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MEMORANDUM

TO: Daniel Hayes and Julianne Page

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: November 3, 2016

SUBJECT: Proposed initiative measure 2017-2018 #4, concerning the Colorado growth initiative

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

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

An earlier version of this proposed initiative, proposed initiative 2017-2018 #3, was the subject of a memorandum dated August 1, 2016. Proposed initiative 2017-2018 #3 was discussed at a public meeting on August 8, 2016. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meeting, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

Purposes

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

1. To reserve the right to limit housing growth without legislative inhibition or penalty by initiative and referendum;
2. To reserve the right to limit housing growth on a countywide basis whereby electors throughout a county may elect to limit housing growth uniformly in every city, town, city and county, local county, and any part of such, whether statutory or home rule, within such county;
3. To specify that privately owned residential housing growth in the city and counties of Broomfield and Denver and the counties of Adams, Arapahoe, Boulder, Douglas, El Paso, Jefferson, Larimer, and Weld shall not exceed one percent annually for the years 2019 and 2020;
4. To specify that in specified counties each local government and any part of such, whether statutory or home rule, shall allot building permits so that housing growth does not exceed a one percent annual growth in the total number of housing units in each specified calendar year; except that, beginning in 2021, such growth limitations may be amended or repealed by initiative and referendum, or otherwise remain in effect.
5. To specify that at least thirty percent of the housing subject to the limitation shall be affordable housing and affordable senior housing;
6. To specify that no permits to build new privately owned residential housing units shall be issued within specified counties, including all local governments contained within or part of specified city and counties; and
7. To implement signature and form and content requirements for initiative and referendum proposals regulating the growth of privately owned residential housing for local governments.

Substantive Comments and Questions

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

1. What do the proponents mean by "local county" as used in subsection (1) of the proposed measure?

2. Is it a correct reading of the last sentence of subsection (2) of the proposed initiative that, beginning in 2021, the voters of an affected local government, by initiative, or its elected leaders, by referendum, could completely repeal any limitations on housing growth adopted for 2019 or 2020? If so, what is the rationale for having the limitation in effect for what could become 1 year? Wouldn't homebuilders and developers likely delay until 2021 any development plans that would exceed the limits in effect for 2019 and 2020?
3. With respect to new subsection (5)(a) of the proposed initiative:
 - a. Do the signature requirements specified in this subsection govern only the initiative and referendum procedures applicable to new section 17 of article XVIII of the state constitution or are they intended to apply to any initiative and referendum across the state that would regulate the growth of privately owned residential housing for local governments?
 - b. What does this sentence mean: "Such proposals on a countywide basis shall be a summation of such requirement from each local government any part of a local government not governed within such county"? The difficulty in understanding its substantive meaning may be aggravated by what appears to be a lack of conjunctive words or punctuation.
4. It appears from the language of subsection (5) that the number that is specified as a percentage of voters participating in the most recent general election that governs the number of signatures required is the minimum percentage number of signatures required. If so, is there any cap on the percentage number of signatures that may be required? What if, in connection with the initial election on approving a limit on residential housing growth, the local government imposed a percentage requirement of 50%? What is the proponents' rationale in not specifying the relevant percentage as a set number?
5. With respect to subsection (5)(c) of the proposed initiative, does the phrase "[a] single challenge" mean that only one challenge will be permitted to the sufficiency of a petition or that any one particular challenge must be filed within the time specified? If the former, who decides who gets to file the single challenge among multiple challenges? In any event, given the possible ambiguity, would the proponents clarify the text of the proposed initiative on this point?

6. With respect to subsection (5)(d) of the proposed initiative, does a challenge to the signature sufficiency need to be filed within ten business *days* of the county clerk's certification of signature sufficiency? If so, please specify.
7. In the definitions section in subsection (7)(c) of the proposed initiative and repeated throughout the substantive provisions of the measure, what is the proponents' intent in substituting the word "housing" for "dwelling" in modifying units? What is the substantive effect, if any, of this change?
8. Please explain why voters in home rule cities under existing law would not be able to exercise all powers granted them under the proposed initiative?

Technical Comments

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

- a. In subsection (6) of the proposed initiative, did the proponents intend to start the sentence with the word "As"? If not, please remove.