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To: Board of Trustees
Town of Palmer Lake

From: Matthew Z. Krob,
Town Attorney

Date: April 11, 2023

Re: SB23-213 – Land Use

On March 23, 2023, Senate Bill 23-213 (SB23-213) was introduced in the Colorado Senate. It is over 150 pages long and proposes sweeping changes regarding land use. Some of the proposed changes will directly impact the Town of Palmer Lake.

Perhaps as importantly, SB23-213 seems to be a massive effort by the state to take away from municipalities matters that have historically been viewed as matters of “local control” such as zoning, land use, and subdivision of property that should be decided by the elected officials of a municipality, and replace them with uniform state regulations to be promulgated by DOLA. Most of the more onerous provisions apply to larger municipalities, such as Denver, Greeley, and Fort Collins. However, many of its provisions, as discussed below, would apply to the Town of Palmer Lake. Many of the events related to the consideration of this bill by the Colorado legislature are happening very quickly, and a substantial amount of uncertainty as to many of the bill’s provisions still exists. However, I wanted to get this memo to you as soon as possible and in advance of your consideration of a possible resolution opposing SB23-213, to give you some perspective of how the bill came to be and what it could mean to the Town of Palmer Lake.

This memo addresses:

- Background of the SB23-213
- It’s purported intent
- CML’s issues with and concerns over the bill
- How it would apply to the Town of Palmer Lake

I. Background of SB23-213

SB23-213 seeks to address Governor Polis' 2023 Legislative Priority: More Housing Now.

Governor Polis and several state agencies including:

- Colorado Energy Office (CEO)
- Department of Local Affairs (DOLA)
- Department of Transportation (CDOT)

had a study performed to “understand which potential policies could have the greatest impact on increasing opportunities to add housing supply, by type, income level, and geography.”

The study analyzed existing policies as a baseline, and then analyzed the impact of four possible policies or options:

1. Allowing ADUs and duplexes by right in single-unit residential zones
2. Allowing 3plexes to 6plexes by right in single unit residential zones
3. Allowing multi-family housing by right near transit centers
4. Allowing multi-family housing by right in commercial and institutional zones.

The case study was done in four jurisdictions that represent about 50% of the state population:

- Denver metro (DRCOG)
- North Front Range (NFRMPO)
- Grand Valley MPO
- A conglomerate of 8 jurisdictions in the Roaring Fork Valley

Conclusions of the study were:

1. Applying all four policies/options together would have the following impacts in the case study jurisdictions:
 - a. Increased opportunity to build housing units by 65% over what could be built under existing land use policies.
 - b. 300% increase in opportunity to build duplexes
 - c. 1000% increase in opportunity to build triplexes and fourplexes
 - d. 35% increase in opportunities to build multi-family housing units
2. Benefits of shifting away from single-family units and toward duplex, triplex, fourplex, and multi-family units, according to the study:
 - a. Increased affordability:
 - i. 14-43% less expensive to own
 - ii. 9-26% less expensive to rent

- b. Reduced water use (due to less outdoor use) - 22-86% less
- c. Reduced energy demands: 30-60% of the energy used by Single Family units

II. Purported purpose of the bill

According to its drafters, SB23-213 was formulated to implement the findings of the study and to provide a comprehensive plan to “help create more housing for every Colorado budget.” It is intended to “improve affordability, water conservation, equity and access to opportunity.”

III. CML’s view of the bill

The bill incorrectly has a central theme that “municipal zoning laws caused the housing crisis by not permitting unfettered residential construction and by trying to protect communities and resources.”

The bill involves state regulation of local matters, particularly zoning and land use, that should be left to local governments

It imposes regulatory actions with insufficient process

It has lots of unintended consequences

The bill would do little make housing affordable

IV. Application of SB23-213 to the Town of Palmer Lake

A. State imposed zoning regulations

SB23-213 does not apply all requirements to all municipalities equally. It divides municipalities into four categories, and leaves some municipalities out of the four groups. The Town of Palmer Lake is not in one of these categories, but this could be a foreshadowing of things to come.

1. Tier 1 Urban Municipality (T1UM) is:

A municipality located within an MPO with a population of at least 1 million and either, (a) 10% of territory in urbanized area with population over 75,000 and a municipal population of at least 1,000, or (b) A municipal population of at least 25,000

2. Tier 2 Urban Municipality (T2UM): a municipality located within an MPO, having a population of between 5,200-25,000, and in a county with a population of at least 250,000.

3. Rural Resort Job Center (RRJC) is a municipality that is not within an MPO; has a population of at least 1,000; has 1,200 jobs and a jobs-to-population ration of at least .64; and a transit stop serviced by a transit agency serving two municipalities with at least 20 trips per day.

4. Non-urbanized Municipality (NUM) is a municipality that is not within the definition of an urban municipality or a rural resort job center; and has a population of at least 5,000

SB23-213 then proposes to apply one or more of four possible “state zoning pre-emptions” to a municipality, depending on which category the municipality falls within.

State zoning preemption No. 1: Accessory dwelling units (ADUs)

SB23-213 defines an ADU as “an internal, attached, or detached “dwelling unit” providing complete independent living facilities for at least one person that is located on the same lot as a primary residence with provisions for living, sleeping, eating, cooking, and sanitation.”

The standards to be used by Town of Palmer Lake for reviewing applications for ADUs would be “objective standards” provided by DOLA that would prohibit Town of Palmer Lake from considering other local factors that it currently considers, such as consistency with the Master Plan, compatibility or harmony with surrounding land uses, and strategies for mitigating project impacts, to determine if the ADU is to be approved. Only objective standards approved by DOLA may be applied.

The minimum standards from DOLA would include:

- a. The ADU must be a minimum of 800 square feet or 50% of the primary residence, whichever is greater
- b. Town of Palmer Lake could not require additional off-street parking in connection with any new ADUs.
- c. Town of Palmer Lake could not require side or rear setbacks greater than 5 feet unless needed for health or safety standards
- d. Town of Palmer Lake could not require that the primary residence be owner-occupied

B. Additional State regulations and burdens placed on municipalities under SB23-213 that would apply to the Town of Palmer Lake under SB23-213.

In addition to the zoning regulations discussed above, SB23-213 would place a number of other burdens on the Town of Palmer Lake:

1. Water, wastewater and stormwater burdens

If a municipality can show that its existing water, sewer, or stormwater services are insufficient to serve the additional demand that will be created by a preemption that applies to them (for example, if Town of Palmer Lake could show that it has insufficient water or water rights to serve the additional ADUs that will be authorized under Exemption No. 1), then the municipality

can apply to DOLA for an extension of time to provide the service. However, the application for extension must include a plan with a specific timeline to remedy the deficiency. Arguably, this places the burden on the Town, rather than the developer, to come up with the additional water or water rights, or the additional sewer treatment capacity, or the additional stormwater capacity to meet the new demand created by allowing ADUs in all single-family residential districts.

2. PUD limitations

PUDs that include residential uses cannot limit the uses authorized by the four pre-emptions. For Town of Palmer Lake, this means that PUDS which allow residential uses cannot preclude ADUs.

3. HOA regulations

SB23-213 would invalidate HOA regulations or declarations that seek to limit any of the four pre-emptions. In Town of Palmer Lake, HOA regulations that prohibit ADUs would be invalid.

4. Minimum residential square footage limits (Applies to T2UM, as well as T1UM)

The bill Prohibits municipalities from imposing square footage requirements for residential units unless necessary for health and safety in the municipality.

5. Housing needs assessment and planning (Applies to T2UM, as well as T1UM and RRJC communities)

DOLA will provide a methodology that municipalities must follow, with the first assessment to be completed by each municipality by December 31, 2024, and every five years after that. The assessment must include among other things, a determination of the types of housing needed, focused on affordable housing, and a plan for how the municipality will meet those needs. The municipality's plans for meeting housing needs must include a minimum number of strategies from a menu of possible strategies that will be provided by DOLA.

6. Master plans (Applies to T2UM, as well as T1UM and RRJC)

Master plans must include, in addition to current statutory requirements:

- a. Housing needs plan
- b. A "greenfield development" analysis (the term refers to how previously undeveloped lands will be developed)
- c. A concept of natural and agricultural land priorities consistent with state requirements that will be developed by DOLA

7. Additional reporting requirements (Applies to T2uM, as well as T1UM and RRJC):

Beginning 12/31/26 municipalities must report to DOLA:

- a. Number of permits for new housing
- b. Number of housing construction starts, categorized by structure type
- c. Time frames to complete residential permit reviews by housing type
- d. Workforce assigned to development review by position
- e. Implementation status of strategies identified in a housing needs plan
- f. Zoning information specifying zone districts, allowed uses, densities and other data

8. Manufactured and Modular Housing

The bill mandates that municipalities treat manufactured and modular housing in the same manner as site built/stick built housing.

9. Residential occupancy limits

Municipalities are prohibited from placing residential occupancy limits on dwellings that differentiate between occupants based on family relationship.