



LOUISVILLE REBUILDS

Ribbon cut at city's first home rebuilt after the Marshall Fire

By City of Louisville staff

Louisville marked a major milestone in its recovery from last year's devastating Marshall Fire with the completion of the first home to be rebuilt following the fire.

City officials issued a certificate of occupancy for a new home in Louisville's Cornerstone subdivision, built by local contractor Wood Brothers Homes for homeowner Jessica Carson. Carson was joined at the ribbon-cutting Dec. 16 by her two children, as well as representatives from Woods Brothers, city council members, family, and friends.

Carson's former home was one of nearly 1,100 Boulder County homes and businesses destroyed in the Dec. 30, 2021, fire, including 550 in Louisville. While almost 200 rebuilding permits have either been issued or are pending, the Carson home is the first to be completed.

"We know that not everyone is at the same stage in their rebuilding journey, but we're



excited to see our community coming together and building a bright future," City Manager Jeff Durbin said. "The city is committed to supporting our fire-affected residents, for as long as necessary, until everyone is back home."

For more information about Louisville's recovery from the Marshall Fire, visit the City's Louisville Rebuilds site at <https://bit.ly/3YBj2zd>.

Executive Board announces process for filling small category vacancy

With a vacancy to occur in January, the CML Executive Board is accepting letters of application through 5 p.m. Monday, **Jan. 9**, to fill a position on the board in the "small" category (under 8,000 population).

Elected or appointed municipal officials in municipalities with a population under 8,000 interested in being considered for appointment by the CML Executive Board should follow the instructions below. Under CML bylaws, population figures are based upon population estimates from the

Colorado Department of Local Affairs used in computing 2023 municipal dues.

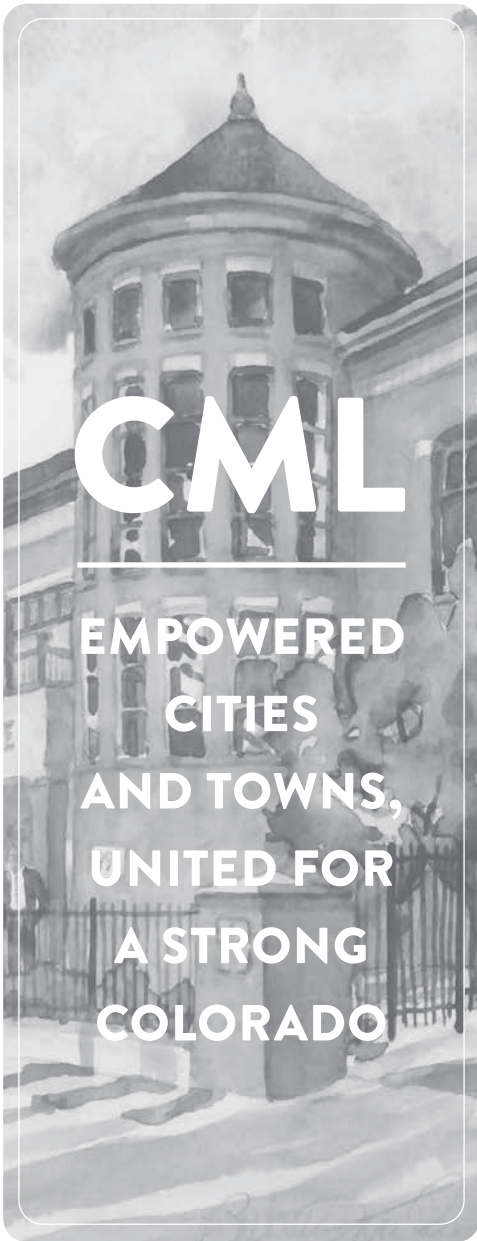
Any eligible official who desires to be considered for the position must:

- Submit an application for nomination, in a letter or other written form, no later than 5 p.m. Monday, **Jan. 9**.
- Include an endorsement in writing from the applicant's city council or board of trustees with the application by 5 p.m. Monday, **Jan. 9**. The endorsement need not be a formal resolution. A letter signed by the mayor affirming the support of the

council or board will suffice (A city council or board of trustees may endorse the nomination of only one official).

- Be prepared to attend the CML Executive Board meeting Friday, **Jan. 27**, from 10 a.m.-1:30 p.m., if selected for recommendation to the full board for appointment.

All application materials and any questions should be emailed to Executive Director Kevin Bommer at kbommer@cml.org. Clerks and managers in small municipalities will be sent this information plus additional details to share with interested individuals.



IN MEMORIAM

Emma Lou Wilson

The City of Lone Tree celebrates the life and accomplishments of its first city clerk, Emma Lou Wilson, who passed away on Oct. 15. A lifelong educator, Wilson helped lay the foundations of the city and was an example of civic engagement from the beginning.

Wilson ran for the public office of City Clerk in 1996 when the need came. The city charter changed in 1999, making the city clerk position appointed instead of elected. Wilson will remain the first and only elected city clerk.

“She saw an opportunity both to get the city founded and then to participate in the government as an elected official,” recalls Jack O’Boyle, the first mayor of Lone Tree. “Not that she’d had any experience in that regard. None of us did.”

Wilson’s contributions to the City of Lone Tree came in many forms, one of which can still be prominently seen at the intersection of Lone Tree Parkway and Yosemite Street. For Arbor Day in 1997, Wilson researched, bought, and planted the city’s official “Lone Tree,” marked by a plaque directly across Lone Tree Parkway from the Hub.

By stepping forward during the infancy of the City of Lone Tree, Wilson has left an indelible impact, showing that anyone can make a difference by engaging with their community.

Read more about Emma Lou Wilson on the City of Lone Tree website, <https://bit.ly/3I5TmVR>.

CONGRATULATIONS

Outstanding municipal attorneys

The Metro City Attorneys Association recognized the work of several members in 2022.

- Outstanding City Attorney: Alison McKenney Brown (City of Lakewood)
- Outstanding Deputy City Attorney: Victoria McDermott (City of Englewood)

- Outstanding Assistant City Attorney: Gus Schenk (City of Lakewood)
- Special Recognition: Community Court — Chris Reynolds, JB Cannafax, Deshawna Zazueta (City of Boulder Prosecutors)

Windsor town attorney retires

Ian McCargar, town attorney for the Town of Windsor, is retiring from his position on Jan. 1. McCargar, a 40-year attorney, assumed the post in 2014 after 10 years as an assistant town attorney. McCargar

has been a presenter at CML conferences and a valuable participant in Attorney Section activities and the Colorado Bar Association’s Government Counsel Section.



COLORADO MUNICIPAL LEAGUE **NEWSLETTER**

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CELEBRATE WITH CML

CML wants to hear about your community’s successes. Tell us about a new grant you’ve won, water tank that’s finally finished, housing initiative, or anything else you’re excited about! To share your good news, please complete the form at <https://bit.ly/3YF8XRM>.

Colorado Supreme Court rules on term limits and Rule 106 deadline

The Colorado Supreme Court recently issued two significant opinions relating to municipal term limits and the 28-day deadline for seeking review under Rule 106. CML supported the cities' excellent advocacy through amicus curiae briefs.

SALAZAR V. KULMANN

In *Salazar v. Kulmann*, a resident asserted that the current mayor of the City of Thornton was ineligible to hold office because she previously served 1.5 terms as a councilmember. The district court held that the offices of mayor and council in that city were the same office for purposes of Article XVIII, Section 11(1) of the Colorado Constitution. The Supreme Court (5-2) reversed, holding that the term limits amendment unambiguously referred to a specific office and that the offices of mayor and councilmember were separate and distinct under the Thornton charter and code. The Court noted the different methods of election (at-large vs. ward) and filling vacancies in the office of mayor, the different title, the different duties unilaterally exercised by the mayor, and the use of "or" when referring to both offices in the charter. The Court declined to decide whether the district court erred in holding that the mayor's partial term did not count as a term for purposes term limits (but the dissent argues why it should it have).

Read more about *Salazar v. Kulmann* and what it means for municipalities in the *Legal Corner*, on Page 6.

BROWN V. WALKER COMMERCIAL, INC.

In *Brown v. Walker Commercial, Inc.*, a developer filed a Rule 106(a)(4) complaint 30 days after the City of Aurora's director of water issued his final decision regarding a storm drain development fee. The district court dismissed the case on grounds that the initial complaint was untimely because



it was filed after the 28-day period set forth in Rule 106(b). On appeal, the developer argued, and the Court of Appeals agreed, that the complaint was timely because Rule 6(b) allows trial courts to accept late-filed Rule 106(a)(4) complaints upon a showing of excusable neglect. The Court of Appeals also set a standard for determining excusable neglect under Rule 6(b) that paralleled Rule 60(b)'s excusable neglect standard. The Supreme Court unanimously reversed, holding that Rule 106(b) establishes a strict 28-day limitation period

for invoking the district court's jurisdiction under Rule 106(a)(4), "consistent with nearly half a century of our case law," and is not subject to any equitable considerations including a showing of excusable neglect under C.R.C.P. 6(b). Because Walker filed its complaint two days late, the complaint was untimely.

Learn more about how CML's amicus program can help your municipality in appellate litigation, <https://bit.ly/3v5s2PD>.

Five more projects receive state Community Revitalization Grants

The Colorado Creative Industries division of the Colorado Office of Economic Development and International Trade announced that community revitalization projects in Paonia, Silverthorne, Grand Lake, and Denver have been selected to receive Community Revitalization Grants.

Among the recipients are Su Teatro, a Santa Fe Arts District institution that celebrates the cultural arts, heritage, and traditions of the Chicano/Latino community, and VFW Post 1, the first and oldest Veterans of Foreign Wars Post in existence. The post is one of the largest and most active veterans organizations in the U.S. The five most recent recipients are:

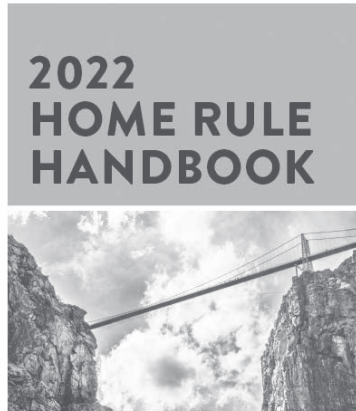
- Grand Lake Community House, Grand Lake — \$86,000
- Silverthorne Art Spot, Silverthorne — \$300,000
- Su Teatro, Denver — \$500,000
- The Learning Council, Paonia — \$650,000
- VFW Post 1 Phase II, Denver — \$150,000.

New edition of Colorado Municipal League's Home Rule Handbook

The Colorado Municipal League has thoroughly revised and updated its Home Rule Handbook.

First published in 1972, the Home Rule Handbook has been developed by the Colorado Municipal League as a starting point for Colorado municipal officials considering home rule or amending existing home rule charters. It is designed to be an introduction to the establishment and exercise of municipal home rule rather than a comprehensive discussion of the subject.

The latest edition contains judicial rulings on the subject of home rule through November 2022. It includes a history of home rule in Colorado, authored by Kenneth Bueche, CML executive director from 1974 to 2005.



Attorneys will find the handbook to be a thorough source of case law, including an extensive table of case law evaluating areas of local and statewide concern and the scope of home rule authority.

Any municipality considering the adoption, amendment, or repeal of a home rule charter or adopting an ordinance asserting home rule powers should obtain the advice of legal counsel.

Print copies of The Home Rule Handbook will be mailed to member municipalities, and electronic copies will be available at the CML Bookstore, <https://bit.ly/3BRicEQ>.

Webinars on Statehouse, crisis communications, new statutes

CML has a fantastic lineup of webinars coming in early 2023. Register on CML's event's page, <https://bit.ly/3Ga7Gex>.

Webinar: Psychedelics, Housing & Wine: A Review of 2022's Propositions 122, 123, and 125
Wednesday, Jan. 11, 12-1 p.m.

Presented by Robert Sheesley, CML General Counsel, and Rachel Bender, CML Associate Counsel. Three of the citizen-initiated statutes approved by voters in November 2022 will impact Colorado municipalities: Proposition 122 (legalizing natural medicine), Proposition 123 (affordable housing funding), and Proposition 125 (allowing the sale

of wine in grocery stores). CLE credits anticipated.

Webinar: Crisis Communications: When the Never Expected Happens — Marshall Fire Lessons Learned
Wednesday, Jan. 18, 12-1 p.m.

When wildfire hit highly populated areas never imagined to be in a danger zone, it put Boulder County government communicators to the ultimate test. Join leaders from the Town of Superior, the City of Louisville, and Boulder County to hear lessons learned about crisis response communications, frameworks, and tactics. The webinar will provide real-life examples

that can help you prepare for disasters, as well as key takeaways on the importance of a digital-first strategy for crisis response and valuable ways for monitoring community sentiment during and after crisis response to ensure support, provide services, and promote long-term healing.

Webinar: 2023 Legislative Update
Wednesday, Jan. 20, 12-1 p.m.

Presented by the CML Advocacy Team. Learn what to expect during this session of the Colorado General Assembly. Get the latest news on potential legislation and ask questions about issues that could affect your city or town.

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CML LEGAL CORNER



Supreme Court clarifies term limits for municipal officials

Robert Sheesley, CML general counsel

In the April 22, 2022, Legal Corner, we discussed how the Colorado Constitution imposes term limits on municipal elected officials. This month, in *Salazar v. Kulmann*, the Colorado Supreme Court clarified how to distinguish between a mayor and a councilmember for term limits purposes. The Court left open the question of whether a partial term counts as a term. Municipalities may want to consider clarifying these issues locally to avoid further confusion or conflict.

COLORADO'S CONSTITUTIONAL TERM LIMITS

Art. XVIII, § 11(1) of the Colorado Constitution ("Section 11") provides that municipal elected officials are generally limited to two consecutive terms in office (three terms if the term is defined as two years or less) but can run again after four years. For 30 years, municipalities either adopted local term limit laws or relied on plain language of Section 11 without significant dispute.

Last year, however, a City of Thornton resident sued the city and its mayor claiming that the mayor's prior recent service as a councilmember disqualified her from serving any terms as mayor. The trial court agreed that terms served as councilmember and mayor both counted towards the two-term limit because the offices were the same. But, by not counting a partial term served as a councilmember prior to becoming mayor, the mayor only had served one term.

The Colorado Supreme Court disagreed with half of the trial court's ruling. First, the Court held that term limits applied to service in an individual office, not

on the governing body. Second, the Court held that the office of mayor and councilmember, at least in Thornton, were distinct and separate even though the mayor is part of the council. In Thornton, the mayor is elected at large while councilmembers are elected by ward, mayoral vacancies are filled differently, the mayor has limited powers that can be exercised independently, and the charter used language separating the two offices. The Court refused to minimize the Thornton mayor's powers, which include ceremonial roles, running meetings, emergency powers, and limited appointment power. The Court declined to say whether the partial term should have counted as a term.

REVISITING LOCAL TERM LIMITS AFTER SALAZAR

Section 11 allows municipalities to restrict, expand, or eliminate term limits through an election. The *Salazar* decision offers an opportunity to consider whether voters should clarify a few matters to avoid future disputes. Because the decision did not create a bright line rule, a municipality could avoid any future uncertainty by asking voters to affirm that the mayor office is separate for term limits purposes (or, conversely, that they should be counted as the same office). For example, Greeley's charter sets limits of two consecutive four-year terms for councilmember (both ward and at-large) and four consecutive two-year terms for mayor. Commerce City's charter specifically says the two offices are separate, but limits lifetime service to two terms in each office.

A municipality might also seek to distinguish the office of mayor or councilmember so that the reasoning

of the *Salazar* decision would result in the offices being considered separate. Beyond direct, at-large election, factors that might distinguish a mayor include some independent executive powers, different compensation, a different method of filling a vacancy, and charter language distinguishing a mayor. Powers may tend toward the ceremonial or procedural or more significant authority, like veto power.

A local election could address the "partial term" question to avoid future confusion, particularly for brief terms or for persons whose service is due to a vacancy. In *Salazar*, the mayor served half of a term as a councilmember and resigned to take a new office, but the litigation raised a hypothetical concern of strategic resignations to avoid term limits. Other innocuous reasons for a partial term might be resignation for illness, to care for a family member, to devote time to work, or moving from a community. A reasonable partial term rule might not count time served to fill a vacancy or, as in Wheat Ridge, service for less than half a term.

Finally, a municipality could very well conclude that no change is needed and their current structure sufficiently addresses the issue under the *Salazar* analysis. Whatever the decision, a municipality should consider whether term limits serve their intended purpose in their community or whether they unnecessarily restrict the municipality from recruiting qualified leaders.

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

White House unveils plan to end homelessness

The Biden-Harris administration has released a federal plan for ending homelessness in America that starts with the ambitious goal of reducing homelessness 25% by 2025. *All In: The Federal Strategic Plan to Prevent and End Homelessness* was developed by the U.S. Interagency Council on Homelessness and released Dec. 19. It aims to systemically prevent homelessness and combat the systemic racism that has created racial and ethnic disparities in homelessness.

The Council on Homelessness will host webinars in 2023 — starting in January — to help communities use *All In* to develop local and systems-levels plans to prevent and end homelessness and learn more about federal programs, strategies, and actions to prevent and end homelessness. View the full plan at <https://bit.ly/3v7iKCB>.

Part 1 of the 2022 Annual Homelessness Assessment Report was also released Dec. 19. This report, conducted by the U.S. Department of Housing and Development, outlines the key findings of the Point-in-Time count and Housing Inventory Count conducted in January 2022, including estimates of chronically homeless persons, homeless veterans, and homeless children and youth. The 2022 report provides comparisons with 2020 data because many communities were considerably effected by COVID-19 during the 2021 PIT count and did not conduct an unsheltered PIT count. Download the report at <https://bit.ly/3G9KU6z>.

BIPOC HOMLESSNESS

There continues to be an overrepresentation of people who identify as Black, African American, or African, as well as indigenous people (including Native Americans and Pacific Islanders) among the population experiencing homelessness compared to the U.S. population.

► People who identify as Black made up just **12 percent** of the total U.S. population but comprised **37 percent** of all people experiencing homelessness.

► Between 2020 and 2022, the number of people experiencing homelessness who identify as American Indian, Alaska Native, or Indigenous increased by **4 percent** and homelessness among Native Hawaiians or Pacific Islanders increased by **19 percent**.

► The number people experiencing homelessness who identify as Hispanic or Latino increased by **8 percent** between 2020 and 2022.

POINT-IN-TIME COUNT

Overall homelessness is nearly unchanged since 2020.

582,462 people experienced homelessness in 2022

Overall homelessness is up **.3%** (1,996 people) since 2020



Overall homelessness is down **8.6%** (54,615 people) since 2010

Unsheltered homelessness is up. 233,832 people experienced unsheltered homelessness in 2022



Up **3.4%** (7,752 people) since 2020



Up **.1%** (298 people) since 2010

Family homelessness is down. 50,767 families with children experienced homelessness in 2022



Down **5.5%** (2,972 families) since 2020



Down **36.1%** (28,675 families) since 2010



Unsheltered homelessness among families with children is down **69%** since 2010

Veteran homelessness is down. 33,129 veterans experienced homelessness in 2022



Down **11.1%** (4,123 veterans) since 2020



Down **55.3%** (40,958 veterans) since 2010

Chronic homelessness is up. 127,705 individuals experienced chronic homelessness in 2022



Up **15.5%** (17,177 individuals) since 2020



Up **20.4%** (21,643 individuals) since 2010



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Featured in this issue:

- Milestone: Home destroyed by wildfire rebuilt in Louisville
- CML releases updated edition of Home Rule Handbook
- Municipalities win at Colorado Supreme Court
- Research Corner: White House has ambitious plan to end homelessness
- Legal Corner: Court clarifies term limits for municipal officials

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