

# Law & Accounting

## Statewide proposed ballot initiative would limit growth

An unprecedented number of citizen-initiated ballot measures are making their way through Colorado's process in advance of the state's Nov. 3 election. To date, 298 ballot measures have been submitted for this election cycle. By contrast, only 185 total measures were filed last cycle.

One measure of particular interest is Proposed Initiative 2019-2020 No. 122, which seeks to limit residential housing growth by enacting a 1% annual cap on the number of housing permits issued in 11 Front Range counties. The measure would allow housing permits for senior housing and affordable housing to exceed the 1% cap by 0.15% each. Even with these allowances, under no circumstance would annual residential housing growth be allowed to exceed 1.3% annually.

Proposed Initiative No. 122 allows voters in local jurisdictions to amend or repeal the cap starting in 2023, but unless amended or repealed, keeps the cap in place indefinitely. The measure also allows local governments to enact even stricter growth limits, and overrides municipal home rule authority by allowing countywide growth limits to apply uniformly across the county.

Last, the proposed initiative enacts a special set of rules for growth initiatives going forward, specifying the number of signa-



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tures needed to put future citizen-initiated growth measures on the ballot and a unique challenge process.

The proposed initiative's growth restriction mirrors the 1% residential growth restriction passed in 1995 by voters in Golden, a municipality near the unincorporated part of Jefferson County where one of the measure's proponents lives. Boulder has a similar residential growth restriction, which was first passed in 1976.

While these local restrictions have succeeded in limiting residential growth in Boulder and Golden, they also have contributed to increased housing costs. For example, Boulder's average home price topped \$1 million in 2016, and the community struggles with congestion because many people who work in Boulder commute from surrounding communities not subject to the restriction where housing is more affordable. Just last year, Lakewood voters likewise voted to cap residential growth to 1% per year. Now, for the first time, voters across Colorado may be asked to decide wheth-

er to impose a growth restriction statewide.

In terms of economic impact, the statutorily required initial fiscal impact statement prepared by Colorado Legislative Council staff states the fiscal impact Proposed Initiative No. 122 would have on local governments, and on the state as a whole, would depend on growth patterns and market forces. On the one hand, local governments in growth-restricted counties would receive less revenue from building permit fees, property taxes on new construction and use taxes for building materials. To the extent growth is redistributed, local governments in nongrowth-restricted counties would receive more revenue from those sources.

Statewide, the initiative would impact the distribution of construction employment, retail trade and population within the state. The state fiscal impact analysis does not address other effects the measure could have, such as traffic redistribution, and it does not address indirect or induced impacts.

Other than generally discouraging growth and investment by the real estate and development community, it is difficult to predict the precise impact that Proposed Initiative No. 122 could have. In Lakewood, the Lakewood City Council only recently passed a

resolution implementing the local measure that passed there because the language of that initiative left several questions unanswered. Similarly, if passed, Proposed Initiative No. 122 would likely be followed by a period of uncertainty while the affected local governments will have to determine how to implement its provisions in their communities.

To qualify for the ballot, the proponents must collect 124,632 valid signatures before June 5. They have committed up to \$400,000 to collect these signatures. Their stated motivation is to drive people away from Colorado, and signature gathering is underway. If they succeed, the following language will appear on the Nov. 3 ballot:

Shall there be a change to the Colorado Revised Statutes concerning limitations on the growth of privately owned residential housing, and, in connection therewith, permitting the electors of every city, town, city and county, or county to limit privately owned residential housing growth by initiative and referendum; permitting county voters by initiative and referendum to limit privately owned residential housing growth uniformly within the county, including all or parts of local governments within the county; for the cities and counties of Broomfield and Denver and for the counties of Adams, Arapahoe, Boulder, Douglas, Elbert, El

Paso, Jefferson, Larimer and Weld: (1) limiting privately owned residential housing growth countywide to 1% annually for the years 2021 and 2022 and for subsequent years unless amended or repealed by initiative and referendum starting in 2023; and (2) requiring said counties and cities and counties to allot permits to build new privately owned residential housing units to ensure that the annual growth rate in the total number of such units does not exceed 1% in the years 2021 and 2022; permitting an additional fifteen hundredths of 1% additional growth each for affordable and senior privately owned residential housing growth in said counties and cities and counties when such housing is either affordable housing or senior housing; and establishing procedural requirements for initiatives and referenda concerning proposals for local governments to regulate the growth of privately owned residential housing?

It is possible for a registered elector to challenge the validity of the signatures being gathered by the proponents, but until the signatures are submitted by the proponents, it is a waiting game to see if Proposed Initiative No. 122 will gain traction with voters and threaten residential growth on the Front Range. ▲

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