



NEWSLETTER

Vol. 49, No. 20, October 6, 2023



Nov. 1 deadline for affordable housing funding commitments

By Robert Sheesley, CML general counsel

Municipalities must act by Nov. 1, 2023, to unlock three years of eligibility for affordable housing funding under 2022's "Proposition 123" that can be used by municipalities, nonprofits, land trusts, and other private entities. Submitting a commitment to the Department of Local Affairs connects local development efforts with up to \$300 million available annually, divided among several programs. Without a commitment, projects in the municipality are not eligible for this funding and municipalities will not benefit from planning capacity grants. To date, over 60 municipalities have taken advantage of this resource to improve housing solutions in their communities.

A commitment specifies how the municipality will increase, by 3% per year or a 9% increase over three years, affordable housing units over a baseline number of affordable housing units. The municipality chooses an appropriate baseline and decides how it plans to reach it, prioritizing density, mixed income housing, sustainability, and other elements. DOLA's website, <https://engagedola.org/prop-123>, provides resources to calculate baselines and opportunities to rely on other resources. Commitment submittal forms and processes to use alternative date and alternative median income standards can also be found on the site.

Making a commitment poses little risk, as non-compliance with a commitment or other requirements is limited to future

ineligibility for Proposition 123 funding. Prior funding is not endangered. By Dec. 31, 2026, the municipality must show that the required number of new affordable units have been permitted and converted units have been permitted and funded. By Nov. 1, 2026, the municipality must establish a "fast-track approval process" that allows certain development approvals within ninety days. Municipalities have substantial discretion to determine the elements of that process.

CML encourages municipalities to file a commitment by Nov. 1 to ensure that funding is made available for development projects in their communities. Municipalities that do not submit a commitment by Nov. 1 can submit a commitment in future years, but funding eligibility will be restricted.

EMPOWERED CITIES AND TOWNS, UNITED FOR A STRONG COLORADO

CML UPDATE

NEW LOOK FOR LESSONS ON LOCAL GOVERNMENT

Lessons on Local Government has unveiled a new website, <https://www.lessonsonlocalgovernment.org/>. The site is a colorful and visually striking portal to lesson plans for elementary, middle and high school teachers. The site was revamped to improve its visual appeal and ease of use. Lessons on Local Government is a resource for Colorado teachers to easily find curriculum materials that meet the state's social studies and civics standards. The resources were developed from a partnership between the Colorado Municipal League and the Special District Association of Colorado.

CALL FOR 2024 CML ANNUAL CONFERENCE SESSIONS

The Colorado Municipal League is accepting session proposals for the 2024 Annual Conference, which will take place in Loveland on June 18-21, 2024. Sessions will be determined through a conference planning process that will take place later this year. CML will notify individuals whose proposals are selected in December 2023.

Session proposals can be submitted through an online application form, <https://tinyurl.com/2jh3v9pb>. The deadline is **Nov. 3**.

The CML annual conference is the premier meeting for municipal officials in Colorado. The conference brings together elected officials and staff from cities and towns across the state to tackle the urgent issues facing our communities. Every year, more than 1,000 leaders attend this four-day series of educational events to learn, collaborate, and network. Educational sessions at the annual conference are learning experiences and are noncommercial. Under no circumstances should a presentation be used for direct promotion of a speaker's product, service, or other self-interest. Questions? Contact CML Engagement & Communications Manager Denise White, dwhite@cml.org.

REMEMBER TO COMPLETE SOOCAT SURVEY

CML has launched its 2024 State of Our Cities and Towns Survey. This annual initiative is a critical tool for understanding the challenges and opportunities facing our local communities. By now, a link to the survey has been sent to the designated respondent for each city and town. Your responses are crucial in helping us shape informed policies, advocate effectively, and work towards solutions that benefit all Colorado municipalities. The deadline for survey responses is set for October, so mark your calendars.



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CELEBRATE WITH CML

CML wants to hear about your community's successes. Tell us about a grant you've won, water tank that's finally finished, or anything else you're excited about! Email CML Publication & Design Specialist Alex Miller, amiller@cml.org, or complete the form at <https://bit.ly/3YF8XRM>.



CONGRATULATIONS

Colorado Springs, Monte Vista awarded Forestry Service grants to plant trees

COLORADO SPRINGS

The U.S. Department of Agriculture's Forest Service announced it will be awarding the City of Colorado Springs forestry division a \$9 million grant to plant and maintain trees, combat extreme heat, and improve access to nature. This funding will help the city improve the health and condition of the tree canopy in more than 12,000 trees in southeast Colorado Springs, contributing to environmental quality, public health, water supply, local economy and aesthetics.

The USDA Urban and Community Forest Grant aims to restore urban tree health and enhance the tree canopy in disadvantaged neighborhoods and adjacent park spaces. The City of Colorado Springs has been awarded the highest dollar amount out of eight cities in the state of Colorado to receive this competitive grant.

City Forestry manages a living infrastructure of approximately 300,000 urban street trees and 20,000 park trees. This resource is a critical element of the region's green infrastructure, contributing to environmental quality, public health, water supply, local economies and aesthetics. The city has been a Tree City USA community since 1977, longer than any other in Colorado.

MONTE VISTA

Monte Vista is greening up through a USDA Forest Service grant intended to help communities plant and maintain trees. The U.S. Department of Agriculture announced this week the awarding of funding for around 400 projects in communities around the country, with Monte Vista set to receive \$1 million through the program.

Monte Vista will use its funding to inventory the current number of trees and identify any that are diseased and need to be replaced, said City Manager Gigi Dennis. The city also plans to plant 100 trees annually for five years to help with climate mitigation, which is the intention of the federal program.

"All good things," Dennis said. "We'll likely put a process in place to give trees to Monte Vista residents."

The U.S. Forest Service awarded \$37.2 million to the Rocky Mountain Region for projects similar to Monte Vista. The money comes through Congress' approval of the Inflation Reduction Act, which pumped \$1.5 billion into the Forest Service's Urban and Community Forestry Program.

UPCOMING WEBINAR

Unlock a world of knowledge through CML webinars. Dive into essential topics that directly address the challenges and conversations Colorado's cities and towns are facing.

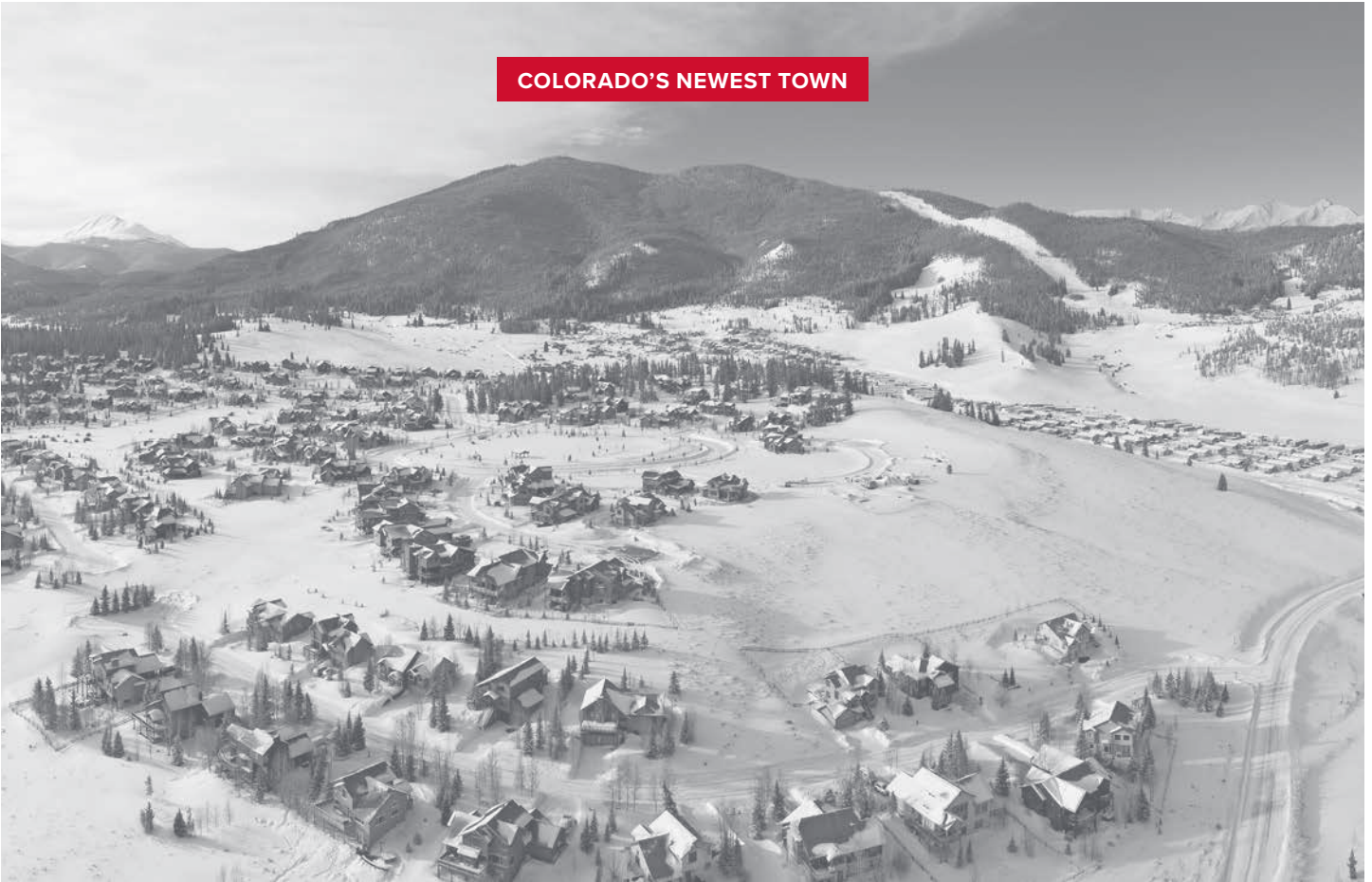
CIVILIAN CYBER RESERVES AND CYBERSECURITY

Wednesday, Oct. 11, 12-1 p.m.

A civilian cyber reserve is a group of public and private cybersecurity professionals who are vetted, trained, and organized to proactively assist communities by improving their cyber defense and respond to cybersecurity incidents, like ransomware. This webinar focuses on understanding how a civilian cyber reserve could bolster Colorado local governments' cybersecurity. The National Cybersecurity Center is developing a cyber reserve model from cities, counties, municipalities, special districts and potential volunteers among the skilled cyber workforce in Colorado. Jaime Clintman, outreach coordinator at NCC, shares information on the mode while also soliciting interactive feedback to explore how Colorado cities and towns can participate. Register at <https://bit.ly/46cWgk8>.



COLORADO'S NEWEST TOWN



Keystone goes home rule: Voters approve charter

Keystone voters approved a home rule charter in a Sept. 26 election.

Colorado's most recently incorporated town has about 900 voters, and more than 80% of them voted to approve the charter, according to an article in the Summit Daily newspaper. The next step will be for voters to elect a mayor and town council.

Elections are expected to take place early next year.

Home rule is a form of government under control of local citizens rather than state governments, with powers and authority derived from the municipality's locally enacted charter and ordinances, rather than state statutes. The charter provides

latitude for Keystone to determine its tax structure, and some community leaders have suggested raising revenue through a tax on lift tickets.

Read more in The Summit Daily, <https://tinyurl.com/3jh4d2jf>.

Federal programs aim to help communities achieve energy goals

The U.S. Department of Energy's Clean Energy to Communities program is now accepting applications for its next round of Peer-Learning Cohorts. The program will convene groups of up to 15 communities to learn about three different energy challenges: evaluating municipal buildings for energy efficiency and decarbonization, enhancing energy resilience of critical

facilities, and developing community-driven approaches to transportation electrification. Learn more about Peer-Learning Cohort topics and eligibility requirements online, <https://tinyurl.com/3sb8jktz>, and apply by Oct. 31.

The department is also accepting applications for its Expert Match program, which pairs communities with national laboratory

experts to provide tailored solutions that address communities' short-term energy goals over the course of about three months. Learn more on the program's website, <https://tinyurl.com/tuemwmy>.

CML LEGAL CORNER



Scrutiny of public officials' social media use continues

Robert Sheesley, CML general counsel

On Halloween, the United States Supreme Court will hear decidedly unspooky arguments in related cases about the intersection of the First Amendment and social media use by public officials. The May 11 Legal Corner detailed the cases, *O'Connor-Ratcliff v. Garnier* from the Ninth Circuit Court of Appeals and *Lindke v. Freed* from the Sixth Circuit Court of Appeals. With these decisions, at least five federal appellate courts joined three other circuits to create a significant "circuit split" as to the proper framework and standard to apply to such cases. Colorado's state and federal appellate courts have yet to speak on the subject, but some officials in the state appear to be taking chances that the Supreme Court will be protective of officials.

THE FIGHT IN THE SUPREME COURT

Both decisions arise in the context of 28 U.S. § 1983, the federal remedial statute that provides recourse when federal rights are violated by someone acting under the color of law. The federal right in question here derives from the First Amendment. Because a claim under that statute requires some form of state action, courts must assess whether the official was acting in a public or private capacity when using social media.

In the *Garnier* case, the Ninth Circuit felt that officials' pages that were "overwhelmingly" geared toward providing official information and soliciting feedback received a higher standard of

First Amendment protection. The Ninth Circuit argued that its approach was consistent with three other circuit courts of appeal. In contrast, in the *Lindke* case, the Sixth Circuit took a narrower approach, considering only the official duties and use of government resources involved in the page.

The Local Government Legal Center filed an *amicus curiae* brief with the National League of Cities, National Association of Counties, and International Municipal Lawyers Association. Advocating for a "clear and practical test," the brief supports an "Authority Test" that rejects the "duties" component of the *Lindke* test and asks whether the official's social media activity was authorized by the government. The government could authorize the account by owning it, expressly authorizing the official to create it, or allowing government resources to be used in its operation.

The local government brief asks the Supreme Court to reject the test endorsed by the Second, Fourth, Eighth, and Ninth Circuit Courts of Appeal, as in *Garnier*, that would focus on the appearance or purpose of the social media page. That test, it contends, improperly looks at "appearance" instead actual uses of state authority.

A BETA TEST FOR COLORADO'S SOCIAL MEDIA STATUTE?

As mentioned in May, the Colorado General Assembly waded into the concept of "private social media" ahead of the Supreme Court's hearing on the issue. That law, House Bill 23-1306,

focused on officials' social media that isn't supported by public resource but is still used to discuss public business. The bill tried to protect officials by allowing them to block individuals for any reason, expressly relying on the Sixth Circuit's opinion in the *Lindke* case. CML has encouraged officials to avoid relying on the law.

At least one public official, however, has relied on the new law to justify his actions on a social media account. A lawsuit filed in September alleges that the Denver Public School Board vice-president blocked a user and deleted her comment on his post about a school principal's termination. The comment apparently focused on a prior internal investigation into the official.

Media outlets reported that the official responded to the lawsuit by claiming strict compliance with H.B. 23-1306. If the litigation proceeds, it seems unlikely that any meaningful direction from Colorado's courts would come before the Supreme Court issues its decisions in the *Garnier* and *Lindke* cases in the first half of 2024.

In the meantime, municipal elected officials should tread carefully when choosing to use personal social media for public uses or when considering blocking users or deleting comments on posts about public business. CML continues to encourage municipalities to develop policies for social media use.

This column is not intended and should not be taken as legal advice. Municipal officials are always encouraged to consult with their own attorneys.

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Per federal law, the Colorado Municipal League is required to publish its Statement of Ownership, Management, and Circulation and Circulation for the CML Newsletter annually.

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