



COLORADO
MUNICIPAL
LEAGUE

NEWSLETTER

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CML Special Conference was truly special



By Kevin Bommer, CML executive director

When the 97th Annual CML Conference in Breckenridge in June 2019 came to a close, none of us could have imagined it would be the last time we would all see each other at a conference for over two years. It seems like ten years ago.

CML responded last year with a successful virtual annual conference and held virtual annual business meetings both last year and this year. There have been countless webinars and virtual meetings, too. However, it is not a stretch to say there was something missing.

What were we missing? Each other! We are truly better together than apart.

From the Tuesday reception to the end of the Friday lunch meetings, CML's Special Conference was filled with the sights and sounds of municipal leaders from around the state networking and laughing. The exhibit hall filled with sponsors and

associate members ready to talk about the services they offer and the work they do. State leaders and dynamic speakers spoke to and inspired us. We talked to each other in the hallways between sessions and shared our stories.

That personal, interactive dynamic that we experience when we are in each other's physical presence is powerful and energizing. As we ground through the long months of 2020 and the first half of 2021, we surely knew we were missing that personal touch. Yet, those who were able to attend the Special Conference may not have known how much we were missing it until we experienced it. Now, it is more than trying to get back to "normal" because perhaps we value being together even more than we did before.

There is work to be done. While conditions may be improving, although not nearly fast enough, the ability to continue doing more

together is not yet guaranteed. Whether it was being at the conference, participating in a CML district meeting, or just getting back together in your city or town, we found each other again. Going back to an all-virtual world is not an option.

Next June, CML will celebrate our 100th Annual Conference in Breckenridge, three full years since we left there not knowing what awaited us in the long months ahead. We want to see you there to celebrate with us and be part of what promises to be another excellent experience.

The entire League staff continues to be inspired and motivated by the resilience of our members. Let's keep rolling up our sleeves and doing the work, and – as always – please let us at CML know how we can help you.

Empowered cities and towns, united for a strong Colorado

Congratulations

CML congratulates Kevin Bommer, Meghan Dollar, and Melissa Mata, who celebrate their work anniversaries in October.



Kevin Bommer
Executive Director
22 years



Meghan Dollar
Legislative Advocacy
Manager
10 years



Melissa Mata
Municipal Research
Analyst
4 years

Coronavirus Capital Projects Fund guidance now available



By Beauclarine Thomas, CML legislative and policy advocate

On Monday, Sept. 20, the U.S. Department of Treasury released guidance for the American Rescue Plan Act's Coronavirus Capital Projects Fund. The Capital Projects Fund is a flexible \$10 billion fund to states and territories for investment in "Capital Projects designed to directly enable work, education, and health monitoring." While this fund will be controlled by states, state governments will have the ability to target covered projects to specific communities in need and may opt to subgrant funding to local governments.

The guidance strongly encourages, but does not require, states to prioritize spending on broadband and connectivity, specifically investment in "high-quality broadband infrastructure as well as other connectivity infrastructure, devices, and equipment." Included in the presumptively eligible projects under this fund are broadband infrastructure projects and digital connectivity technology projects (purchase and/or installation of devices and equipment for broadband access, such as computers). However, states may also choose to invest in multi-purpose community facility projects for capital assets that meet the requirement of enabling work, education, and health monitoring, such as construction or improvement of community schools, libraries, and community health centers.

Eligible broadband projects must provide service upon completion that meets or exceeds 100 Mbps symmetrical service. States are encouraged, but not required, to prioritize last-mile service, investment in fiber-optic infrastructure, and to prioritize broadband infrastructure owned, operated, or affiliated with local governments,

nonprofits, and cooperatives. Eligible projects are also required to participate in federal low-income subsidy programs upon completion and are encouraged to provide at least one low-cost option for service. States are encouraged, but not required, to prioritize communities

currently lacking reliable 100/20 Mbps wireline service.

States are not permitted to use the fund for highways, bridges, transit systems, or ports, and construction or improvement of hospitals and traditional schools is not presumed to be eligible except under limited circumstances. States may also be able to make, under certain circumstances, investments in projects not presumed eligible and subject to a case-by-case review, so long as they can demonstrate:

- that the project is designed to enable work, education, and health monitoring jointly and directly for at least five years from completion of the project;
- that the project addresses a critical need that results from or was made apparent or exacerbated by the COVID-19 health emergency; and
- that the project is designed to address a critical need in the community to be served by it.

Projects must be "substantially complete" and funds must be expended by **Dec. 31, 2026**. While the fund is allocated by formula and not competitive, states must apply and receive approval from Treasury to access funds. States will be required to submit an overall spending plan and at least one plan for a specific project to access initial funding, and each individual project must be approved by Treasury. States must also submit quarterly expenditure reports and annual performance reports.

You may access the full guidance document here: bit.ly/3uPwL7j.



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Colorado municipal officials come together for 2021 CML Special Conference



CML held its 2021 Special Conference Sept. 22-24 at the Westin Westminster. More than 600 municipal officials from throughout the state attended the conference.

The Special Conference was especially so because it was the first time CML was able to hold an in-person event since the Legislative Workshop in February 2020. Municipal officials, sponsors, government agencies, and others enjoyed the opportunity to once again connect with each other and pick up best practices and tips.

Among the fantastic lineup of speakers this year were Gov. Jared Polis, Attorney General Phil Weiser, and nationally recognized speakers Kevin Brown and Dr. Dwinita Mosby Tyler. The conference included nearly 50 different sessions, along with numerous networking opportunities.

Following the in-person event, CML held its Virtual Special Conference from Sept. 30-Oct. 1. All in-person registrants received a complimentary registration to the virtual event and nearly 100 others registered for just the virtual conference. Registrants learned from a mix of recorded sessions from the Special Conference and brand-new content.

Session materials from both events and recordings from the Special Virtual Conference will be available to in-person and virtual conference registrants through Oct. 15 on the event platform (use the link you used to view the conference app or virtual conference). Session materials are also available on the CML website at bit.ly/31HgZhX.

CML's conference lineup would not be possible without the generous support of our sponsors. See a full list of sponsors at bit.ly/2ZK1ZkD.

Next year will be a big one for CML, as we celebrate our 100th Annual Conference **June 21-24, 2022** at Beaver Run Resort in Breckenridge. We have some big plans in store, so be sure to save the date!

CML LEGAL CORNER



A brief history of odd-year elections in Colorado



*By David W. Broadwell, CML
general counsel*

Like most states, Colorado conducts its biennial general elections in November of even-numbered years. This singular state election date has always been locked-in by the Colorado Constitution. Unlike municipalities, the state has no authority to call special elections at other times of the year. The constitution goes on to say, “All elections on measures initiated by or referred to the people of the state shall be held at the biennial regular general election . . .”

Then in 1992, something “odd” happened.

TABOR and the annual state election cycle

When state voters added the Taxpayer’s Bill of Rights (TABOR) to the Colorado constitution in 1992, they may not have realized they were essentially doubling the number of state elections in Colorado.

TABOR is fundamentally about restricting the authority of state and local elected officials to raise taxes, incur debt, or increase revenue and spending without voter approval. But buried in the text of TABOR was this important provision about election timing: “Ballot issues shall be decided in a state general election, biennial local district election, or on the first Tuesday in November of odd-numbered years.” The author of TABOR did not bother to reconcile this new reference to “odd-numbered years” with the existing language in the constitution

that definitively required votes on all state ballot questions to occur at state general elections in even-numbered years.

The year after the adoption of TABOR, the Colorado General Assembly faced the immediate need to interpret and implement the new reference to odd-year elections. The legislature adopted a statute clarifying that the odd-year election date could be utilized only for initiated and referred ballot questions that concern “state matters arising under” TABOR. All other statewide ballot questions must continue to appear on the traditional state general election date.

Colorado’s experience with odd-year elections

Since 1992, the Colorado Secretary of State has conducted elections on statewide fiscal ballot questions in every odd-year except three (2007, 2009, and 2017). In the very next year after the adoption of TABOR, the General Assembly referred a question to the 1993 ballot to reinstate a statewide tourism tax that had just expired. The measure failed by a wide margin, perhaps setting the tone for many other failed state tax questions to come.

Undoubtedly, the single most important statewide ballot question approved in an odd year was Referendum C of 2005. Ref C was structured similar to a typical “de-Brucing” question allowing the state to retain and spend excess revenue for the ensuing five years. But the measure went on to literally re-write the way the state revenue cap would be calculated in perpetuity. As a result, since 2005 the state has been allowed to keep, rather than refund, billions of dollars of revenue in excess of the normal TABOR cap.

Political pundits may disagree about whether certain state ballot questions fare better or worse in an odd-year election, but there is undoubtedly a major difference

in turnout. In 2019, a little over 1.5 million people voted on two fiscal questions on the statewide ballot that year. The following year, over 3.2 million votes were cast in the presidential race in Colorado.

A unique legal challenge

On Sept. 23 of this year, a lawsuit was filed in Denver District court claiming that the Colorado Secretary of State erred when she allowed Amendment 78 to appear on the 2021 odd-year election ballot. Amendment 78 is an initiated constitutional amendment fundamentally aimed at changing the way the state handles “custodial funds” received by the state from outside sources such as federal funds, damages in lawsuits, or donations earmarked for a particular purpose. Under current law, the Governor or the Attorney General often control the spending of custodial funds. Amendment 78 would shift power to the General Assembly.

In an apparent attempt to make Amendment 78 a “state matter arising under” TABOR and thereby qualify it for the odd-year election ballot, the proponents added “de-Brucing” language to the initiated measure. The text provides that, henceforth, custodial funds can be received and spent by the state without regard to the TABOR revenue and spending cap. Ironically, however, TABOR itself already expressly exempts federal funds, damage awards, and gifts from the cap.

This eleventh hour legal challenge faces a steep uphill climb. But the case raises an interesting question: Should token or gratuitous TABOR language in an initiated statewide ballot measure always qualify the measure for an odd-year election ballot?

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

Research Corner: Short-term rentals in Colorado

While short-term rentals are not new in Colorado, the supply, demand, and impacts of these accommodations have reached new heights in recent years. As featured in a recent CML Newsletter Legal Corner by former CML Associate Counsel Laurel Witt, Colorado municipalities are seeking new regulatory options to navigate the complex calculus of short-term rentals, balancing tourism demand and revenue, individual property rights, the effect on affordable housing supply and workforce, and the impact of these short-term guests on permanent residents and local neighborhoods.

SAMPLE POLICIES BEING PURSUED IN COLORADO INCLUDE:

Caps on short-term rentals



2,200

Breckenridge's limit on the number of short-term rentals, effective **Nov. 2, 2021**



400

proposed cap in Telluride citizen's initiative which will be on the **Nov. 2, 2021** ballot for rentals that are not a part of a primary residence

Incentive programs



\$5,000 - \$20,000

range of incentives available through Winter Park's Short Term Fix program (bit.ly/3itNuYS), available to property owners who convert their short-term rental property into long-term workforce housing

SHORT-TERM RENTAL INDUSTRY STATISTICS



\$32,441

average annual Airbnb host earnings, 2020, Colorado (2nd in nation behind California)

\$24,886

average annual Airbnb host earnings, 2020, nationwide

Source: Alltherooms.com, bit.ly/3Fi8f38.

SPECIAL TAXES ON SHORT-TERM RENTALS

Short-term taxes on the November ballot



- **Avon: 2%**, to fund community housing
- **Crested Butte: 7.5%** (increase from 5%), to fund affordable housing programs
- **Ouray: 15%**, to fund housing programs and debt for water and wastewater treatment plants

NATIONAL SHORT-TERM RENTAL OCCUPANCY RATES

59.5%

August, 2019

64.1%

August, 2020

66.8%

August, 2021

18%

increase of short-term rental demand, fall/winter 2021 over 2019

88%

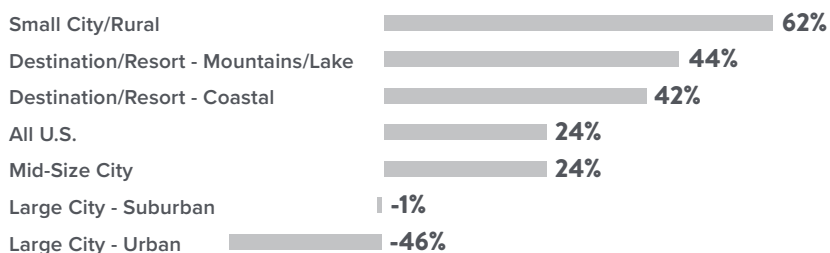
increase of short-term rental demand, fall/winter 2021 over 2020

Source: AirDNA, bit.ly/3iuUG6S.

Small city/rural and destination markets saw quick recovery in 2021 compared to large cities

While short-term rental demand soared in small-town and destination/resort areas, demand for urban areas is not expected to reach 2019 levels until 2023.

U.S. summer 2021 booking demand, relative to 2019



Source: AirDNA, bit.ly/3FerevF.

18.1%

increase in demand for short-term rental nights in Colorado, May 2021 to May 2019

Source: AirDNA, reported by StayFi bit.ly/3mf3YVG

Recent media coverage includes stories by *Steamboat Pilot and Today* (bit.ly/3a5sSRQ), the *Colorado Sun* (bit.ly/3D7jA4d), and an abundance of Letters to the Editor in mountain publications such as *Summit Daily News* (bit.ly/2WI5Cqc).



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