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Denver Voters to Consider Referred Question 2F; Group Living Repeal

October 2021 • [Matt Bender](#) and [Brian Connolly](#)

This November, Denver residents will be voting on Referred Question 2F, which asks whether Denver’s recently enacted 2020 Group Living Text Amendment should be repealed and reversed.

The amendment in question was adopted by Denver’s City Council by an eleven to two vote in February 2021 following a three-year discussion and community-engagement process regarding the modernization of Denver’s zoning code in order to permit more than two unrelated adults to live together in a single dwelling unit, increasing that limit up to five. During that process, the City received and reviewed more than 10,000 pages of feedback and comments from Denver residents on the amendment’s language.

The previous two-person cap was one of the strictest in the country, and at odds with both basic fair housing requirements and City residents’ need for more affordable housing options. At the time the amendment was enacted, Aurora, Golden and Westminster each had a limit of four unrelated adults, and Parker and Lakewood had a limit of five.

The amendment also addressed certain related issues, such as clarifying the definition of “residential care facilities” to include uses such as assisted living, nursing homes, shelters, sober-living facilities and other, similar facilities, and permitting the siting of

such facilities in areas in the City other than merely downtown and industrial zones. From a land use perspective, this aspect of the amendment effectively required the City to regulate these facilities by their size and resulting impacts, rather than merely by their use or the health-status of their occupants. This approach brought the City into greater conformance with its obligations under the Federal Fair Housing Act, which requires that local governments allow group living opportunities to people with disabilities in residential areas.

Proponents of these changes to the residential care facility definition say the changes will increase the efficacy of these facilities, by not pushing them to areas where the residents' quality of life will be negatively impacted by the surrounding uses, and increase the ability of operators to site such facilities, thereby limiting costs and expanding options. Further, proponents argue that regulating these facilities by their size is more consistent with how other uses are regulated and will limit opportunities for discrimination and NIMBY-ism against the likely residents of these facilities during the City's entitlement and permitting process. Moreover, by allowing more unrelated people to reside together—on par with the number of related people who can live together—the amendment expanded options for more affordable forms of housing in the City.

Opponents of the amendment, who have put forward Referred Question 2F, are purported to believe that the changes are needed, but that the City did not do an adequate job engaging the community and educating them about possible outcomes from the existing amendment. As such, they believe the process needs to begin again from its beginning. If 2F passes, the current amendment would be repealed, a stand-still period of one year would be required, and then the City Council could again take-up the issue of modernizing and correcting the old rules, but only pass it by a two-thirds vote. 2F and its supporters, however, have not clarified what changes they feel are needed or how the 'restart' of the City Council's process should differ from the prior multi-year process, but merely stated that the existing amendment poses a threat to Denver's unique and lively neighborhoods.

A large and diverse group has formed to oppose 2F, including Denver Mayor Michael Hancock, ten of Denver's thirteen City Council members, affordable housing advocates, housing and addiction experts, members of Denver's development community and various other Denver businesses and service providers. Mayor Hancock said 2F would be a step backward in the city's efforts to increase housing density, something he believes is counter to the input the City gathered from residents during its most-recent comprehensive planning process. "I think there is a lot of fear-mongering around this bill that is unfortunate and, quite frankly, detrimental to a city that is using equity as its north star," Hancock said. City Councilwoman Robin Kniech, a vocal opponent of 2F, says the referred question is simply "demonizing a group of people and trying to paint a whole campaign with it," and that the amendment was repeatedly revised [to address community concerns](#), such as parking limitations and spacing restrictions between facilities.

Although our firm did not take a position on the 2020 Group Living Amendment during its consideration by the City, and while we believe that the 2020 Group Living Amendment is imperfect in several ways, we oppose Referred Question 2F. In particular, we are concerned that, should it pass, Referred Question 2F will place the City in a precarious position with respect to its federal fair housing obligations, and we also believe that the measure would result in a significant backslide in the City's efforts to encourage the creation of more affordable housing options. Ultimately, however, the question now rests in the voters' hands as part of the November 2nd election.

If you have questions about Referred Question 2F, the 2020 Group Living Amendment or other aspects of Denver's land use and zoning code, Otten Johnson's land use and real estate attorneys have deep and active expertise in order to help you navigate its complexities.

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