



OTTEN JOHNSON ALERT

Midterm Results: State and Local Real Estate and Land Use Approved Ballot Measures from Colorado's November 2022 Election

November 2022 • [Rachel D. Van Amburg](#) and [Andrew L.W. Peters](#)

As a follow up to last month's [discussion](#) of measures on the statewide and local Denver ballots, this alert summarizes impacts of the voter-approved ballot measures on the real estate industry. The Denver election results became official on November 29th. The statewide election results, on the other hand, will not be certified until December 5th. However, the following statewide measures are unofficially approved by voters.

State-Level Voter-Approved Constitutional and Statutory Amendments

[Proposition 123](#)

Current State Income Taxes Directed to Statewide Affordable Housing Fund

Voters in Colorado approved Proposition 123 to direct 0.1% of state income taxes to create and administer the Statewide Affordable Housing Fund. This fund is expected to raise nearly \$300 million for affordable housing in its first year and will be administered jointly by the Office of Economic Development and International Trade (OEDIT) and the Colorado Department of Local Affairs (DOLA). OEDIT will oversee:

- A land banking program providing grants and loans to local governments and nonprofits setting aside land for affordable housing development;

- An affordable housing equity program making investments in low- and middle-income multi-family rental developments; and
- A debt-financing program for new, affordable housing development.

DOLA, on the other hand, will administer:

- An affordable home ownership program offering down-payment assistance to first-time homebuyers;
- A program assisting persons experiencing homelessness by providing rental assistance, housing vouchers and eviction defense assistance; and
- A local planning program providing grants to local governments to increase capacity of their planning departments to process land use, permitting and zoning applications for affordable housing projects.

Unless legislatively amended, beginning in 2027 the measure will also add significant requirements for localities seeking the funds: they must be growing their affordable housing stock by three percent annually and must also institute fast-track approval processes designed to streamline permitting for affordable housing projects.

[Proposition 125](#)

Grocery and Other Stores Allowed to Sell Wine Along with Beer

While there were three measures on the statewide ballot related to alcohol sales, only Proposition 125 passed. Beginning on March 1, 2023, a new fermented malt beverage and wine license will automatically allow grocery and other stores who currently sell beer to sell wine as well.

[Amendment D](#)

Governor's Designation of Judges to Newly-Created 23rd Judicial District

Unlike the other voter-approved measures discussed below, Amendment D is a legislatively-referred constitutional amendment allowing and directing Governor Polis to staff the newly-created 23rd Judicial District that will serve only Douglas, Elbert and Lincoln Counties.[1] Governor Polis, in his upcoming second term, must now assign seven judges from the current 18th Judicial District, which will continue to serve Arapahoe County, to the new 23rd Judicial District by November 30, 2024. Those judges must also live in or move to the new district by January 7, 2025. This voter-approved process should ensure a smooth transition of judges already presiding over Arapahoe, Douglas, Elbert and Lincoln Counties in the current 18th Judicial District.

What Happens Next?

With the exception of Amendment D, these measures are all subject to later changes from General Assembly. After the results have been certified on December 5th, the General Assembly may amend, repeal or otherwise supersede either of the above voter-approved statutory amendments, Proposition 123 and Proposition 125, by a simple majority vote at any time after result certification. Altering Amendment D, on the other hand, would require the General Assembly to send a new constitutional amendment back to voters.

Denver Voter-Approved Municipal Code Amendments

[Ordinance 306](#)

Recycling and Compositing Requirements for Denver Businesses

Beginning in 2023, many Denver businesses, including multifamily residential and nonresidential operations and food waste producers, will be required to offer composting and recycling services on their property. For multifamily residential premises, there will be a phase-in based on the number of units: buildings with more units will have to comply sooner than those with fewer. The phase-in for nonresidential premises and food waste producers will be based on the square footage of the premises, with larger buildings also having to comply on a faster timeframe than smaller buildings. Not only will the affected property owners have to provide recycling and composting services, they must also provide education, information and signage regarding such services in English and Spanish, and create an annual diversion plan. Construction sites in Denver are also impacted by new requirements to recycle materials such as readily-recyclable concrete, asphalt, clean wood, scrap metal and corrugated cardboard, or risk losing permits and/or incurring fines for noncompliance.

[Ordinance 307](#)

Shift in City Responsibility over Sidewalks and Creation of the Sidewalk Master Plan

Denver voters changed the way sidewalk construction, reconstruction and repairs will be handled moving forward by removing the responsibility from property owners and placing it onto the City. Property owners will now pay a semi-annual sidewalk service charge to the City, similar to the City's existing storm drainage fee, based upon the street type. The current fee structure is outlined as follows:

- Commercial, industrial and residential collector streets and local and undesignated streets will have an annual fee of \$2.15/linear foot of property frontage.
- Commercial, industrial, mixed use, and residential arterial and mixed use collector streets will have an annual fee of \$3.58/linear foot of property frontage.
- Downtown and main street arterial and collector streets will have an annual fee of

\$4.30/linear foot of property frontage.

- Fees will be reduced by twenty percent in areas identified through the City's Neighborhood Equity & Stabilization program.

In addition to the sidewalk service charge, this voter-passed ordinance creates a sidewalk master plan setting forth the location and state of repair for all sidewalks within the City. The priority under the master plan will be on areas where no sidewalks currently exist, where existing sidewalks do not meet specified minimum width requirements and areas in which sidewalks are in serious disrepair or do not comply with legally-mandated accessibility requirements.

What Happens Next?

Starting at the end of May 2023, the Denver City Council may amend or repeal either of these voter-initiated ordinances by a two-thirds majority vote. The City Council must first hold a public hearing before taking action and must take such action within the next ten years, otherwise no amendment or repeal may be made with respect to these ordinances.

[1] The legislature, in [HB 20-1026](#), created the 23rd Judicial District as a response to the growing population of Colorado. The new judicial district will take effect January 7, 2025.

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