

**GENERAL-PURPOSE REGIONAL GOVERNANCE AS A
SUSTAINABILITY TOOL FOR METROPOLITAN REGIONS:
EMPOWERING DENVER’S DRCOG TO FACILITATE
MEANINGFUL TRANSIT-ORIENTED DEVELOPMENT**

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ABSTRACT

A majority of the United States population now lives in a metropolitan region.¹ Any given region is comprised of numerous local governments, and the very nature of home rule jurisdiction precludes these localities from acting in isolation to curb the ill-effects of sprawl. When there are issues of regional significance and the state fails to address the issue, a regulatory vacuum is created. This paper explores how a general-purpose regional government structure can fill that regulatory vacuum to promote a sustainable metropolitan region. Specifically, this paper argues that a regional governance approach better serves transit-oriented development and looks at the Denver metro region as a case study.

I. Background

In Colorado, the Regional Transportation District (RTD) services the Denver metropolitan (Denver metro) region’s public transportation

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¹ Laurie Reynolds, *Local Governments and Regional Governance*, 39 URBAN LAWYER 483, 485 (2007).

needs² across eight counties. Throughout the RTD's jurisdiction, full service is provided in the counties of Boulder, Broomfield, Denver, and Jefferson, and RTD serves parts of Adams, Arapahoe, and Douglas counties, as well as a small part of Weld county.³ Within the eight counties where RTD provides full-service transportation, there are approximately forty municipalities⁴ and each has their own set of zoning and land use laws.⁵ RTD is the main provider of public transportation for nearly 3.1 million people within its 2,342 square mile district,⁶ providing service in the form of bus, rail, and shuttles, among others.⁷ RTD operates the eighth-largest rail system in the country,⁸ and yet, the average vehicle miles traveled within the Denver metro region has only increased throughout the years.⁹ In fact, a 2019 Denver Regional Council of Governments (DRCOG) study suggests that traffic congestion will only continue to worsen in the Denver metro region, "unless new technologies provide some relief or transportation funding becomes a higher priority."¹⁰

Given the sheer amount of counties and municipalities that encompass the Denver metro region,¹¹ it makes sense that a regional body like DRCOG exists "to make and adopt a regional plan for the physical development of the region's territory."¹² However, while DRCOG acknowledges that "the success of the [regional] visionary plan requires coordinated efforts of local, state, and federal governments," the plans DRCOG develops and maintains are only aspirational and advisory in practice.¹³ As such, DRCOG's plans for the region have no force of law

² See *Who We Are: Welcome to Your Transit System*, RTD DENVER (2023), <https://www.rtd-denver.com/who-we-are> [hereinafter RTD DENVER].

³ *Id.*

⁴ *Id.*

⁵ See discussion *infra* Section II.A.

⁶ See RTD DENVER *supra* note 2.

⁷ *Id.*

⁸ Andrew Small, *Denver Radically Expanded Its Transit. So Why Are More People Driving Cars?*, BLOOMBERG: CITYLAB (Nov. 2, 2017), <https://www.bloomberg.com/news/articles/2017-11-02/why-denver-s-fastracks-rail-expansion-has-fallen-short>.

⁹ *Id.*

¹⁰ Aldo Svaldi, *Metro Denver's Traffic Congestion Will Go from Bad to Worse, Study Predicts*, DENV. POST (Oct. 17, 2019), <https://www.denverpost.com/2019/10/17/metro-denver-traffic-congestion-to-get-worse-study>.

¹¹ See sources cited *supra* notes 4 and 5 and accompanying text.

¹² See DENVER REGIONAL COUNCIL OF GOV'TS, METRO VISION 7 (2019), <https://indd.adobe.com/view/bc3ce7aa-3e79-4f11-8eb6-9e1c20b4472a> [hereinafter METRO VISION].

¹³ *Id.*

unless a local municipality's planning commission chooses to adopt DRCOG's regional plan as its comprehensive plan¹⁴ and the municipality's comprehensive plan carries the force of law, as well.

In its latest regional plan, dubbed Metro Vision,¹⁵ DRCOG proposes compact urban cores connected by multimodal corridors, a safe, reliable transportation system, in order to lower greenhouse gas emissions in the region by providing "all residents access to a range of transportation" infrastructure.¹⁶

With the climate crisis worsening by the day¹⁷ and future growth expected throughout the region,¹⁸ it is pertinent that local municipalities within the Denver metro work with urgency to meet Metro Vision's regional goals. As such, a uniform regional approach must replace the old ways of being. Namely, we must shift away from home rule jurisdictions unilaterally instating zoning regulations that do not comport to a regional comprehensive plan and adopt a regional approach that streamlines Denver's development in a way that promotes transit-oriented development (TOD).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 15–16.

¹⁷ In August 2021, Denver ranked number one in the world for the worst air pollution among major cities. See Kieran Nicholson, *Denver Ranks No. 1 in List of International Cities for Air Pollution Saturday*, DENVER POST (Aug. 7, 2021), <https://www.denverpost.com/2021/08/07/denver-air-pollution-ranking>. For several months in a row that same year, Denver experienced air quality alerts three out of every four days. See Kelsey Vlamis, *People Are Flocking to Colorado for the Great Outdoors, But the Air Pollution is So Bad, It's Forcing Many to Stay Inside*, BUSINESS INSIDER (Oct. 2, 2021), <https://www.businessinsider.com/air-pollution-colorado-wildfires-climate-threatening-access-to-the-outdoors-2021-10>. While wildfires in the west are a major culprit, ozone is the primary contributor to Denver's worsening air quality. See *id.* Colorado's ozone pollution is largely due to increased traffic congestion from the Denver metro region's population surge, in addition to the state's burgeoning fossil fuel industry. *Id.*

¹⁸ See Svaldi *supra* note 10. As of 2019, DRCOG's director of transportation planning and operations, Ron Papsdorf, reported that the Denver metro region expected to grow "by another 1 million people" over the next two decades. *Id.* The regional growth projection from DRCOG's annual roadway congestion report follows the 8% population increase experienced in the region between 2014–2019. *Id.* Projections from DRCOG's report expect the Denver metro region's population to increase by a third, from 2018's estimated population of 3.28 million to 4.37 million by 2040. *Id.* Given these facts, it is only logical to assume that a larger population will result in more traffic congestion, which in turn generates more greenhouse gas emissions throughout the region.

II. What is Regional Governance?

Before arguing for a regional governance structure, it is imperative to understand what a regional governance structure is. This Part will outline the basics of regional governance structures and analyze a few present examples of regional governance employed in the United States.

A. Defining Regional Governance

The very idea of regional governance is predicated on the fact that many metropolitan areas, such as the Denver metro region, are comprised of several smaller multipurpose governments, such as municipalities.¹⁹ For example, the Denver metro's single transportation district, RTD, services eight counties, and within those eight counties there are approximately forty municipalities.²⁰ As urban areas have grown and expanded outward from their urban cores, these municipalities have become increasingly interconnected, and there arises a need to approach certain regional problems in a more coordinated effort.²¹ Furthermore, the "excessive fragmentation and local autonomy" of the various municipalities within a given metropolitan region "produces inefficiencies that could be cured by regional action."²² Systems that effect an entire region, such as transit, drainage, sewers, or waste disposal, are examples of infrastructure and services well-positioned for regional coordination.²³

Importantly, municipalities are granted "home rule powers" by the state, but these powers typically only extend to the borders of each municipality.²⁴ Home rule powers are general grants of authority the state legislature provides to local governments, which allow localities to respond swiftly and effectively to strictly local matters.²⁵ Because the state legislature's general grant of authority intends to narrowly address "matters of local concern," the state legislature, via statute or the state's constitution, limits a local government's authority to very specific areas.²⁶ As such, local

¹⁹ See Reynolds, *supra* note 1, at 485.

²⁰ See RTD DENVER, *supra* note 2.

²¹ See Reynolds, *supra* note 1, at 486.

²² See *id.* at 491.

²³ See *id.* at 486.

²⁴ See Laurie Reynolds, *Home Rule, Extraterritorial Impact, and the Region*, 86 DENV. L. REV. 1271, 1274 (2009).

²⁵ See *Cities 101 – Delegation of Power*, NATIONAL LEAGUE OF CITIES (2023), <https://www.nlc.org/resource/cities-101-delegation-of-power>.

²⁶ *Id.*

government action is subject to constant judicial interpretation, which seeks to determine whether a local government's action falls within or outside of its home rule powers.²⁷ Conversely, matters of local concern that are comfortably within a municipality's home rule jurisdiction are immune from state interference under the grant of home rule authority.²⁸ However, the state legislature retains the power to modify a local government's grant of home rule authority, and can decide that matters such as traffic congestion or TOD are matters of "statewide concern," effectively preempting purely local regulation of these areas.²⁹

Home rule powers are extremely important to localities because they provide them with the unilateral power to facilitate local policy initiatives.³⁰ Specifically in Colorado, a municipality's home rule powers extend to matters of local concern such as zoning³¹ and general land use planning.³² However, given that various municipalities exist within a single metropolitan region, there are certain decisions a local government simply cannot make due to the extraterritorial impacts on neighboring jurisdictions that might ensue.³³

Regional governance provides a cure for the ill effects created by a region's fragmented patchwork of regulations, which are unavoidable when each municipality exercises its home rule powers in isolation.³⁴ Regional governance also fills the regulatory vacuum created when local municipalities are judicially precluded from acting due to a policy's extraterritorial impacts and the state—the only governmental body that may act in such circumstances—has not acted.³⁵ Regional governance falls

²⁷ *Id.*

²⁸ *Id.*

²⁹ Richard Briffault, Nestor M. Davidson, Paul A. Diller, Sarah Fox, Laurie Reynolds, Erin A. Scharff, Richard Schragger & Rick Su, *Principles of Home Rule for the Twenty-First Century*, NATIONAL LEAGUE OF CITIES, FEBRUARY 12, 2020; FORDHAM LAW LEGAL STUDIES RESEARCH PAPER NO. 3539617; UNIVERSITY OF VIRGINIA SCHOOL OF LAW PUBLIC LAW & LEGAL THEORY RESEARCH PAPER NO. 2020-16 (2020), https://scholarship.law.columbia.edu/faculty_scholarship/2609.

³⁰ *See* Reynolds, *supra* note 24, at 1293.

³¹ *See* COLO. LEGIS. COUNCIL STAFF, 2018 COLO. LOC. GOV'T HANDBOOK 19 (2018), https://leg.colorado.gov/sites/default/files/2018_local_government_handbook_with_cover_0.pdf [hereinafter COLO. LOC. GOV'T HANDBOOK].

³² *See id.* at 29.

³³ *See* Reynolds, *supra* note 1, at 492.

³⁴ *Id.* at 491.

³⁵ *See* Reynolds, *supra* note 24, at 1300. For example, courts have deemed local regulation that promote affordable housing "in the form of rent control, condo conversion restrictions, or limitations on mobile home park discontinuances" to exceed a municipality's scope of home rule authority. *See* David J. Barron, *Reclaiming Home*

somewhere between what is comfortably within a local municipality's home rule jurisdiction and what rises to a level necessitating state action.³⁶

Proponents of regional governance structures argue for a regional general-purpose government versus one with the narrow and limited powers of a regional special district, which are ill suited to handle multifaceted regional issues.³⁷ Regional special districts are generally formed to deal with a single issue, like transportation or waste removal³⁸, and are largely immune from a municipality's laws and regulatory schemes.³⁹ In contrast, general-purpose regional governments have broader powers that can mimic a municipality's home rule powers and are therefore favored by regional governance proponents because they can tackle multifaceted regional issues through coordinated efforts between municipalities.⁴⁰

B. How Regional Governance Works

Currently, not one major metropolitan region in the United States utilizes a general-purpose regional governance structure.⁴¹ However, there are examples of regional governance structures in the United States that serve more than a single purpose and go beyond the scope of regional special districts. This Section will briefly overview regional governance models currently employed in the United States.

i. A Regional Tax Base Share Combats Inequity in the Twin Cities

Minnesota's Twin Cities region, which encompasses the cities of Minneapolis and St. Paul, provides a rare example of regional cooperation to solve regional issues perpetuated by fragmented governance, such as

Rule, 116 HARV. L. REV. 2255, 2349–50 (2003) (citing to a line of Massachusetts cases that invalidated a municipality's local regulations for the extraterritorial impacts created by these policies). When courts have found such local actions valid, it is generally because the state legislature provided its localities a very broad and general grant of authority. *Id.* at 2350 n389. Arguably, this risk of invalidation at the local level hinders innovative local policies. *See id.* at 2351.

³⁶ *See* Richard Briffault, *Localism and Regionalism*, 48 BUFF. L. REV. 1, 4 (2000).

³⁷ *See* Reynolds, *supra* note 1, at 510.

³⁸ *Id.* at 511.

³⁹ *Id.* at 512.

⁴⁰ *See generally* Peter Salsich, *Thinking Regionally About Affordable Housing and Neighborhood Development*, 28 STETSON L. REV. 577 (1999) (arguing for a regional approach to affordable housing development, including a regional governance structure with land use and taxation powers).

⁴¹ *See* Briffault, *supra* note 36, at 4.

inequities in the tax base, scarce affordable housing, and inequitable development of infrastructure and land use.⁴² In the Twin Cities, “visionary leaders” built a grassroots coalition comprised of mayors from decaying communities, members of inner-city community groups, church-goers, and environmentalists to push reforms in the state legislature.⁴³ The coalition’s primary concerns focused on local issues with regional implications, such as land use planning, fair-share affordable housing, and welfare reform.⁴⁴ To address these concerns, the coalition created a regional governance structure with a regional tax base share.⁴⁵

The state legislature enacted several pieces of legislation to create a limited-purpose regional government, dubbed the Metropolitan Council (the Council).⁴⁶ These pieces of legislation include: (1) the Metropolitan Reorganization Act, which transformed the Council from a regional planning agency, solely responsible for sewers and transit systems, into the current limited-purpose regional government system; (2) the Metropolitan Land Use Planning Act, which primarily protects farmers from storm sewer, public roads, and other public works assessments; and (3) the Livable Communities Act, which provided a tax base sharing plan for affordable housing.⁴⁷ Today, the Council administers the region’s transportation and sewer services, and also sets the direction for the region’s

⁴² See Sheryll D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 GEO. L. J. 1985, 2030 (2000).

⁴³ *Id.* at 2034–35.

⁴⁴ *Id.* at 2034.

⁴⁵ *Id.* As Cashin notes, “[o]rganizers understood that older, inner-ring suburbs held the balance of power in the state legislature and that building an alliance between representatives from the central cities and the several inner-ring suburbs would create a narrow majority.” *Id.* at 2035. To effectuate change in their region, the coalition understood how important it was to “build bridges” between communities that may not generally view themselves as allies. *Id.* This coordinated effort provided insight to the inner-ring suburbs that “a fair-share affordable housing bill would not increase their obligations . . . but would instead open up more affluent, developing suburbs to such housing,” which led to “very strong support for the bill.” *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at 2035 n268. The first of these Acts, The Metropolitan Reorganization Act, passed in 1994. *Id.* The Metropolitan Land Use Planning Act passed in 1998. *Id.* While the Livable Communities Act also passed in 1998, it was originally proposed in 1994 as part of the Metropolitan Reinvestment Act, an Act that failed to pass the State Senate and was repurposed as part of the 1998 bill. *Id.* In addition to the failed Metropolitan Reinvestment Act, the governor also twice vetoed the Comprehensive Choice Housing Act, first proposed in 1993, which aimed to establish affordable housing based on a given community’s median income. *Id.*

land use and transportation policies across its seven counties and 188 localities.⁴⁸

The Council is responsible for designing a regional comprehensive development guide⁴⁹ and a subsequent mandatory review of local comprehensive plans for compliance.⁵⁰ The Council also has authority to construct transit systems and roads, powers that were previously solely afforded to municipalities.⁵¹ Additionally, the Council accepts federal transportation funding on behalf of the entire metropolitan region and exercises the same powers as municipalities over housing and redevelopment.⁵²

However, as James Poradek has argued, the Council interprets its powers narrowly in such a way that does not allow itself the power to actually *enforce* its decisions.⁵³ The Council's enabling act is ripe with ambiguity and the likely reason for the Council's conservative approach.⁵⁴ While the enabling act mandates that the Council must review local comprehensive plans for compliance with the regional comprehensive plan, it only grants the Council discretionary enforcement powers.⁵⁵ As a result, the Council will only consider modifying a municipality's comprehensive plan if it directly and radically impacts any of the basic regional infrastructure systems it is tasked to administer, and does not often pursue enforcement actions in court.⁵⁶

Notwithstanding the shortcomings of the Council's authority to regionally govern, the Council administers a substantial amount of money from a pool of funds built from a regional tax base share, which has resulted

⁴⁸ *Id.* at 2035.

⁴⁹ *Id.* at 2035 n270.

⁵⁰ See James Poradek, *Putting the Use Back in Metropolitan Land Use Planning: Private Enforcement of Urban Sprawl Control Laws*, 81 MINN. L. REV. 1343, 1361 (1997).

⁵¹ See Cashin, *supra* note 42, at 2035 n270.

⁵² *Id.*

⁵³ See Poradek, *supra* note 50, at 1360.

⁵⁴ *Id.* at 1361. Ambiguities include what is included within the Council's authority over the "metropolitan system plan," and what a "substantial impact on" or "substantial departure from" the regional plan looks like in order to trigger the Council's modification of a local plan. See *id.* at 1361-62.

⁵⁵ *Id.* at 1362. Notably, during legislative debate for the enabling Act, one representative attempted to amend the Council's discretionary enforcement powers to be mandatory, arguing the Act's purpose to ensure good planning would best be served if the Council was forbidden from permitting "bad planning," but this amendment failed. *Id.*

⁵⁶ See *id.*

in “a healthier, more sustainable regional economy” that benefits all the region’s communities equitably.⁵⁷

ii. Atlanta’s Multifaceted Regional Approach to Transit

In response to uncontrolled sprawl in the Atlanta region that has resulted in unfavorable traffic congestion and a loss of federal transportation funding due to its ozone levels, the Georgia state legislature statutorily created the Georgia Regional Transportation Authority (GRTA) in 1999.⁵⁸ The Governor appointed a board of business and civic leaders to lead the GRTA, and the legislature granted the GRTA broad powers to combat the region’s sprawl by imposing transit systems and highways on local governments, restricting development, and pressuring local governments to raise their taxes to fund a regional pool.⁵⁹ The state legislature also granted the GRTA veto power over new developments in congested areas that lack adequate transportation routes.⁶⁰ Throughout its thirteen member counties, the GRTA has statutory authority to plan and build new public transit systems and carpool lanes, and can also withhold certain state funding from localities that refuse to pay their required tax share into the system.⁶¹

The GRTA’s development is necessary because, as of 2000, Atlanta contains four of the top ten fastest-growing counties in the United States.⁶² The region saw a population increase of more than 650,000 people between 1990 and 2000, and anticipates further growth of more than 2 million people between 2000 and 2025.⁶³ However, the GRTA’s regional governance scope is too limited in its purpose to be wholly effective in addressing the region’s multifaceted environmental and equity needs.⁶⁴

From the outset, critics argued the GRTA’s narrow purpose only partially addresses the area’s congestion issue and further perpetuates other issues in the region,⁶⁵ such as racial inequity largely due to under-investment

⁵⁷ See Cashin, *supra* note 42, at 2036.

⁵⁸ See *id.* at 2037–38.

⁵⁹ See Cashin, *supra* note 42, at 2038.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² See BROOKINGS INST. CTR. ON URB. AND METRO. POL’Y, MOVING BEYOND SPRAWL: THE CHALLENGE FOR METRO. ATLANTA 4 (2000), <https://www.brookings.edu/wp-content/uploads/2016/06/atlanta.pdf> [hereinafter MOVING BEYOND SPRAWL IN ATLANTA].

⁶³ *Id.*

⁶⁴ *Id.* at 36.

⁶⁵ *Id.* at 4, 6.

in public infrastructure, education, and housing in the southern region.⁶⁶ Furthermore, Atlanta's unbalanced growth has overburdened the northern region and its lack of investment in the southern region has created a "two-pronged environmental crisis."⁶⁷ The north side of metro Atlanta has experienced extensive development leading to traffic congestion, which threatens the area's water and air quality, and continues to sprawl into the surrounding green space.⁶⁸ On the other hand, the under-investment in the south side of metro Atlanta has resulted in aging infrastructure and a lack of industry that "increase[s] the chances of environmental degradation and . . . a troubling public health problem."⁶⁹

Scholars argue that the region must look to broader solutions to tackle school quality, location of affordable housing, density near transit, and the environmental crisis to combat Atlanta's urban sprawl.⁷⁰ While the GRTA is certainly a step in the correct direction for regional governance, its narrow purpose ultimately falls short of solving the region's growth problem. To tackle unbalanced growth, the Atlanta region needs a regional government system that can address zoning, provide subsidies and tax incentives, and reform schools,⁷¹ issues far beyond the scope of the GRTA's limited powers.

Additionally, the lessons learned from the GRTA's limited scope suggest that the Denver metro region needs to implement a more empowered and coordinated regional structure to address its own pervasive issues.

iii. Portland's Metro Manages the Region's Urban Growth Boundary & Requires Local Compliance with a Regional Comprehensive Plan

Portland, Oregon's Metropolitan Service District (Metro) is the United States' closest example of a general-purpose regional government structure. The structure of Metro has evolved immensely overtime.⁷² In 1970, voters originally approved Metro for the limited purposes of solid

⁶⁶ *Id.* at 39.

⁶⁷ *Id.* at 6.

⁶⁸ *Id.*

⁶⁹ *Id.* at 8.

⁷⁰ *Id.* at 6, 38.

⁷¹ *Id.* at 38.

⁷² See Richard Briffault, *The Local Government Problem in Metropolitan Areas*, 48 STAN. L. REV. 1115, 1118 n19 (1996).

waste disposal and administration of the Portland Zoo.⁷³ Today, Metro oversees the regional transportation agency and operates as “home rule” in character, regulating the regional urban growth boundary and setting sales tax levies.⁷⁴ With this broad oversight of its region’s growth, Portland’s Metro leads the United States in controlled-growth policies targeted to encourage development in the city’s urban core.⁷⁵

According to Metro, Oregon formed its regional governance structure specifically to provide an “unfilled need” as it pertained to “regionwide planning and coordination to manage growth, infrastructure and development issues that cross[ed] jurisdictional boundaries.”⁷⁶ Metro is also the area’s federally designated Metropolitan Planning Organization (MPO), providing Metro the authority “to coordinate and plan investments in the [region’s] transportation system.”⁷⁷

Metro serves more than 1.5 million people over three counties, which encompasses twenty-four cities, including Portland.⁷⁸ Notably, it is the only regional government in the United States with citizen-elected legislators.⁷⁹ The “Metro Council” is comprised of a president, who is elected regionwide, and six councilors elected by their respective districts every four years.⁸⁰ Additionally, the region elects a Metro Auditor, who oversees Metro’s annual financial statements and conducts performance audits.⁸¹ The Council also appoints a chief operating officer, who oversees more than 1,600 employees, including “park rangers, economists, teachers, scientists, designers, planners, animal keepers, stagehands[,] and cartographers.”⁸² Metro adopted a budget over \$1.8 billion for the 2022–23 fiscal year,⁸³ and receives funding from various sources, including

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ See Cashin, *supra* note 42, at 2011 n132.

⁷⁶ See *What Is Metro?*, OREGON METRO, <https://www.oregonmetro.gov/regional-leadership/what-metro> (last visited Sept. 22, 2023) [hereinafter OREGON METRO].

⁷⁷ *Id.*

⁷⁸ *Id.* One of the counties within Metro’s service jurisdiction is located in Washington state. *Id.*

⁷⁹ See Ethan P. Seltzer, *Regional Planning and Local Governance: The Portland Story*, SUSTAINABLE CITY REGIONS: SPACE, PLACE, AND GOVERNANCE 277, 277 (Tetsuo Kidokoro, et al. eds., Springer, 2008).

⁸⁰ See OREGON METRO, *supra* note 76.

⁸¹ *Id.*

⁸² *Id.*

⁸³ See METRO, ADOPTED BUDGET C-6 (Aug. 31, 2023), <https://www.oregonmetro.gov/sites/default/files/2023/08/31/FY-2023-24-adopted-budget-20230831.pdf>.

enterprise activities, property taxes, monies carried over from the previous fiscal year, excise taxes paid by users of Metro-operated facilities, and other sources such as local, state and federal grants, and restricted donations.⁸⁴

By far, one of the most compelling characteristics of Metro is how it coordinates land use throughout the region. After a 1990 voter-approved state constitutional amendment that granted Metro home rule charter, management of the metropolitan area's urban growth boundary became one of Metro's most important duties.⁸⁵ Because of this grant of power, Metro is the primary facilitator of regional growth management, land use, and transportation planning.⁸⁶ Specifically, Metro has the statutory authority to develop "regional functional plans" and the authority to mandate "changes in local comprehensive plans [for consistency] with the regional functional plans."⁸⁷ While Metro cannot itself engage in comprehensive land use planning, it can create regional functional plans to address "one or a narrow set of issues . . . of regional significance" and require local compliance accordingly.⁸⁸

While presumptively limited and narrow in scope, Metro's statutory responsibility for designating and managing the region's urban growth boundary affords Metro the authority to mandate local comprehensive planning and implementation consistent with the regional urban growth boundary scheme it designs.⁸⁹ This coordination of locally and regionally developed comprehensive plans⁹⁰ has allowed Metro to increase density in the region around transportation hubs⁹¹ and exceed its acquisition goals for parks and greenspace.⁹² As such, it is no wonder why leaders and civic planners from across the globe have traveled to visit the region to "gather[] information about what it means to plan and govern at a metropolitan scale."⁹³

While Portland's Metro provides a worthy example of regional governance,⁹⁴ Metro is not without its critics. In 2004, voters passed a ballot

⁸⁴ See *How Metro Works: Finances and Funding*, OREGON METRO, <https://www.oregonmetro.gov/how-metro-works/finances-and-funding> (last visited Sept. 22, 2023) [hereinafter FINANCING METRO].

⁸⁵ See Seltzer, *supra* note 79, at 280.

⁸⁶ *Id.* at 281.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.* at 282.

⁹⁰ *Id.*

⁹¹ *Id.* at 294.

⁹² *Id.* at 292.

⁹³ *Id.* at 277.

⁹⁴ See *id.*

initiative that requires government compensation for any loss in land value caused by Metro's imposition of new land use regulations on private land owners.⁹⁵ Additionally, homebuilders, commercial real estate developers, and other industrial groups have taken to the courts to challenge Metro's "urban reserve" initiatives, which were employed to control the urban growth boundary, for being too conservative.⁹⁶ Ironically, conservation groups have also opposed Metro's "urban reserve" initiatives and argue these initiatives will create sprawl into "the state's best farmland."⁹⁷ Despite the opposition, Metro continues to govern the region's urban growth boundary with success.⁹⁸

III. An Argument for General-Purpose Regional Governance

At this point, over 80% percent of the United States population lives in some form of urbanized metropolitan region.⁹⁹ Given this staggering statistic, this Part will outline why metropolitan regions should adopt a general-purpose regional government system in place of the current structure of strictly local home rule jurisdictions, specifically as it pertains to TOD.

A. Strictly Local Home Rule Governance is Ridden with Issues

The most widely practiced system of local governance in the United States is home rule jurisdiction because it empowers localities to self-govern in ways that are responsive to purely local issues.¹⁰⁰ Generally, state

⁹⁵ *Id.* at 292. To respond to the high public support for local land use planning and the protection of individual property rights, both the state of Oregon and Metro began exploring what challenges had to be overcome if regional land use regulation was to continue. *Id.* at 293.

⁹⁶ See Eric Mortenson, *With Critics on All Sides, Portland Area's Long-Range Growth Plan Faces a Hearing this Week*, OREGONIAN (Oct. 19, 2010), https://www.oregonlive.com/environment/2010/10/with_critics_on_all_sides_port.html (last updated Jan. 10, 2019). See also *Dolan v. City of Tigard*, 512 U.S. 374 (1994) (a case arising out of Oregon state holding that permitting conditions are an unconstitutional taking if there is not an "essential nexus" between a legitimate state interest and the condition of the issued permit).

⁹⁷ *Id.*

⁹⁸ See OREGON METRO, *supra* note 76.

⁹⁹ See Reynolds, *supra* note 1, at 484.

¹⁰⁰ See NAT'L LEAGUE OF CITIES, PRINCIPLES OF HOME RULE FOR THE 21ST CENTURY 11 (2020).

constitutions grant home rule authority to localities, which is the case in Colorado, California, Missouri, Washington, Oregon, and Michigan, to name a few.¹⁰¹

However, home rule jurisdiction often leads to suburban sprawl, and these sprawling suburban developments come at a high cost. It has been argued that “any marginal benefits of increased local authority” provided by home rule jurisdiction “are vastly outweighed by the collective harm to metropolitan regions.”¹⁰² Namely, economic segregation largely driven by the “desire for racial exclusion” during the suburban movement of the 1950s and 1960s still persists today.¹⁰³ Atlanta’s segregated growth problem of overdevelopment in the area’s northern region and under-investment in the southern region provides a pertinent example.¹⁰⁴

Furthermore, the old adage “growth pays for itself” could not be further from the truth.¹⁰⁵ Most metropolitan regions in the United States consist of “high-growth, developing suburbs,” which typically represent only about 25% of the region’s population.¹⁰⁶ Paradoxically, these suburban regions with a minority share of the regional population “tend to capture the largest share of the region’s public infrastructure investments and job growth.”¹⁰⁷ For example, building and maintaining highway infrastructure is costly,¹⁰⁸ and expanding this infrastructure in urban areas has “fostered urban sprawl . . . which has hastened the decline in public transit” use.¹⁰⁹ Furthermore, local governments are frequently incentivized by state

¹⁰¹ *Id.* See also COLO. LOC. GOV’T HANDBOOK, *supra* note 31, at 19; discussion *supra* Section III.A.

¹⁰² Cashin, *supra* note 42, at 1997.

¹⁰³ *Id.* at 1993–94.

¹⁰⁴ See discussion *supra* Section II.B.ii.

¹⁰⁵ Cashin, *supra* note 42, at 2007.

¹⁰⁶ *Id.* at 1987.

¹⁰⁷ *Id.* at 2007. Notably, “there is considerable agreement in the research literature that low-density development costs more than compact development and that it is necessarily subsidized, if not by the urban core, then by higher levels of government.” *Id.* See also MOVING BEYOND SPRAWL IN ATLANTA, *supra* note 62, at 37 (discussing how the racial divide in Atlanta has perpetuated a concentration of poverty in the mostly non-white central city, while infrastructure investment in the city’s mostly white areas has allowed for prosperity and job growth in the northern region).

¹⁰⁸ See generally Jerusalem Demas, *Why Does it Cost so Much to Build Things in America?*, VOX NEWS (June 28, 2021), <https://www.vox.com/22534714/rail-roads-infrastructure-costs-america> (discussing the increase in cost of building and maintaining transportation infrastructure in the United States).

¹⁰⁹ Robert H. Freilich, *The Land-Use Implications of Transit-Oriented Development: Controlling the Demand Side of Transportation Congestion and Urban Sprawl*, 30 URB. LAW. 547, 547–48 (1998).

governments—in the form of infrastructure subsidies that allow the perpetuation of suburbs¹¹⁰—to participate in highly exclusionary zoning and development practices that perpetuate racial and social divides throughout metropolitan regions.¹¹¹

Even those who argue for maintaining home rule jurisdiction recognize that “the current form of home rule often produces the very kind of local power that is least likely to transform regions in useful ways.”¹¹² State statutory enabling acts that allow for home rule jurisdiction delegate nearly all home rule authority to local governments and this makes it very difficult to mitigate sprawling development in the suburbs on the state level.¹¹³ Communities surrounding urban areas have “devised elaborate systems to control growth,” and these types of growth-control policies directly contribute to sprawl.¹¹⁴ Furthermore, exclusionary zoning practices—which often mandate large-lot developments with garages and ample parking, but prohibit multi-family housing units—are often comfortably within a local municipality’s home rule jurisdiction, as provided by state statute.¹¹⁵ Paradoxically, however, inclusionary zoning ordinances have consistently been deemed to exceed a local government’s statutory authority,¹¹⁶ precluding initiatives that would promote affordable housing and higher-density development in the suburbs.¹¹⁷

As a result, the current local government structure perpetuates sprawl.¹¹⁸ Sprawl, in turn, perpetuates “leapfrog” development.¹¹⁹ Sprawling “leapfrog” development contributes to traffic congestion,¹²⁰ and traffic congestion creates air quality issues in many metropolitan regions, including Denver.¹²¹

B. Why Regional Governance Promotes Sustainability

¹¹⁰ Cashin, *supra* note 42, at 2007.

¹¹¹ *Id.* at 1993.

¹¹² Barron, *supra* note 35, at 2351.

¹¹³ *Id.* at 2346.

¹¹⁴ Freilich, *supra* note 109, at 548.

¹¹⁵ Barron, *supra* note 35, at 2351.

¹¹⁶ This is largely due to their the extraterritorial impacts. *See Reynolds, supra* note 1, at 492.

¹¹⁷ Barron, *supra* note 35, at 2358.

¹¹⁸ *See Briffault, supra* note 36, at 9.

¹¹⁹ *Id.*

¹²⁰ MOVING BEYOND SPRAWL IN ATLANTA, *supra* note 62, at 7.

¹²¹ *See sources cited supra* note 17 and accompanying text.

The current local government structure present in most American cities, including that of Denver, makes it difficult for individual municipalities to mitigate and control sprawl.¹²² Importantly, purely local policies for urban growth management cannot meaningfully mitigate sprawl in isolation because sprawl is a regional phenomenon.¹²³ Even when a local municipality enacts land use regulations falling within its home rule jurisdiction, local land use controls still have “ripple effect[s]” throughout the region.¹²⁴ Coordination of local growth management within the region is thus necessary,¹²⁵ and a general-purpose regional government can provide the tools.

In many ways, a regional governance system makes sense for the modern metropolitan region. Metropolitan regions are comprised of numerous local government entities¹²⁶ and over 80% of the United States population now resides in a metropolitan region.¹²⁷ People who live in these regions rarely spend all of their time in a single municipality.¹²⁸ In fact, it is likely a person lives in one locality, works in another, shops in third, and may find entertainment or other economic reasons to travel to a fourth locality throughout their daily lives.¹²⁹ Given the social and economic interdependence of the region, it only makes sense to coordinate how a region is governed. It can therefore be argued that “regionalism is . . . localism for metropolitan areas.”¹³⁰

Furthermore, regional governance offers a mechanism to fill the regulatory vacuum created over matters that tend to fall outside of a local municipality’s home rule powers but do not rise to the level of statewide concern.¹³¹ Given their cross-jurisdictional nature, a system of local governments working in coordination would better manage matters of regional significance like TOD.¹³² Additionally, requiring local municipalities to participate in a shared regional vision “would allow local governments to seek solutions that respect both the local

¹²² See Briffault, *supra* note 36, at 9. See also discussion *supra* Section III.A.

¹²³ See Briffault, *supra* note 36, at 10.

¹²⁴ *Id.* at 9.

¹²⁵ *Id.* See also discussion *supra* Section II.B.iii.

¹²⁶ See Briffault, *supra* note 36, at 4.

¹²⁷ See Reynolds, *supra* note 1, at 484.

¹²⁸ See Briffault, *supra* note 36, at 3.

¹²⁹ *Id.*

¹³⁰ *Id.* at 2.

¹³¹ See sources cited *supra* note 35 and accompanying text.

¹³² See generally discussion *infra* Section III.C.

government's . . . narrow self-interest" and how that local self-interest is directly related to the greater region.¹³³

When discussing the ideal regional governance structure to aid sustainable development, it is important to consider the drawbacks of limited purpose regional special districts and why a general-purpose regional government is the better solution.¹³⁴ For example, the GRTA's lack of land use powers in Atlanta does not remedy the unbalanced growth and inequity rampant throughout the region nor address the lack of affordable housing, reliable school systems, or meaningfully mitigate sprawl.¹³⁵ While the Twin Cities has granted broader powers to its limited-purpose regional authority—allowing it to raise taxes and administer the regional sewer and transportation services—its lack of land use powers and enforcement authority does little to cure the patchwork of land use regulations throughout the region.¹³⁶ Portland's Metro is by far the best example of a functional regional governance system, and the land use authority it has to require local compliance with a regional plan has allowed the region to develop substantial TOD.¹³⁷ And since Metro's plans to control the urban growth boundary simultaneously maddens developers for being too conservative and angers conservationists for creating too much sprawl, it seems a compromise in regional sustainable development has been reached.¹³⁸

The best form of regional governance to combat suburban sprawl in metropolitan regions is a government that can plan the region's development, require local compliance with a regional development plan, raise taxes through a regional tax base scheme, and administer other public services, such as sewer and waste removal. The more a regional governance structure takes on, the less likely it is just a regional special district. The broader its powers, the more a regional governance structure appears to be functioning as a general-purpose government that can address regional issues in sync. However, if metropolitan regions continue to develop along their existing paths because home rule jurisdictions continue to act in isolation, metropolitan regions are effectively confined to a destiny "in which numerous regional special districts are created, home rule units are relegated to the margin, and joint regional action does not occur."¹³⁹

¹³³ See Reynolds, *supra* note 1, at 527.

¹³⁴ See *generally* discussion *supra* Section II.B.

¹³⁵ See discussion *supra* Section II.B.ii.

¹³⁶ See discussion *supra* Section II.B.i.

¹³⁷ See discussion *supra* Section II.B.iii.

¹³⁸ *Id.*

¹³⁹ See Reynolds, *supra* note 24, at 1301.

C. Transit-Oriented Development Necessitates Regional Coordination

A general-purpose regional government better serves matters promoting TOD given the land use needs of an effective TOD system. In promoting TOD, there are various other sustainable policies that flow, namely higher density, mixed-use communities that reduce reliance on car usage, which in turn reduces ozone and other environmental impacts caused by traffic congestion.¹⁴⁰

Transit is particularly well situated for regional coordination.¹⁴¹ In fact, the purpose of TOD is to connect “higher density residential areas, commuter-oriented commercial areas, and mass transportation stations” throughout a metropolitan region.¹⁴² Importantly, “a region’s land-use patterns influence the transportation modes used,” suggesting that coordinating land-use planning at the regional level would greatly aid TOD.¹⁴³

However, to promote TOD in a region, a state legislature must enact certain land use policies that require regional coordination of local policies on some level. There are five major characteristics of TOD.¹⁴⁴ First, and importantly, TOD requires a density sufficient to encourage utilization of public transit.¹⁴⁵ Second, TOD relies on the close proximity of residences, employment, and retail to public transit stations so people rely less on their cars.¹⁴⁶ Third, for TOD to achieve its second characteristic, mixed-use zoning is required, where housing, retail, employment, and transit stations are located within walking distance of one another.¹⁴⁷ Fourth, TOD should generally be “built on a grid transportation network.”¹⁴⁸ Finally, successful TOD includes “design guidelines,” such as setbacks and smaller lot size requirements, in order to promote density and pedestrian use of streets, sidewalks, and public transit.¹⁴⁹ Every one of these characteristics of TOD

¹⁴⁰ See TRANSIT ORIENTED DEVELOPMENT INSTITUTE, <http://www.tod.org> (last visited Sept. 22, 2023); see also text accompanying *infra* note 146.

¹⁴¹ See Reynolds, *supra* note 1, at 486.

¹⁴² David S. Silverman, *Green Transportation: Roadblocks and Avenues for Promoting Low-Impact Transportation Choices*, 43 URB. LAW. 775, 775 (2011).

¹⁴³ Freilich, *supra* note 109, at 547.

¹⁴⁴ *Id.* at 550.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 550, 554.

is tied directly to land use, and “land uses relate functionally to [a] transit system.”¹⁵⁰

Given TOD’s high reliance on consistent land uses, the traditional, strictly local home-rule land use grant of authority cannot effectively promote TOD without some sort of regional coordination. It cannot be stressed enough: “[u]rban development is now regional development,”¹⁵¹ and a regional structure of governance capable of coordinating regional services, tax base sharing, and land use policies is well-positioned to efficiently implement TOD throughout today’s metropolitan regions.¹⁵²

IV. Empowering DRCOG for a Sustainable Denver Metro Region

Looking specifically at the Denver metro region, empowering the already-existing DRCOG into a general-purpose regional government structure would promote more sustainable development throughout the Denver metro region.

While the theory behind DRCOG is commendable, its lack of statutory authority greatly impairs its ability to “foster regional collaboration and cooperation” throughout the Denver metro region.¹⁵³ DRCOG’s lack of statutory authority means that any of its devised plans are purely aspirational because DRCOG lacks any authority to require local compliance with its regional plans.¹⁵⁴ The current iteration of DRCOG’s “Metro Vision” cites membership exceeding fifty local governments, “each of which has an equal voice.”¹⁵⁵ Notably, each one of these local governments also has home rule power to create land use policies within their jurisdictional borders.¹⁵⁶ This means that there are over fifty different governments enacting land use policies in the Denver metro region with no regional coordination of those policies. Paradoxically, DRCOG “recognizes that the success of the visionary plan requires the coordinated efforts of

¹⁵⁰ *Id.* at 551.

¹⁵¹ *See* Salsich, *supra* note 40, at 600.

¹⁵² *Id.* at 601. Salsich’s article argues for a regional governance structure to promote affordable housing and neighborhood development. *Id.* at 600–05. While this paper focuses on regional governance as a way to effectively promote TOD, it is worth noting that affordable housing can be achieved through the same means of coordinated regional land use policies promoting density and mixed uses. *See generally id.*

¹⁵³ METRO VISION, *supra* note 12, at 3.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *See* COLO. LOC. GOV’T HANDBOOK, *supra* note 31, at 19.

local, state[,] and federal governments,”¹⁵⁷ but has no power to actually coordinate the efforts of its fifty-eight-member municipalities.

This Part will outline how the Colorado legislature could transform DRCOG into a general-purpose regional government structure to design and maintain the region’s urban growth boundary and further argues why DRCOG is particularly well-situated to facilitate meaningful TOD throughout the Denver metro region.

A. Enabling & Financing A General-Purpose DRCOG

Empowering DRCOG into a general-purpose regional government structure is as simple as the state granting it the authority to control the urban growth boundary, which necessitates compliance with a devised regional plan.¹⁵⁸ The more nuanced issue is funding the newly formed regional structure given Colorado’s Taxpayer’s Bill of Rights (TABOR) amendment.¹⁵⁹ While the intricacies of funding a new regional governance body in Colorado fall beyond the scope of this paper, a discussion of a few possible funding sources follows.

The state legislature can grant DRCOG the power to raise taxes via a tax base sharing scheme.¹⁶⁰ A tax base sharing scheme that raises taxes to fund DRCOG by mandating that local governments contribute a portion of their annual growth tax revenue, such as the one utilized in the Twin Cities,¹⁶¹ does not require an increase in overall taxation; rather, it re-appropriates already-taxed funds. Without an increase in taxes, voter approval under TABOR is not required to divert funding to DRCOG.¹⁶² An

¹⁵⁷ METRO VISION, *supra* note 12, at 7.

¹⁵⁸ Cashin, *supra* note 42, at 2007. Cashin argues that “any meaningful approaches to regionalism will require structural reforms” at the state level. *Id.* Portland’s Metro offers a clear example of this approach. *See* Seltzer, *supra* note 79, at 280–81; *see also* discussion *supra* Section II.B.ii.

¹⁵⁹ *See generally* COLO. CONST. art. X, § 20.

¹⁶⁰ *See* Cashin, *supra* note 42, at 2036; *see also* discussion *supra* Section II.B.i.

¹⁶¹ *See* Cashin, *supra* note 42, at 2036.

¹⁶² *See Taxpayer’s Bill of Rights (TABOR) Information*, COLO. DEP’T OF REVENUE: TAXATION DIVISION, <https://tax.colorado.gov/TABOR> (last visited Sept. 22, 2023). TABOR is a state constitutional amendment Colorado voters approved in 1992. *Id.* It limits the amount of revenue the Colorado legislature can retain in its general fund and requires voter approval for certain tax increases. *Id.* Another way to avoid triggering TABOR is to organize DRCOG as an “enterprise.” *See Creating an Enterprise Pursuant to TABOR*, COLORADO LEGISOURCE, (Jan. 19, 2017) <https://legisource.net/2017/01/19/creating-an-enterprise-pursuant-to-tabor>. However, if DRCOG is organized as an “enterprise” it cannot raise taxes through a tax base sharing

empowered DRCOG that administers enterprise activities could also provide a possible source of funding. In Portland, Metro's enterprise activities, such as administering the Oregon Convention Center, Oregon Zoo, and the Portland Expo Center, provides the regional body's largest source of funding.¹⁶³ If DRCOG became a formal, general-purpose regional government body, enterprise activities like the Denver Zoo, Colorado Convention Center, or other entities could fall under its jurisdiction and create additional funding streams.

However, if increased taxation was unavoidable, Colorado voters must approve any tax increase under TABOR.¹⁶⁴ Metro, for example, receives roughly 30% of its funding from property taxes, but the region's electorate must vote on the projects financed via their property taxes.¹⁶⁵ Given regional dissatisfaction with traffic congestion and air quality in the Denver metro region, it seems likely that Colorado voters, or at least voters in the Denver metro region, would agree to fund sensible improvements to the transit system, as they did with FasTracks.¹⁶⁶ If Colorado voters already approved FasTracks, the nation's largest transit expansion program,¹⁶⁷ it is reasonable to suggest the same voters would approve companion legislation to increase regional coordination, collaboration, and oversight of the transportation system's development. Perhaps overseeing the execution of FasTracks is precisely the first initiative for an empowered DRCOG to take on to win further support from the region's electorate.

B. DRCOG & The Urban Growth Boundary

If the Colorado State Legislature statutorily empowered DRCOG to regulate the region's urban growth boundary, it could regulate zoning compliance in each of its fifty-eight local member governments. While

system. *See* Nicholl v. E-470 Pub. Highway Auth., 896 P.2d 859 (Colo. 1995) (establishing that an entity may not have the power to tax and its activities must be conducted in the pursuit of benefit, gain, or livelihood to qualify for enterprise status). Because the tax base sharing system would provide a steady stream of funding from the region's local government bodies, enterprise status for DRCOG is not the most ideal way to avoid TABOR restrictions.

¹⁶³ *See* FINANCING METRO, *supra* note 84.

¹⁶⁴ *See generally* COLO. CONST. art. X, § 20; *see also* TABOR, COLO. GEN. ASSEMB., <https://leg.colorado.gov/agencies/legislative-council-staff/tabor> (last visited May 10, 2023).

¹⁶⁵ *See Property Tax Information*, METRO, <https://www.oregonmetro.gov/property-tax-information> (last visited May 10, 2023).

¹⁶⁶ *See FasTracks*, RTD DENVER (2023), <https://www.rtd-denver.com/fastracks>.

¹⁶⁷ *Id.*

regulating the region's urban growth boundary is key in creating a sustainable Denver metro region, a similar anti-sprawl ballot measure during the 2000 election only garnered support from 30% of Colorado voters.¹⁶⁸ However, much has changed in the years since Colorado voters had the opportunity to meaningfully regulate the urban growth boundary. For one, the population of Colorado has grown over 1.4 million people between 2000 and 2020.¹⁶⁹ As for the makeup of registered voters, the share of registered democratic versus republican voters has also grown in Colorado, with active registered democrats outnumbering active registered republicans in 2023.¹⁷⁰ While anti-sprawl legislation should not be a partisan issue, introducing “bigger” government in the form of a regional governance structure would appeal to a more progressive and socially minded voter.

Given the increase in the state's population and larger share of liberal voters, a failed urban growth boundary ballot initiative in 2000 should not deter present action on the matter. Furthermore, with the massive population increase over the last twenty years¹⁷¹ and anticipated future growth,¹⁷² voters in the Denver metro region should reconsider initiatives that aim to combat the area's worsening air quality and traffic congestion,¹⁷³ issues that plague the lives of the constituency more poignantly today than in 2000.

¹⁶⁸ See Carey Goldberg, *The 2000 Elections: The Ballot Initiatives; Changes in Drug Policy and Gun Laws are Picked*, N.Y. TIMES (Nov. 9, 2000), <https://www.nytimes.com/2000/11/09/us/2000-elections-ballot-initiatives-changes-drug-policy-gun-laws-are-picked.html>.

¹⁶⁹ See Jennifer Campbell-Hicks, *2020 Census: Here's How Much Colorado's Population Has Grown*, 9NEWS (Apr. 26, 2021), <https://www.9news.com/article/news/local/colorado-news/colorado-population-growth-census-2020/73-300040f2-72bf-4ad0-8653-1c2eaf6ab896>.

¹⁷⁰ See COLO. SECRETARY OF STATE JENA GRISWOLD, TOTAL REGISTERED VOTERS BY PARTY AND STATUS (Aug. 2023), <https://www.sos.state.co.us/pubs/elections/VoterRegNumbers/2023/August/VotersByPartyStatus.pdf>. In 2004, the oldest voter registration date publicly accessible, the number of registered republicans in Colorado outnumbered the number of registered democrats. See *2004 Voter Registration Numbers*, COLO. SEC'Y OF STATE, <https://www.sos.state.co.us/pubs/elections/VoterRegNumbers/2004VoterRegNumbers.html> (last visited May 10, 2023).

¹⁷¹ See source cited *supra* note 169 and accompanying text.

¹⁷² See generally discussion *supra* Part I.

¹⁷³ See text accompanying *supra* note 17.

Because it generally requires voter-approval,¹⁷⁴ Colorado voters need know *why* it is in their best interest for a regional governance body to manage an urban growth boundary. This is simply a matter of showing Colorado voters that an urban growth boundary preserves open space.¹⁷⁵ During the 2021 election, Colorado voters signaled that they care deeply about the preservation of open space in the Denver metro region. Namely, Denver voters elected to preserve the Park Hill Golf Course, and in the metro suburb of Westminster, voters elected to extend the city's sales tax earmarked exclusively for preserving and protecting open space parks.¹⁷⁶ If voters see that managing the urban growth boundary further protects the Denver metro region's open space parks, they are likely to approve a measure authorizing DRCOG to establish and manage an urban growth boundary to achieve those ends.¹⁷⁷

Portland's Metro provides another important lesson about establishing an urban growth boundary in the Denver metro region: voters can and should have a voice in how the boundary is developed and maintained.¹⁷⁸ Significantly, when Metro designed the region's 2040 comprehensive plan, it turned to voters and provided three options for how Metro would utilize the boundary for regional development.¹⁷⁹ One option allowed minor boundary expansion with changes to transportation and land use planning in major corridors.¹⁸⁰ Another option prohibited expansion of the boundary and instead allowed major region rezoning and massive transit

¹⁷⁴ See Teri Shore, *What Are Urban Growth Boundaries and Why Do We Need Them?*, GREENBELT ALL. (Feb. 18, 2020), <https://www.greenbelt.org/blog/what-are-urban-growth-boundaries-need>.

¹⁷⁵ *Id.*

¹⁷⁶ See Rebecca Spiess, *Dueling Park Hill Golf Course Initiatives – Results: 301's In the Lead*, DENVERITE (Nov. 2, 2021), <https://denverite.com/2021/11/02/denver-election-results-initiated-ordinance-301-302-park-hill-golf-course> (reporting that advocates for open space won over voters in the city of Denver); see also Scott Taylor, *Election Results 2021: Voters Replace Westminster Mayor, City Council*, WESTMINSTER WINDOW (Nov. 2, 2021), <https://westminsterwindow.com/stories/westminster-mayor-council-at-stake-on-busy-ballot,384502> (reporting that voters in Westminster, a city within the Denver metro region, voted in favor of increasing a bond issued for open space through sales tax).

¹⁷⁷ See Seltzer, *supra* note 79, at 282. The state of Oregon designated Metro the authority to establish and manage the urban growth boundary of the Portland metro region and each local government's comprehensive plan must comply with Metro's urban growth boundary plan. *Id.*

¹⁷⁸ *Id.* at 286.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

system expansion.¹⁸¹ The final option allowed minor changes to the boundary, a large transit system expansion, and created “satellite cities” outside of or separate from the current urban growth boundary.¹⁸² Importantly, these three options were developed through the public process where the state held public hearings and workshops to understand the region’s desires for the urban growth boundary.¹⁸³ The public involvement process took approximately two years and throughout the process, Metro learned what its constituents generally supported regarding the region’s growth and development.¹⁸⁴

Given the changes of the Denver metro region’s population over the last two decades, political demographics, worsening air quality, the population’s growing exasperation with traffic congestion, and general voter approval for open space preservation in urban areas, the Denver metro region is in a prime position to reconsider the development and management of an urban growth boundary. Additionally, the process of developing and maintaining an urban growth boundary can and should invite the collaboration and input of the public, as evidenced by the way Metro handled development of its 2040 comprehensive plan.¹⁸⁵ Further, such a collaboration with the public creates a sense of ownership that can yield favorable results come election time.

C. DRCOG is Particularly Well-Situated to Facilitate Transit-Oriented Development

DRCOG is already the region’s federally designated MPO, which allows it to disperse federal funding for transportation projects throughout the region.¹⁸⁶ With the power to fund transportation projects throughout the region and the power to regulate local zoning compliance in accordance with a regional plan, DRCOG is well-situated to facilitate regional TOD development. Because TOD requires a regional approach, empowering DRCOG to facilitate TOD broadens prospects of combatting Denver’s urban sprawl and worsening air quality, problems that persist across its front range.¹⁸⁷

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.* at 287.

¹⁸⁵ See generally METRO VISION, *supra* note 12.

¹⁸⁶ *Id.* at 3.

¹⁸⁷ See sources cited *supra* note 17 and accompanying text.

While Denver already has RTD, a special district to facilitate transportation throughout the metro region, DRCOG covers a far larger area. RTD services eight counties, which encompasses forty municipalities throughout the Denver metro region¹⁸⁸, but DRCOG covers ten counties and fifty-eight local governments.¹⁸⁹ Empowering DRCOG into a general-purpose regional government system would therefore comfortably situate the RTD special district within DRCOG's jurisdiction. In such a situation, DRCOG and RTD could work together to transform public transportation in the Denver metro region to better align with TOD principles and combat the region's ill effects of sprawl (e.g. traffic congestion and air quality).

V. Conclusion

The Denver metro region needs to take radical action and imagine new ways to govern. DRCOG anticipates the region will increase by another 40%, from around 3 million people to around 4.3 million people, by the year 2040.¹⁹⁰ Unless action is taken to reduce the region's reliance on cars, traffic congestion due to the sprawling nature of the Denver metro region will only grow worse. Transit-oriented development (TOD) offers a solution. Meaningful development of TOD in the Denver metro region is realistically achievable if the Colorado legislature empowers DRCOG to act and govern as a regional general-purpose entity.

¹⁸⁸ See RTD DENVER, *supra* note 2.

¹⁸⁹ METRO VISION, *supra* note 12, at 1-2.

¹⁹⁰ *Id.* at 12.