

# MEMO

**To:** City Council

**From:** Troy Smith, Deputy City Manager & Erin Goff, Axiom Politics

**Subject:** 2019 General Assembly Legislative Report

**Date:** April 15, 2019

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Monday marks the 102<sup>nd</sup> day of the 2019 legislative session, meaning only 18 days remain. The House has introduced 320 bills and the Senate 238 for a current total of 558. The Governor has signed 119 of these into law and 94 have been postponed indefinitely. A handful of bills have died on 2<sup>nd</sup> or 3<sup>rd</sup> reading in the House or Senate and a few more are on the Governor's desk awaiting his signature. Both chambers have very full calendars for the next 3 weeks, during which time they will be focused on ensuring that all of the remaining bills get a fair hearing.

Commerce City is currently tracking 91 bills and one concurrent resolution for possible direct or indirect impacts on the city, its employees, businesses and residents. Learn more about [monitored legislation online](#), including summaries and full text of the bill. Updates on council's specific legislative priorities are listed below. City positions are consistent with city council's [approved issues guide](#) and noted in parentheses, when applicable. Thanks to the Colorado Municipal League (CML), Axiom Politics, and other cited media sources for providing legislative information.

## **SPECIFIC LEGISLATIVE PRIORITIES**

### **Affordable Housing**

- *HB 19-1228, Increase Tax Credit Allocation Affordable Housing (Support)*  
Currently, under the affordable housing tax credit, during each calendar year of the period beginning in 2015 and ending in 2024 the Colorado Housing & Finance Authority may allocate tax credits in an aggregate amount up to \$5 million annually. The bill increases the aggregate cap to \$10 million for the years beginning on January 1, 2020 and ending on December 31, 2024. This bill passed 2<sup>nd</sup> reading in the House late Friday night and will be up for 3<sup>rd</sup> reading on Monday, April 15.
- *HB 19-1245, Affordable Housing Funding from Vendor Fee Changes (Oppose)*



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The state treasurer is required to credit an amount equal to the increase in sales taxes attributable to the vendor fee changes that result from the bill to the housing development grant fund, which the division of housing in the department of local affairs uses to make grants and loans to improve, preserve, or expand the supply of affordable housing in the state. The division is required to annually award at least 1/3 of this money for affordable housing projects for households whose annual income is less than or equal to 30% of the area median income. A retailer who collects state sales tax is currently allowed to retain 3 1/3% of the state sales taxes collected as compensation for the retailer's expenses incurred in collecting and remitting the tax (vendor fee). Beginning January 1, 2020, the bill increases the vendor fee to 4% and establishes a \$1,000 monthly cap on the vendor fee. The changes to the state vendor fee do not apply to a local government that imposes a sales tax and permits a vendor fee that is based on the state's vendor fee. The retail community is strongly opposed to this bill. It passed through the House Finance committee last week on a party line vote and was sent to the Appropriations committee, where it still has not yet been scheduled for hearing.

- *HB 19-1289, Consumer Protection Act (Oppose unless Amended)*  
HB 19-1289 makes a number of changes to the Consumer Protection Act, some of which could negate strides made two years ago on construction defect reform, which affects the ability to build attainable housing. Of particular concern is the language in the bill concerning standard form contracts. The recent *Vallagio* Colorado Supreme Court decision was important as it clarified that arbitration agreements in declarations for a planned community are enforceable. Under HB 19-1289, depending on how they are drafted, those same agreements could now be deemed unenforceable. There is a concern among municipal officials that this change will result in significant additional costs and litigation which will be detrimental to an already difficult affordable housing market. The Attorney General is the main proponent behind the bill for reasons outside of the construction defects discussion, and stakeholders are working with the Attorney General to seek amendments to address these concerns. The bill was amended by the House Judiciary committee to delete the section on standard form contracts. It passed on 2<sup>nd</sup> Reading in the House on Friday, as amended, and is scheduled for 3<sup>rd</sup> reading early this week.
- *HB 19-1322, Expand Supply Affordable Housing (Recommend Support)*



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Assuming certain conditions are satisfied affecting the state's fiscal situation, the bill requires the state treasurer to transfer a specified amount of money starting with the 2019-20 state fiscal year and through and including the 2025-26 state fiscal year from the unclaimed property trust fund to the division of housing in the department of local affairs, to be deposited by the division into the housing development grant fund. The bill also makes parallel changes found to the "Revised Uniform Unclaimed Property Act". In addition to the other sources of money to be deposited into the housing development grant fund, the bill specifies that the fund also consists of money transferred by the state treasurer from the unclaimed property trust fund to the division to be deposited into the housing development grant fund to supplement existing money in such fund to be expended for any of the purposes specified in the bill. It also expands the source of money that may be deposited into the housing development grant fund. This bill was introduced in the House late Friday evening and assigned to the Finance committee, where it has not yet been scheduled for hearing.

- *HB 19-225, Rent Control*  
SB 19-225 removes the state preemption on local governments controlling rents on private property. It also removes language that prohibits a local government from denying an application for a development permit if a developer declines to enter into an agreement to limit rent. The new language enables local governments to enact and enforce any ordinance, resolution measure that would control rent on either private residential property or a private residential housing unit which includes deed restrictions and agreements. While CML supports the bill because of its local control theme, it is more of a “passive” support as they have not heard from their membership that rent control is a necessary tool for local governments. The bill was scheduled to be heard by the Senate State Affairs committee last Wednesday but due to weather it was rescheduled for Monday, April 15.

### Education

- *SB 19-183, Alternate Procedures to Reorganize School Districts (Support)*  
This bill creates an alternate process for the dissolution and annexation of a school district. Pursuant to the bill, if a school district meets specified criteria, the board of education of the school district (local school board) may seek dissolution and annexation of the school district by convening an organization planning committee that consists of representation from the local school board of the dissolving school district



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and the local school boards of the contiguous school districts. The local school board of the dissolving school district must notify the commissioner of education when such a committee is formed. The committee must create a proposed plan of organization that dissolves the convening school district and annexes the territory of the dissolved school district to one or more of the contiguous school districts. The bill specifies the issues that the committee must consider in creating the plan. This bill passed the Senate and the House and will now be sent to the Governor for signature.

- *SB 19-204, Public School Local Accountability Systems*

This bill creates the local accountability system grant program in the department of education (department) to provide grant money to local education providers that adopt local accountability systems to supplement the state accountability system. A local accountability system may include additional measures for determining achievement of the state performance indicators and additional indicators of student success, but the measures do not affect the accreditation rating assigned to a school district or the type of plan that a school must adopt. A local education provider may use grant money to work with one or more accountability system partners, which may be public or private institutions of higher education or private nonprofit entities. The department shall review applications and recommend to the state board of education (state board) the applicants that may receive a grant and the amount of the grant. The state board shall award the grants subject to available appropriations. A local education provider that adopts a local accountability system may submit to the department a supplemental performance report that includes information collected through the local accountability system. The local education provider may also use an alternative format for the type of performance plan that the local education provider is required to implement. The department must post the supplemental performance reports and alternatively formatted plans on the department's data portal. The bill passed through the Senate Education committee last week and was referred to the Appropriations committee, where it has not yet been scheduled.

### **Transportation Funding**

- *HB 19-051, Transportation Funding*

SB 19-051 increases the amount of transportation funds appropriated under SB 18-001 in 2019 from \$150 to \$340 million. The bill increases the state's HUTF portion for transportation funding from \$105 million to \$266 million and the local government



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HUTF allotment from \$22.5 million to \$51 million. The bill does not increase funding for multimodal infrastructure improvements. SB 19-051 has two Republican Senate sponsors and no House sponsor and is therefore very unlikely to pass without significant negotiation between the parties. This bill still has not yet been scheduled for hearing. In Colorado, every bill is required to receive at least one hearing, so this must be scheduled soon.

- *SCR 19-003, Replace Motor Fuel Taxes with Additional Sales Tax*  
If approved by the voters of the state at the November 2020 general election, this concurrent resolution will amend the state constitution to require the general assembly to enact a law that will:
  - Effective July 1, 2021, repeal existing state excise taxes on gasoline and other liquid motor fuel, including diesel, compressed natural gas, liquefied natural gas, and liquefied petroleum gas (motor fuel taxes); except that the law shall not repeal the existing state excise tax on aviation fuel used for aviation purposes;
  - On and after July 1, 2021, levy an additional state sales and use tax (additional sales tax) at a rate calculated to generate the amount of net revenue needed to offset 99% of the state revenue loss resulting from the repeal of the motor fuel taxes for state fiscal year 2021-22; and
  - Require the net revenue generated by the additional sales tax to be credited to the highway users tax fund (HUTF), initially allocated to the state, counties, and municipalities in a manner that preserves existing HUTF allocations as nearly as possible, and used exclusively for the construction, maintenance, and supervision of the surface transportation system of the state.

The concurrent resolution specifies that for purposes of TABOR its approval by the voters of the state constitutes voter approval in advance for the state to levy the additional sales tax and to retain and spend all revenue generated by the additional state sales and use tax during a state fiscal year that exceeds the amount of revenue generated during the 2020-21 state fiscal year by the repealed gasoline and special fuel taxes as a voter-approved revenue change. SCR 19-003 is scheduled for hearing by the Senate Transportation & Environment committee on Thursday, April 18.

### **Taxation**

- *HB 19-1240, State Sales Tax Administration (Support)*



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HB 19-1240 has been introduced to attempt to consolidate a number of issues related the state's rulemaking in the wake of the *Wayfair* decision. The rules, effective on June 1, will impact those that remit state sales tax and sales tax for statutory entities on whose behalf the state collects. The bill will ultimately create a *de minimis* exemption for remittance to jurisdictions outside of a taxpayer's local jurisdiction, require remote marketplace facilitators to collect sales tax and remit to the state, and repeals some language from the old 2013 Marketplace Fairness Act legislation. Nothing in this legislation directly implicates self-collecting home rule municipalities, but the bill would be a step toward an aspirational single point of remittance sometime in the future. This bill passed the House Business Affairs & Labor and House Finance committees and is now awaiting a hearing by the Appropriations committee.

### OTHER LEGISLATIVE ITEMS OF INTEREST

#### Beer & Liquor

- *SB 19-141, Entertainment Districts in Counties (Formerly Opposed)*  
SB 19-141 was introduced at the request of Beaver Creek - an unincorporated resort area in Eagle County. The legislation modifies the current statute allowing entertainment districts by permitting them to be in counties and also adding "optional premises licenses" as one of the types of license that may be attached to an entertainment district. Currently, the statute restricts entertainment districts to municipalities. The municipal league is neutral on the bill but asked for a clarifying amendment that a county establishing an entertainment district can only do so in the unincorporated portion of the county. This amendment avoids any confusion, since municipalities license any liquor establishments attached to an entertainment district within a municipality. The bill, as amended, passed both the House and Senate and now is headed to the Governor's desk.

#### Building Regulations

- *HB 19-1086, Require Journeymen for Local Plumbing Inspections (Formerly Opposed)*  
Beginning in 2022, HB 1086 as introduced would require all local governments conducting their own plumbing inspections to employ journeyman plumbing inspectors or those who hold a master plumber license issued by the state. Many local governments currently employ unlicensed inspectors and would therefore not be in



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compliance with this requirement. The proponents of the bill originally proposed a 10 year “grandfather” period for existing unlicensed inspectors however they have now backed off the licensing requirement altogether and are taking a new approach. The bill was dramatically amended in the House Business Affairs & Labor committee to take out the journeyman/master plumber standards and instead require plumbing inspectors to check licensure and apprenticeship requirements when conducting inspections and require additional continuing education. It passed both the House and Senate and is now headed to the Governor’s desk.

### Employment

- *HB 19-1210, Local Government Minimum Wage*  
HB 19-1210 clearly gives affirmative authority for local governments to establish a local minimum wage higher than the state minimum wage. Local government stakeholders negotiated problematic language out of the bill before it was introduced. Further amendments will strengthen the ability of local governments to work collaboratively and regionally, as well. The bill passed through the House and was introduced in the Senate, where it was assigned to the Business, Labor & Technology committee. It was heard by the committee on Monday, April 8 but laid over for action on Monday, April 15.
- *SB 19-188, Family and Medical Leave Insurance (Oppose)*  
For the last four legislative sessions, versions of FMLI legislation have been introduced but ultimately failed to pass in a split legislature. Previously, advocacy efforts were limited to a few key areas, but this year’s version has a critical new component. The intent of the legislation is to have a state version of the Family and Medical Leave Act (FMLA) with two key exceptions: 1) It provides a paid benefit, and; 2) it applies to all employers in Colorado of all sizes. The FMLI program would be funded with a percentage of payroll deduction relative to the employee’s pay and create an enterprise within the Colorado Division of Labor and Employment to administer it. FMLI would provide partial wage replacement benefits to an eligible individual who takes leave from work to care for a new child or a family member with a serious health condition. As introduced, the premium – defined in the bill draft as a “fee” and not a “tax” – would be required to be split 50/50 between the employer and employee. The requirement for the employer contribution is a new element in the forthcoming bill, not seen in previous versions. At this point, the key concerns are ensuring that any program





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would align and not conflict with FMLA and the significant unfunded mandate that the required employer payroll deduction represents. The bill faces a lot of opposition and the sponsors have not been able to get their entire caucus on board with some of its far-reaching provisions. It passed the Senate Finance committee last week and was sent to Appropriations, where it will be heard on Tuesday, April 16. Amendment negotiations are ongoing.

### Land Use

- *HB 19-1191, Allow Farm Stands on any Size Principal Use Site (Formerly Opposed)*  
As originally introduced, HB 19-1191 would allow a farm stand to locate anywhere throughout the state and undertake agricultural operations, regardless if the local government has zoned that area for agricultural activity. Local government is authorized to enact ordinances and/or regulations to help facilitate the agricultural operation but may not limit or restrict any operation. At the request of the municipal league, the bill was amended to clarify that while farm stands may be allowed on any size parcel, they still must go through the permitting and licensing requirements of the local government. The amended bill passed the House and the Senate and was signed by the Governor on Friday, April 12.

### Marijuana

- *HB 19-1230, Onsite Consumption (Oppose)*  
Subject to local and state approval, HB 19-1230 would allow "cannabis hospitality spaces" for onsite consumption of marijuana and marijuana products. The bill also allows for onsite sales. The legislation would allow smoked products to be consumed by creating an exemption in the Colorado Clean Indoor Air Act. For those who supported the inclusion of marijuana smoke in the Clean Indoor Air Act in 2013, this exception is problematic. To the credit of the proponents and sponsors, the bill does require local governments to opt in to allow onsite consumption establishments. An amendment was added at CML's request to clearly allow the decision for an exemption of marijuana smoke from the Clean Indoor Air Act to be made at the local level, allowing CML to withdraw opposition. The bill was passed as amended by the House Business Affairs & Labor and House Finance committees. It is now awaiting a hearing in Appropriations.
- *HB 19-1234, Delivery (Oppose)*





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HB 19-1234 is far more expansive than last year's failed legislation creating a pilot project. However, proponents kept their word in stating they would be consistent with the local control they have promoted, and this bill was amended in committee last week to address all of CML's concerns. Specifically, language was added that (1) requires an opt-in to allow delivery of medical or retail marijuana, even if a municipality already allows medical centers or recreational stores; and (2) prohibits cross-jurisdictional deliveries or at least prohibits them unless a municipality allows them. These points are consistent with the local control elements and processes of Amendment 64. The bill was amended by the House Business Affairs & Labor committee and is now awaiting a hearing by the House Appropriations committee.

### **Public Safety**

- *HB 19-1119, Police Officers IA Investigation Open Records (Oppose)*  
HB 19-1119 attempts to govern internal affairs investigation (IA) files of a peace officer for in-uniform or on-duty conduct that involves a member of the public subject to inspection. In addition, the legislation directs what types of information should be redacted before complying with the inspection request (although, the custodian could have first provided an IA summary first). CML opposed the legislation in its introduced form as it is a significant expansion of the existing practices of releasing criminal justice records under current law. However, after meeting with the proponents and negotiating language, CML dropped their opposition and are now neutral on the bill. This position mirrors the position taken by the Colorado Association of Chiefs of Police. The bill passed both the House and the Senate and was signed by the Governor on Friday, April 12. It takes effect upon signature.
- *HB 19-1177, Extreme Risk Protection Orders (Oppose)*  
HB 19-1177 creates a process for extreme risk protection orders in Colorado. This would allow law enforcement to remove fire arms from an individual a judge deems too high a risk to themselves or others. The legislation is a response to the shooting death of a Sheriff's Deputy in 2017. The Colorado Association of Chiefs of Police supports the legislation as well as several individual Sheriffs. The bill faced significant opposition throughout the process but still passed both the House and Senate. After hours of debate on 2<sup>nd</sup> and 3<sup>rd</sup> Readings in the Senate, it passed by only one vote, with the Democrat President of the Senate voting no. This bill went into effect upon signature of the Governor on Friday, April 12.



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- *HB 19-1225, No Monetary Bail for Low Level Offenses (Oppose)*  
There is a movement across the nation aimed at reforming judicial bail and bond systems. That movement is also alive and well in Colorado. One of the bills introduced to reform the use of monetary bail is HB 19-1225. The bill removes monetary bail for petty offenses, traffic offenses, and municipal ordinance violations that do not have a comparable state misdemeanor. When the bill was introduced there was substantial confusion as to which municipal ordinance violations were exempted in the bill. CML worked with the bill sponsors and proponents on an amendment that makes it clear that monetary bail is allowed for municipal ordinance violations with a comparable state misdemeanor. These ordinances violations may include crimes that are violent in nature. The bill was heard in the House Judiciary Committee where the passed with the amendment. With the adoption of that clarifying amendment, CML is no longer opposed to the bill. It passed both the House and Senate and will soon head to the Governor's desk.
- *SB 19-166, Revoke POST Certification for Peace Officers Who Made Untruthful Statements*  
SB 19-166 requires the Peace Officers Standards and Training Board (POST) which certifies peace officers, to revoke the certification of a peace officer if a law enforcement agency reports that the officer knowingly made an untruthful statement. The bill specifically identifies untruthful statements that concern a material fact or omitted a material fact on an official criminal justice record, while testifying under oath, or during an internal affairs investigation. In order to report to POST that an officer should be decertified, the law enforcement agency must complete the administrative process and determine by a clear and convincing standard of the evidence that the officer was untruthful. An appeal process is also described in the bill. The bill passed the Senate and was sent to the House where it will be heard by the House State Affairs committee on Tuesday, April 16.

### TABOR

- *HB 19-1257, State Permanent Debrucing (Support)*
- *HB 19-1258, Debrucing Companion Bill (Support)*  
HB 19-1257 places a debrucing question on the fall ballot and HB 19-1258, which would become effective only upon passage of the question, specifies how revenues



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retained above the state limitation would be distributed. The deburring question will require a simple majority in both chambers to be placed on the ballot and would be known as "Proposition CC." A simple majority would also be required to pass it at the ballot. The implementing legislation specifies that any revenue retained would be divided equally between K-12, higher education, and transportation/transit. The transportation/ transit revenue would be distributed through the HUTF formula (60-22-18) and 10% of the amount directed to the State Highway Fund would be available for transit or transit-related purposes (this was amended on 2<sup>nd</sup> reading in the House to increase the 10% to 15%). Depending on whether revenue is available, this provision has the potential to help with a lot of the maintenance and project backlogs at the local level. The bills passed the House on 2<sup>nd</sup> reading late Friday and are expected to be up for 3<sup>rd</sup> reading on Monday, April 15.

### **Unclaimed Property**

- *SB 19-088, Revised Uniform Unclaimed Property Act*  
SB 19-088 would enact the Revised Uniform Unclaimed Property Act, as adopted by the National Conference of Commissioners on Uniform State Laws, with Colorado-specific amendments. The Act responds to current transactions and practices, in particular electronic records, and seeks to promote uniformity among state laws regarding the disposition of unclaimed property. As the bill essentially replaces our current state laws regarding unclaimed property, it also originally omitted the existing local government opt-out. CML worked with the bill sponsor, Sen. Bob Gardner (R-Colorado Springs) to address this omission and amendment was adopted by the Senate Business, Labor & Technology committee. The bill passed the Senate and was introduced in the House, where the House sponsor ran an amendment that will affect the manner in which the City handles intangible property, particularly reporting and holding requirements. Local government concerns fell on deaf ears and this amendment was adopted. The bill passed the Senate and House and was sent to the Governor for signature.

Please contact Troy Smith at 303-289-3619 or [tsmith@c3gov.com](mailto:tsmith@c3gov.com) with questions on these or any other legislative issues.

