



OTTEN JOHNSON ALERT

Midterm Elections: State and Local Ballot Measures Affecting Real Estate and Land Use

October 2022 • [Rachel D. Van Amburg](#)

Ballots have been mailed out meaning Election Day is nearly upon us. It's midterm season in Colorado and there are several measures on the statewide and local Denver ballot with direct and indirect impacts on the real estate industry. This alert provides summaries of those ballot measures that may be of interest to business and property owners in the Denver area and beyond.

State Ballot Measures

[Proposition 123](#)

Dedicate Revenue for Affordable Housing Programs

Proposition 123 aims to add to existing state resources dedicated to affordable housing by creating the State Affordable Housing Fund. This measure does not increase taxes, but rather allocates a portion of the already-collected state income taxes away from the legislature's priorities or potential refund to taxpayers. The State Affordable Housing Fund would be administered by the Office of Economic Development and International Trade (OEDIT) and the Colorado Department of Local Affairs (DOLA). OEDIT would oversee a land banking program, an affordable housing equity program and financing for new, qualifying affordable housing projects. DOLA, on the other hand, would

oversee a down payment assistance program for first-time home buyers and mobile home owners' associations, a rental assistance program for those at risk of experiencing homelessness and grants to local planning departments to help process applications for affordable housing projects.

- Voting **Yes** to Proposition 123 would allocate a portion (0.1%) of state income taxes to this State Affordable Housing Fund for use by OEDIT and DOLA.
- Voting **No** to Proposition 123 would allow the legislature to continue spending this money on priorities under their discretion or return the funds to taxpayers.

Propositions 124-126

Measures Related to Alcohol Sales in the State

Various measures related to the sale of alcohol within the State are on the ballot this November. [Proposition 124](#) would incrementally increase the number of liquor licenses available to retailers over the next fifteen years until an unlimited number of licenses would be allowed for each person by 2037. [Proposition 125](#) would create a new fermented malt beverage and wine retailer license for off-site consumption to allow retailers like grocery stores to automatically convert their beer license to allow for wine sales as well. [Proposition 126](#) would allow for third-party delivery of alcohol and make takeout of alcohol from restaurants and bars permanently available. If any of the above measures are passed, it may impact the locations of establishments licensed to sell alcohol in the State.

- Voting **Yes** to each of these measures would change the landscape of alcohol sales within the State by allowing for more liquor licenses to be issued to a person, expanding locations in which wine may be sold, allowing third-party delivery of alcohol and allowing for permanent alcohol takeout from restaurants and bars.
- Voting **No** to the various measures would keep the law as it currently exists by continuing to limit a person to three retail liquor licenses, allowing retailers like grocery stores to keep selling beer, allowing businesses to continue using their own employees for alcohol delivery and allowing bars and restaurants to continue offering takeout of alcohol until July 2025.

Denver Ballot Measures

[Initiated Ordinance 305](#)

Rental Property Tax to Fund Eviction Legal Representation

If Ordinance 305 passes, landlords in the City of Denver will be assessed a “no eviction

without representation” tax of \$75 per leased residential rental property each year, as may be annually increased due to inflation. This tax would be used to create and fund a program providing legal aid to people in the process of being evicted by their landlords. The Ordinance creates a Tenants’ Legal Services and Assistance Coordinator position and a seven-member Tenants’ Committee to oversee the program providing possible legal representation to all tenants within the City.

- Voting **Yes** to Ordinance 305 would create the no eviction without representation tax to be charged to landlords of leased residential rental properties each year.
- Voting **No** to Ordinance 305 would keep the current landscape of eviction defense in Denver.

[Initiated Ordinance 306](#)

Recycling and Composting Programs in Apartment Complexes and Office Buildings

Ordinance 306 requires a wide variety of property owners in the City of Denver to provide access to recycling and composting services to all tenants, employees and guests of their property. This includes those responsible for multi-family residential and non-residential properties, along with “food waste producers.” The latter category encompasses a range of property types including grocery stores, hotels, hospitals, sports venues, event centers, shopping centers, airports, restaurants and more. The Ordinance also requires that information and instructions be provided to all tenants, businesses, organizations, employees and others using such facilities. Most construction and demolition projects are also covered by this Ordinance, requiring recycling of materials such as readily-recyclable concrete, asphalt, clean wood, scrap metal and corrugated cardboard. There is an exception, however, for small construction projects and those requiring only mechanical, electrical, plumbing or HVAC permits.

- Voting **Yes** to Ordinance 306 requires multi-family residential properties, non-residential properties, and food waste producers in Denver to provide recycling and composting services to their employees, tenants and guests.
- Voting **No** to Ordinance 306 allows property owners in Denver to have the choice of whether or not to provide recycling and composting services on their property.

[Initiated Ordinance 307](#)

Sidewalk Enterprise and Property Owner Fee for Sidewalk Repair and Maintenance

Ordinance 307 would change the parties obligated to construct, reconstruct and repair

sidewalks within the City of Denver. If Ordinance 306 passes, this obligation would be placed on the City itself, as administered and overseen by the Manager of the Department of Transportation and Infrastructure. Property owners would be assessed an annual Sidewalk Service Charge, revenues of which would be dedicated toward sidewalk construction, reconstruction and repair by the City. The Sidewalk Service Charge would be calculated dependent upon the length of sidewalk adjoining one's property and the type of street on which the property is located. For example, the annual fee per linear foot is most expensive for downtown and main street arterial and connector streets, and cheapest for commercial, industrial and residential collector streets, and local and undesignated streets. Under this Ordinance, the Manager of the Department of Transportation and Infrastructure would create a Sidewalk Master Plan that prioritizes areas where no sidewalks currently exist, existing sidewalks that do not meet the specified minimum width requirements and sidewalks in severe disrepair or not complying with legally mandated accessibility requirements.

- Voting **Yes** to Ordinance 307 transfers the responsibility of constructing and repairing sidewalks to the City, with an annual fee charged to property owners.
- Voting **No** to Ordinance 307 keeps the responsibility of constructing and repairing sidewalks in Denver on the adjacent property owners.

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