lines. *See id.* at 32. It notes that these urban centers are transit-, pedestrian- and bicycle-friendly places denser than surrounding areas. At the same time, however, it recognizes that some areas, like Greenwood Village, may emphasize employment while others emphasize housing. *See id.*

219. As discussed above, this coordinated, community-centered approach to planning has already oversupplied the housing H.B. 24-1313 seeks to stimulate.

220. In 2023, DRCOG initiated a regional housing needs assessment. A July 2024 report identifies both existing and future housing needs as primarily concentrated at the lower end of the income scale, where market-driven housing strategies are unable to generate housing inventory that is attainable for the population in need of housing. *See Ex. 7* at 9 (noting that existing and future housing needs are “heavily skewed” towards households earning zero to sixty percent of AMI).

221. This calculation of need below 60% of AMI incorporates the objective of providing housing for the Denver region's unhoused population.

222. According to DRCOG, “the private market typically fails to deliver housing affordable to these income levels, as they require a patchwork of financial subsidies to build and maintain.” *Id.* For households earning over 60% of AMI, existing supply and market forces can potentially produce housing on their own, assuming supportive local policies. *See id.*

223. DRCOG's conclusion that subsidies are necessary to provide housing for those earning below 60% of AMI is broadly consistent with the conclusions reached by the literature discussed above. They are also consistent with the longstanding experience of Colorado's resort communities. Communities such as Aspen and Telluride have faced housing affordability challenges far longer than the Denver region, and recognize that relaxing zoning requirements does not result in housing inventory attainable for lower earners. Colorado's resort communities utilize a combination of exactions, inclusionary zoning requirements and public funding sources to subsidize affordable housing inventories for lower earners.

224. DRCOG's analysis confirms that up-zoning and market forces alone will not provide housing affordable to lower-income households. And, in line with the above-referenced data showing metro Denver's multi-family market is currently oversupplied, DRCOG concludes that market forces and coordinated local control can adequately meet housing demand in market segments that do not require subsidies.

225. DRCOG and numerous other regional partnerships provide that coordinated local control. And the data previously discussed bear out its success in meeting multi-family demand. Thus, despite the General Assembly's assertions to the contrary, local control of zoning and land-use decisions has not thwarted the generation of housing sufficient to meet market-rate demand. Nor have the actions of any one jurisdiction seriously impacted housing availability and affordability in other jurisdictions.

226. To the extent housing shortages presently exist at the lower end of the income spectrum, the causal link is to economic forces and an absence of subsidies sufficient to provide housing to unhoused individuals and lower earners, not to local zoning policies. This, too,

indicates that extraterritorial impacts from diverse zoning policies do not seriously contribute to housing shortages in those AMI segments having the highest housing demand.

227. The Court need not speculate as to any ripple effect in this regard, as the communities in question have been administering local land use codes for decades. Indeed, the Cities and their neighbors are already largely built-out. Thus, the evidence of diversity in zoning administration is visible in the existing built environment.

THE REMAINING FACTORS THE GENERALLY ASSEMBLY IDENTIFIES IN SUPPORT OF A NEED FOR STATEWIDE UNIFORMITY DO NOT WITHSTAND SCRUTINY

228. The General Assembly's legislative findings in both H.B. 24-1313 and H.B. 24-1304 reflect that body's recognition that asserting State authority over local planning and zoning concerns finds no support in existing Colorado law. Thus, in addition to lengthy recitations of purported state interests relating to housing and transportation, the legislation also refers in a cursory fashion to other purported state interests that the drafters apparently believed might salvage its constitutionality.

229. First, H.B. 24-1313 asserts that if people own fewer vehicles and drive less there will be fewer air-pollution and climate-related impacts. The statute does not, however, assert that local zoning regulations cause people to own more vehicles and drive more frequently. As discussed above, the market tends to produce residential parking near transit stations even when local jurisdictions do not require it. And people in metro Denver avoid mass transit for reasons that have nothing to do with zoning. Whatever unquantified impact local zoning may have on driving, if any, it has no cognizable extraterritorial climate or air-pollution impact.

230. Climate change is a global problem. Carbon production in China has a far greater impact on Denver's various local communities than do the activities of their neighbors. To

conclude otherwise would be to adopt an analysis with no limiting principle, which would nullify Article XX, § 6 altogether. This is inconsistent with existing law and sound principles of constitutional interpretation. Moreover, as with other issues discussed above, both the Cities and DRCOG account for air pollution and climate impacts in their own planning activities. Regional coordination thus minimizes adverse impacts on the various members of DRCOG and ensures those impacts are not serious.

231. Second, H.B. 24-1313 asserts that multi-family housing consumes less water and energy than single-family homes. Existing local zoning, however, already supplies more multifamily housing than the market can absorb. Requiring multi-family housing in places that conflict with local community values and in ways that violate citizens' and local jurisdictions' constitutional rights is unnecessary and advances no legitimate public purpose.

232. Third, H.B. 24-1313 asserts that higher residential density lowers costs to local governments. The Cities, however, are competent to manage their own budgets while safeguarding the rights and priorities of their citizens. H.B. 24-1313 claims that impacts on local budgets somehow affect the State, but does not explain how. Any impact on the State in this regard is, if it exists at all, de minimis.

233. Fourth, H.B. 24-1313 asserts that permitting public involvement in development decisions delays development approvals. As noted above, however, the Cities and other local partners have managed to keep the multi-family housing market oversupplied. And a large inventory of approved but unbuilt inventory already exists. Any review-related delays have therefore not impacted the actual production of housing. Rather, the ebb and flow of construction starts relates to market forces.

234. Even if review-related delays did materially impact production, however, that is not a basis to abridge citizens’ constitutional rights as the General Assembly requires in H.B. 24-1313.

235. Fifth, H.B. 24-1313 asserts that more compact development advances upward economic mobility, thus justifying the State’s attempt to preempt local authority. In fact, however, a 2025 study concludes that the opposite is true: dense development *impedes* upward mobility. *See* Ex. 14. In any event, unless the Cities reconsider their views in light of that 2025 study, both they and DRCOG already support dense, coordinated development near mass transit while still honoring local values and constitutional rights.

236. Sixth, H.B. 24-1313 asserts that dense development better serves people with disabilities. There is no claim, however, that existing housing opportunities are insufficient to serve people with disabilities or limited mobility. Existing building codes and the ADA already take account of such concerns.

LAND USE AND ZONING HAVE BEEN A MATTER OF LOCAL CONCERN FOR
OVER A CENTURY

237. Land use and zoning have long been the domain of county and municipal government in Colorado. For decades, the Colorado Supreme Court has recognized under Article XX, § 6 that land use and zoning are matters of local concern. The General Assembly’s enactments similarly have, for decades, recognized that counties and cities are responsible for land use and zoning control, not the state. *See, e.g.,* Colo S.B. 413, 1923, Session Laws 1901-1950, p. 2726 and § 29-20-101, C.R.S. (2024) (Local Government Land Use Control Enabling Act of 1974). Prior to 2023, the General Assembly made no efforts to directly control these issues itself.

238. The Colorado Constitution does not specifically address land use, zoning, or related concepts. It does, however, directly provide: (1) in Article XX, § 6(a) that home-rule municipalities have authority over “the definition, regulation and alteration of the powers, duties, qualifications and terms or tenure of all municipal officers, agents and employees;” (2) in Article II, § 11 that the General Assembly shall pass no law impairing the obligation of contracts or retrospective in its operation; (3) in Article V, § 1(9), that citizens of municipalities have initiative and referendum rights “as to all local, special, and municipal legislation of every character in or for their respective municipalities”; and (4) in Article II, § 25 that “[n]o person shall be deprived of life, liberty or property, without due process of law.”

THE STATE THREATENS TO WITHHOLD EXISTING FUNDING SOURCES

239. On May 16, 2025 Governor Polis signed Executive Order D 2025 005 (“EO D 2025 005”). The Executive Order directs CDOT, DOLA, the Colorado Energy Office and the Office of Economic Development and International Trade to identify “Funding Opportunities” for local governments like the Cities that the State can withhold to punish jurisdictions that do not comply with, among other laws, H.B. 24-1313 and H.B. 24-1313.

240. EO D 2025 005 defines “Funding Opportunities” to mean “competitive or discretionary grants, contracts, loans, incentive programs, and discretionary tax credits that provide support to Local Governments in areas of housing development, land use, transportation, infrastructure, historic preservation, mixed-use incentives, conservation, energy, or climate.”

241. The Funding Opportunities that EO D 2025 005 identifies and directs state agencies to withhold from local governments like the Cities exist by virtue of their own state or federal statutory authority.

242. The state or federal statutory frameworks governing these Funding Opportunities contain their own criteria governing distribution of the relevant funds. Most or all of these statutory frameworks predate the enactment of H.B. 24-1313 and H.B. 24-1304.

243. H.B. 24-1304 contains no authorization for the withholding of Funding Opportunities EO D 2025 005 identifies.

244. H.B. 24-1313 contains no authorization for the withholding of Funding Opportunities EO D 2025 005 identifies. H.B. 24-1313 does, in § 29-37-204(8)(d), C.R.S., direct DOLA to identify certified transit-oriented communities for the purpose of establishing eligibility for state grant incentive programs. The deadline for local jurisdictions to undertake the steps necessary to become a certified transit-oriented community, however, does not arrive until December 31, 2027. EO D 2025 005 purports to withhold funding based on factors unrelated to those necessary to become a transit-oriented community, and on an accelerated timeframe that conflicts with that set forth in the statute itself.

245. When initially introduced, H.B. 24-1313 contained a provision that would withhold highway user tax funds from local jurisdictions that failed to comply with its requirements. The General Assembly struck this provision from the bill prior to enactment.

FIRST CLAIM FOR RELIEF
(Declaratory Judgment that H.B. 24-1313 Is Unconstitutional and Preempted)

246. The Cities incorporate the foregoing allegations as if fully set forth herein.

247. H.B. 24-1313 violates Article XX, § 6, and the Cities' respective land use codes preempt it.

248. The land use codes fall squarely within each City's home-rule power, authority to regulate land use and zoning, and prerogative to define development approval processes within its boundaries.

249. H.B. 24-1313 intrudes on land use and zoning matters and processes that are areas of exclusive local concern under Article XX, § 6. There is no need for statewide uniformity of regulation with respect to H.B. 24-1313's subject matter, as evidenced by the statute's limited geographical scope and flawed assumptions. Moreover, the area at issue in the statute is already the subject of coordinated local action designed to minimize inter-jurisdictional effects.

250. Existing local and regional planning already accounts for the issues addressed in H.B. 24-1313.

251. Cooperation and coordination between local jurisdictions helps ensure that the land use and zoning actions of neighboring jurisdictions do not seriously affect each other. Similarly, by providing opportunities for comment from neighboring jurisdictions through the land-use review process, the Cities and other local jurisdictions consider the views of partner jurisdictions, and can render land-use decisions that take those views into account. Thus, the Cities' existing land use and zoning regulations do not carry serious consequences for those in neighboring jurisdictions, and there is no cognizable extraterritorial impact.

252. The diversity of zoning patterns throughout the greater Denver region demonstrates that one community's adoption of a particular approach to zoning does not create a "ripple" or "domino" effect that results in neighboring communities replicating the zoning approaches of their neighbors. DRCOG's regional plan specifically endorses maintaining this diversity of development patterns.

253. Numerous judicial decisions and statutes demonstrate that local land use and zoning are traditionally matters of local concern. *See, e.g., Ryals*, 364 P.3d at 908; § 29-20-101, C.R.S. (2024) (Local Government Land Use Control Enabling Act of 1974).

254. The Cities enacted their respective zoning and land development regulations in compliance with their constitutional authority and Colorado law. H.B. 24-1313 conflicts with these local laws and with the numerous constitutional provisions that are the subject of the claims for relief in this action.

255. The Cities are entitled to a declaration that H.B. 24-1313 is unconstitutional under Article XX, § 6, preempted by the Cities' zoning and land development regulations, and of no force and effect within the Cities. The Cities are further entitled to an order enjoining Defendants from enforcing H.B. 24-1313 against them.

SECOND CLAIM FOR RELIEF
(Declaratory Judgment that H.B. 24-1304 Is Unconstitutional and Preempted)

256. The Cities incorporate the foregoing allegations as if fully set forth herein.

257. The Cities' regulation of parking falls squarely within their home-rule power and authority over land use and development within municipal boundaries.

258. H.B. 24-1304 intrudes on land use and zoning matters that are areas of exclusive local concern under Article XX, § 6. There is no need for statewide uniformity of regulation with respect to H.B. 24-1304's subject matter, as evidenced by the statute's limited geographical scope.. The Cities' current ability to maintain parking impacts within each community is preserved by the very off-street parking requirements that this legislation seeks to destroy.

259. Through regional cooperation and coordination, the Cities help ensure that the land use and zoning actions of neighboring jurisdictions do not seriously affect each other.

Similarly, by providing opportunities for comment from neighboring jurisdictions through the land-use review process, the Cities and other local jurisdictions consider the views of partner jurisdictions, and can render land-use decisions that take those views into account. The Cities' existing parking regulations do not carry serious consequences for those outside their boundaries, because they help ensure parking impacts do not cross from one jurisdiction into another.

260. The diversity of zoning patterns throughout the greater Denver region demonstrates that one community's adoption of a particular approach to parking does not create a "ripple" or "domino" effect that results in neighboring communities replicating the parking approaches of their neighbors. Cooperative regional planning specifically contemplates maintaining a diversity of development patterns.

261. The expectations of state residents are that local communities through their elected leaders and staff will effectively determine parking and other needs of new development or redevelopment. State residents do not expect soviet-style centralized government control over local residential development.

262. The Colorado Supreme Court has long recognized that parking is a matter of local concern. *See, e.g., Webb v. City of Black Hawk*, 295 P.3d 480, 490 (Colo. 2013) (citing *Lehman v. City & Cnty. of Denver*, 355 P.2d 309, 312 (1960) (holding city parking regulations to be within local authority)). Prior to H.B. 24-1304, the General Assembly had not purported to regulate parking requirements associated with development applications in home-rule municipalities.

263. The State of Colorado has no interest in uniform regulation of parking space requirements for development or redevelopment in home-rule municipalities.

264. H.B. 24-1304 violates numerous provisions of the Colorado Constitution vesting powers in local jurisdictions and their citizens as set forth in the various claims for relief in this action.

265. The Cities are entitled to a declaration that H.B. 24-1304 is unconstitutional, preempted by the Cities' home rule charters and land development codes, and are of no force and effect within the Plaintiff Cities. The Cities are further entitled to an order enjoining Defendants from enforcing H.B. 24-1304 against them.

THIRD CLAIM FOR RELIEF
(Declaratory Judgment that H.B. 24-1313 Unlawfully Infringes on Cities' Powers to Define Duties of their Officers)

266. The Cities incorporate the foregoing allegations as if fully set forth herein.

267. The General Assembly has no power to enact a law that denies a right specifically granted by the constitution. *See Town of Telluride v. San Miguel Valley Corp.*, 185 P.3d 161, 164-65 (Colo. 2008).

268. Article XX, § 6(a) specifically grants to the Cities powers to "legislate upon, provide, regulate, conduct and control" the "definition, regulation and alteration of the powers, duties, qualifications and terms or tenure of all municipal officers, agents and employees."

269. Article XX, § 6 further grants the Cities "all other powers necessary, requisite or proper for the government and administration of its local and municipal matters."

270. H.B. 24-1313 purports to: (1) dictate that home-rule city councils cast votes to enact specific ordinances to implement its terms; (2) abridge the powers of city councils and planning and zoning commissions to hear certain land-use applications; and (3) dictate the

activities of the Cities’ employees by requiring a staff-level administrative approval process for significant multi-family development applications.

271. The weighing of competing state and local concerns is not necessary to construe the scope of the power contained in Article XX, § 6(a), nor is it appropriate.

272. The Cities are entitled to a declaration that these provisions of H.B. 24-1313 violate the specific grants of authority in Article XX, § 6(a), and that they are of no force and effect in the Cities. The Cities are further entitled to an order enjoining Defendants from enforcing H.B. 24-1313 against the Cities.

**FOURTH CLAIM FOR RELIEF
(Declaratory Judgment that H.B. 24-1313 Violates Due Process)**

273. The Cities incorporate the foregoing allegations as if fully set forth herein.

274. The Fourteenth Amendment to the United States Constitution and Article II, § 25 of the Colorado Constitution both require the Cities to provide due process of law to citizens in connection with certain site-specific development applications.

275. Specifically, to satisfy due process, the Cities must provide citizens with notice and an opportunity to be heard.

276. H.B. 24-1313 purports to establish an “administrative review process” that forbids the Cities from complying with these constitutional requirements.

277. The Cities are entitled to a declaration that H.B. 24-1313’s administrative review process violates the Fourteenth Amendment and Article II, § 25, and that provisions requiring the Cities to adopt that administrative review process are of no force and effect in the Cities. The Cities are further entitled to an order enjoining Defendants from enforcing this aspect of H.B. 24-1313 against the Cities.

FIFTH CLAIM FOR RELIEF
(Declaratory Judgment that H.B. 24-1313 Violates Art. V § 1(9))

278. The Cities incorporate the foregoing allegations as if fully set forth herein.

279. H.B. 24-1313 purports to mandate that the Cities allow multi-family housing densities consistent with a jurisdiction's HOG, including density minimums of 15 units per acre. One or more of the Cities must rezone to achieve these goals. The rezonings required are legislative acts subject to referendum and initiative.

280. H.B. 24-1313 further purports to mandate procedural changes that remove certain developments from approval processes subject to referendum and initiative. Accomplishing such changes will require all of the Cities to enact municipal legislation that is subject to referendum and initiative.

281. H.B. 24-1313 contains no allowance for deviation from its requirements in the event a referendum or initiative voids local legislation designed to implement H.B. 24-1313.

282. H.B. 24-1313's requirement that the Cities utilize an administrative review process without any opportunity for call-ups or public hearings also purports to eliminate rights of initiative and referendum over certain approvals that are subject to those rights.

283. H.B. 24-1313 accordingly violates the Cities' powers and duties to provide for referendum and initiative consistent with Colorado Constitution Art. V § 1(9).

284. The Cities are entitled to a declaration that H.B. 24-1313's rezoning and administrative review requirements violate Article V, § 1(9), and that provisions requiring the Cities to meet mandated densities and create administrative review processes are of no force and effect in the Cities. The Cities are further entitled to an order enjoining Defendants from enforcing these aspects of H.B. 24-1313 against the Cities.

SIXTH CLAIM FOR RELIEF

(Declaratory Judgment that H.B. 24-1313 and H.B. 24-1304 Violate Art. II § 11)

285. H.B. 24-1313 purports, in § 24-67-105(5.5)(b), C.R.S., to supersede and render unenforceable existing PUD approvals insofar as those approvals contain housing density limits more restrictive than those H.B. 24-1313 requires local jurisdictions to enact.

286. H.B. 24-1313 similarly purports, in § 38-33.3-106.5(5), C.R.S., to prohibit enforcement of existing covenants restricting the development of housing at a density lower than the HOG-dictated density the statute mandates.

287. One or more of the Cities is a party to agreements that provide the relevant City with contractual rights to secure compliance with site-specific density restrictions in existing PUDs.

288. H.B. 24-1313 purports, in § 29-36-103, C.R.S., to preclude enforcement of local laws that establish minimum parking requirements for multifamily residential developments.

289. One or more of the Cities is a party to an agreement that provides the relevant City with contractual rights to secure compliance with site-specific parking requirements in connection with an approved but unbuilt multifamily residential development.

290. H.B. 24-1313 and H.B. 24-1304 purport to void the foregoing contractual rights.

291. Article II, § 11 prohibits the General Assembly from passing laws impairing the obligation of contracts, or laws retrospective in their operation.

292. H.B. 24-1313 and H.B. 24-1304 impair one or more of the Cities' contractual rights, and operate retrospectively.

293. The Cities are entitled to a declaration that H.B. 24-1313 and H.B. 24-1304 violate Article II, § 11, are void, and are of no force and effect in the Cities. The Cities are further

entitled to an order enjoining Defendants from enforcing these aspects of H.B. 24-1313 and H.B. 24-1304 against the Cities.

SEVENTH CLAIM FOR RELIEF

(Declaratory Judgment that EO D 2025 005 Exceeds Gubernatorial Powers)

294. The Cities regularly seek and receive Funding Opportunities as defined in EO D 2025 005. The funds awarded through these Funding Opportunities have had, and will continue to have, a meaningful impact on the Cities' budgets and abilities to provide for public health, safety and welfare.

295. Greenwood Village, for example, recently applied for and was awarded funding for traffic safety improvements through the Highway Safety Improvement Program ("HSIP"), a federal program governed by 23 U.S.C. 148. CDOT prioritizes projects for HSIP funding. CDOT awarded Greenwood Village \$180,000 in 2023, but has not yet disbursed the funds.

296. 23 U.S.C. 148 sets forth a range of criteria relating to road safety to guide awards of HSIP funds. Neither housing nor compliance with H.B. 24-1313 and H.B. 24-1304 is among those criteria.

297. EO D 2025 005 purports to direct state agencies to incorporate compliance with unconstitutional statutes into the award of funds controlled by unrelated legislation enacted by the United States Congress and the General Assembly.

298. Article IV, § 2 of the Colorado Constitution charges the Governor with a duty to faithfully execute the law.

299. Amending laws enacted by Congress and the General Assembly is beyond the Governor's authority.

300. By inserting unrelated criteria associated with H.B. 24-1313 and H.B. 24-1304, EO D 2025 005 encroaches on the legislative powers of Congress and the General Assembly.

301. By purporting to elevate statutes that violate the Colorado Constitution over the Constitution itself, EO D 2025 005 encroaches on the powers of the judiciary to say what the law is.

302. The Cities are entitled to a declaration that EO D 2025 005 exceeds the Governor's powers under Article IV, § 2, violates principles of separation of powers under Article III, and is of no force and effect. The Cities are further entitled to an order enjoining Defendants from applying EO D 2025 005 against the Cities.

PRAYER FOR RELIEF

Wherefore, the Cities ask the Court to enter judgment in their favor and against Defendants and to order the following relief:

a. A declaration that H.B. 24-1313 is unconstitutional under Article XX, § 6 and preempted by the Cities' respective home rule charters and land use codes;

b. A declaration that H.B. 24-1304 is unconstitutional under Article XX, § 6 and preempted by the Cities' respective home rule charters and land use codes;

c. A declaration that H.B. 24-1313's attempt to usurp the powers of the Cities' officers and employees is unconstitutional under Article XX, § 6(a);

d. A declaration that H.B. 24-1313's administrative review process violates the due process clauses of the Fourteenth Amendment and Article II, § 25;

- e. A declaration that H.B. 24-1313 violates the rights to initiative and referendum contained in Article V § 1(9);
- f. A declaration that both H.B. 24-1313 and H.B. 24-1304 impair the obligations of contracts, operate retrospectively, and violate Article II, § 11;
- g. A declaration that EO D 2025 005 exceeds the Governor's authority under Art. IV, § 2 and violates principles of separation of powers under Art. III;
- h. Preliminary and permanent injunctive relief prohibiting Defendants and any of their departments or subdivisions from undertaking or authorizing the enforcement of H.B. 24-1313, H.B. 24-1304 and EO D 2025 005;
- i. An award of the Cities' costs and attorneys' fees as may be provided by law; and
- j. Any and all other relief that the Court deems just and proper.

Respectfully submitted this 19th day of May, 2025.

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