



COLORADO  
MUNICIPAL  
LEAGUE

# NEWSLETTER

Vol. 48, No. 18, September 9, 2022

## Questions answered: A recap of CML's "What is Kratom?" webinar

*By Makenna Sturgeon, CML training and marketing specialist*

CML's "What is Kratom" webinar, held Aug. 23, gave an overview of the substance, SB22-120, and different views concerning kratom and public health. We heard from Colorado Counties Inc., American Kratom Association, Colorado Association of Local Public Health Officials, and CML Legislative Advocate Jaclyn Terwey.

The well-attended webinar provided an array of new information about the substance, including the danger of buying adulterated kratom. The webinar reminded viewers that right now there are no federal regulations in place and no FDA-approved uses for the substance. Currently there are a few municipalities in Colorado that regulate kratom at the local level, including Parker and Monument with bans on the sale of kratom; Denver with strict labeling requirements; and Castle Rock with an age restriction. In 2022, the Colorado General Assembly passed a prohibition on the sale of kratom products to individuals under 21 years of age and directed the Department of Revenue to conduct a feasibility report to determine future actions. This report, which is to be finished by **Jan. 4, 2023**, will investigate several different items concerning kratom including:

- Regulating products, processors, and retailers
- Recommending the appropriate state agency to be responsible

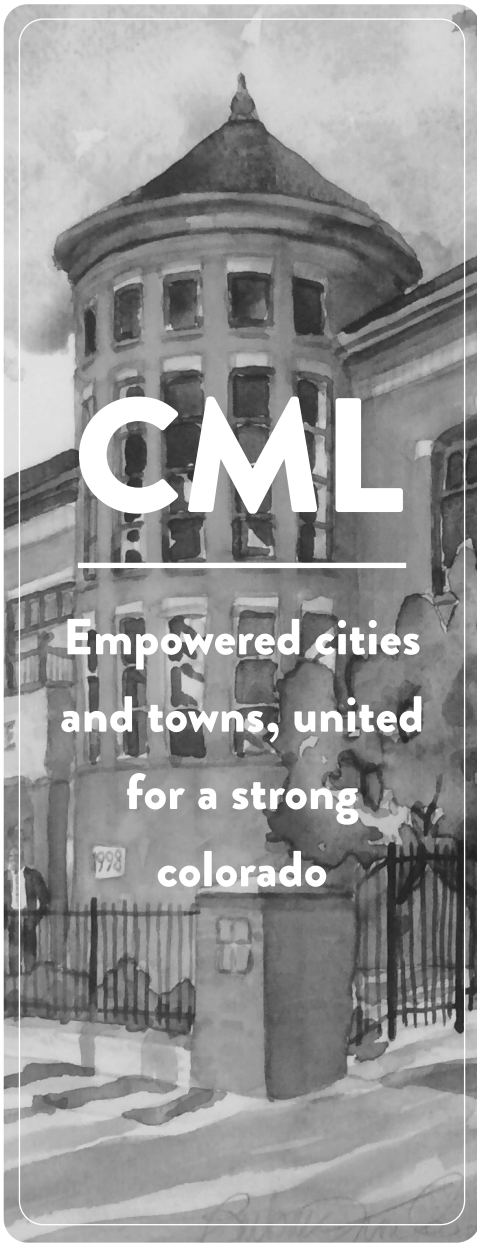


- Defining terms surrounding kratom processing and selling
- Age restrictions
- Testing
- Food products and their interactions with the substance
- Labeling requirements
- Adverse health reporting
- Fiscal considerations such as taxes, licensing fees, etc.

Right now, it is up to municipalities to decide if they would like to regulate kratom and how to do it. However, municipalities cannot enact an ordinance establishing a minimum age to purchase kratom products

that is under 21 years of age. We hope to gain more information from the feasibility report next year. If you are interested in hearing more about kratom and the voices involved in the conversation, visit <https://bit.ly/3B5SRa3> to view a recording of the "What is Kratom" webinar and the presentation materials. If you have questions, please email Makenna Sturgeon at [msturgeon@cml.org](mailto:msturgeon@cml.org). As CML learns more about this important topic, we will keep you informed.

**Empowered cities and towns, united for a strong Colorado**



## IN MEMORIAM

### Paul Tauer

Former mayor of Aurora, Paul Tauer, died recently at age 86. Tauer served as mayor for 16 years, his last term ending 2003. Prior to being mayor, he was a councilmember for eight years.

"Paul enjoyed attending CML events, especially the summer conference. He was a great friend of the League and on a personal level, a wonderful friend. A great guy," stated retired League Executive Director Sam Mamet.

Tauer's service coincided with a period of tremendous growth and redevelopment in Aurora. His influence was a key factor in turning Fitzsimmons Army Medical Center into the Anschutz Medical Campus, according to current mayor, Mike Coffman. He also was heavily involved in the E-470 project and relationship with Denver in the creation and opening of Denver International Airport.

CML offers condolences to the Tauer family and gratitude for Mayor Tauer's dedication to public service and municipal governance.



### Bill Swenson

Bill Swenson, former Longmont mayor and state representative, passed away on July 14. He was 90 years old.

As mayor and councilmember in Longmont from 1981-1985, he oversaw a period of significant growth for the city. In 1995, he decided to run for the Colorado House of Representatives in the district that his wife, Betty Swenson, represented from 1985-1992. After winning, he served in that capacity until 2002.

"Bill was very active in CML. A true gentleman, and tremendous leader as Longmont mayor. He served with distinction in the legislature, and very supportive of municipal issues. A great guy for sure," stated Sam Mamet, retired League executive director.

"My experience with Rep. Swenson was as a very young lobbyist for CML," said Kevin Bommer, CML executive director. "I learned very quickly that he was thoughtful, friendly, but principled in his positions. He was a tremendous representative for Longmont."

Swenson was preceded in death by Betty, who died in 2016 at age 83. He is succeeded by three children, seven grandchildren, and seven great grandchildren.



COLORADO  
MUNICIPAL  
LEAGUE

## NEWSLETTER

*CML Newsletter* (ISSN 7439903) is published biweekly by the Colorado Municipal League, 1144 Sherman St., Denver, CO 80203-2207, for Colorado's municipal officials. (USPS 075-590) Periodical postage paid in Denver, Colorado.

**Editor: Jennifer Stone**

**Designer: Alex Miller**

**Circulation/mailling lists: Mark Vanderbrook**

POSTMASTER: Send address change form 3579 to Colorado Municipal League, 1144 Sherman St., Denver, CO 80203-2207; (p) 303-831-6411 / 866-578-0936; (f) 303-860-8175.

Subscription to *CML Newsletter* is offered as a portion of member dues.

Get this newsletter by email. The *CML Newsletter* is available by email three days before it arrives in the mail! Sign up at [bit.ly/CMLNewsletter](http://bit.ly/CMLNewsletter).





## Highway User Tax Fund revenues recover from pandemic low

*Meghan MacKillop, CML legislative and policy advocate*

Each year, the CDOT Office of Financial Management and Budget (OFMB) prepares a forecast of expected revenues in the Highway Users Tax Fund (HUTF) for upcoming years. CML and CCI utilize these HUTF forecasts to assist local governments in developing their annual road and bridge budgets. CML and the OFMB also utilize updated information from the Department of Revenue on lane miles, bridge deck area, vehicle miles traveled, and vehicle registrations.

After nearly three years of uncertainty and volatility due to COVID-19, our state partners at CDOT predict that HUTF revenues have mostly recovered from the impacts of the pandemic. This recovery is largely due to vehicle miles traveled rising to pre-pandemic levels and an increase in gas sales. Despite overall increases in HUTF revenue, the implications of Senate Bill 21-260, Sustainability of the Transportation System, remain difficult to forecast. The impacts of the various fees created in SB21-260 have yet to be seen, in part because those fees only recently went into effect, but also because the General Assembly has delayed implementation of the road usage fee.

### 2023 HUTF annual revenue forecast

For FY2022-23, the OFMB used baseline data from 2021 and 2022 to build a model to project future revenues for the HUTF. The HUTF forecast predicts a roughly \$3 million increase in municipal HUTF revenues from 2022 to 2023. These revenues should trend upward over the next few years as the fees created by SB21-260 increase, regardless of trends in vehicle miles traveled and gasoline sales. During the 2022 legislative session, the General Assembly passed legislation that delayed the implementation of the road usage fee, created in SB21-260, and extended the reduction in FASTER fees through 2023. To make up for this loss in revenue, the state allocated funds to municipalities and counties in the form of a one-time deposit into the HUTF.

The rebound that HUTF revenues experienced in 2022 is predicted to continue in the next fiscal year and in years to follow. Vehicle miles traveled has returned to pre-pandemic levels; however, analysts found that people traveling are not necessarily following exact patterns that they did before COVID-19. People are still working from home and are therefore making more dedicated and discretionary trips. Rather than going to the grocery store

or completing other errands on the way to and from work, Coloradans make these trips separately, contributing to the increase in road usage. Also attributed to the increase in vehicle miles traveled is an uptick in the overall population, increased tourism, a steady increase in delivery trucks, and more people taking driving vacations rather than flying.

Although revenue from gasoline consumption has seen a steady increase since 2019, OFMB analysts predict that this revenue source will decrease over time. Cities and towns, however, can expect other revenue generated from SB21-260, namely the newly created electric vehicle registration fee, will compensate for this decrease. As people transition from fuel dependent vehicles to electric vehicles, revenue from the electric vehicle registration fee will replace the lost revenue from fees and taxes on fuel.

For the full memo and more information on revenue distributions, please visit <https://bit.ly/3e9litz>.

## Rural Economic Development Initiative Grants

The Rural Economic Development Initiative (REDI) program is designed to help rural communities comprehensively diversify their local economy and create a more resilient Colorado.

The most successful applications to this program are those from counties with fewer than 50,000 people, and from communities with fewer than 25,000 people. Projects that will be funded include plans, construction,

programs, and capacity building. All applications must create and retain jobs, either directly or indirectly. Projects should fall into one or more of the following categories: job creation and retention; capacity building; economic resilience; or supporting entrepreneurial ecosystems. The grant cycle closes **Sept. 30**. Visit <https://bit.ly/3B60f5f> for more information.

## Broadband Deployment Board cancels summer 2022 grant cycle

The Broadband Deployment Board (BDB) approved the cancellation of the Summer 2022 Grant Cycle last month.

“The Board endeavors to deliver grant funding as quickly as possible while adhering to complex legal requirements,” according to a press release. “The recent changes in state law and federal regulations have created delays. With the influx in grant funding and grant awards, the board believes it prudent to cancel the upcoming summer 2022 Grant Cycle. Funding carries over from cycle-to-cycle, so this decision does not impact funding availability. The board believes this will allow staff, the board, and the public to reconvene to assess board processes, deliberate issues,

and prepare for a better upcoming cycle. With the next cycle already commencing in January, the board notes that the cancellation will only result in a brief delay before grant awards will recommence.”

The BDB will host public stakeholder meetings, BDB meetings, and webinars to discuss and implement any potential changes to the grant cycle process.

Applications for the Winter 2023 Grant Cycle will be due **Jan. 15** (subject to change).

Email questions to [oit\\_broadband\\_deploymentboard@state.co.us](mailto:oit_broadband_deploymentboard@state.co.us).

## Applications sought for 2022 Off-System Bridge Program

The Special Highway Committee is now accepting grant applications from counties with off-system bridges that are eligible for rehabilitation or replacement.

Approximately \$5.6 million is available for municipal projects this year. This is a substantial increase from previous years and comes from dedicated funding from the Bipartisan Infrastructure Legislation passed this year. The federal act included

\$45 million per year for the next five years for statewide bridge rehabilitation and construction, a portion of which is dedicated to off-system bridges.

The deadline for applications is **Oct. 28**. Please reach out to CML Legislative & Policy Advocate Meghan MacKillop at [mmackillop@cml.org](mailto:mmackillop@cml.org) for more details.

## Grants for wildlife habitat protection on private land

The Partners for Fish and Wildlife Program provides direct technical and financial assistance in the form of cooperative and grant agreements to private landowners to restore and conserve fish and wildlife habitat for the benefit of federal trust resources. Priorities include complementing activities on National Wildlife Refuge System lands, improving habitat for species at risk and federally designated species, and supporting five-year strategic plans to identify focal species and focal areas in which to invest limited resources. The deadline to apply is **Sept. 30**. Visit <https://bit.ly/3TMIpQG> to apply.

## American Planning Association 2022 Policy and Advocacy Conference

The American Planning Association is ready to build on the legislative gains made last year! The Policy and Advocacy Conference is an opportunity to ensure last year's landmark investments in planning deliver on the promise for a more equitable and resilient future.

This is an opportunity to network with fellow planners across the country, participate in professional development sessions, and hear from top decision-makers to advance legislation that is important to you.

Register for this online inclusive conference that will provide guidance on the latest legislative policies and strategies, education on emerging and important topics, and opportunities to connect with other planners on **Sept. 28** and **29**. Visit <https://bit.ly/3Q58nHv> to register.



## Colorado Opioid Abatement Council hosts conference

CML staff attended the Colorado Opioid Abatement Council Conference last month, which was attended by more than 200 community leaders, including some CML members. Staff was able to learn directly from the council about the impact of the opioid settlement funds for municipalities, as well as receive updates on the fentanyl accountability and prevention bill (HB22-1326), the newly created Behavioral Health Administration, upcoming funding

opportunities for municipalities, and risk reduction policies.

Visit <https://bit.ly/3wPeUzi> to view day one conference sessions and <https://bit.ly/3RcT3tZ> to view day two sessions.

On day two of the conference, Attorney General Phil Weiser launched the state's new Colorado Opioid Settlement Funds Dashboard. The dashboard is designed to provide accurate and up-to-date

information regarding the distribution of opioid settlement funds in the state. Data will be updated on the dashboard as expenditures are reported, annual funds are requested, and additional lawsuits are settled. Visit <https://bit.ly/3TyGtqp> to review the dashboard.

## AARP to host Housing for People of All Ages workshop

Housing needs change as we age, but it's possible for our homes and communities to be livable for people of all ages and life stages.

This free, online workshop will bring together local leaders, housing practitioners, and AARP staff and volunteers to explore how communities nationwide can provide safe, affordable

housing options for individuals and families of all backgrounds, incomes and abilities.

Through four core themes — Housing Choice, Design, Stability, and Equity — the workshop will share best practices, insights and inspiring next steps for meeting the housing needs of a changing nation.

The online workshop will be held **Sept. 21 and 22**. Visit <https://bit.ly/3cDKUQd> to register.

## Seminar on Municipal Law coming to Grand Junction

CML's Annual Seminar on Municipal Law is coming up this month! We cannot wait to hear from experts like Former State & Local Legal Center Executive Director Lisa Soronen and to discuss cutting edge legal issues in areas like municipal taxation, police liability, and First Amendment law. To learn more about the seminar visit <https://bit.ly/3Qaxucr>.

A special thank you to our sponsors: Butler Snow; Hoffmann, Parker, Wilson & Carberry P.C.; and Widner Juran LLP.

BUTLER SNOW



Hoffmann  
Parker  
Wilson &  
Carberry | P.C.



Widner  
Juran LLP



# CML LEGAL CORNER



## Navigating municipal background checks

By Rachel Bender, CML associate counsel

Background checks can be a vital tool in many aspects of the municipal world, most notably in licensing and employment. Criminal background checks provide information on potential licensees who will be operating in your jurisdiction and whether it is appropriate to approve the license application. In the employment setting, background checks, which can include information from criminal history to financial history to employment history, help ensure a person is qualified for the position and has an appropriate background for the associated tasks. The following is a primer on background checks in these contexts.

### Municipal Licensing

#### *Liquor Licensing*

Municipalities can conduct background checks on liquor license applicants to include all officers and directors, as well as members and shareholders who own 10% or more of the business entity. Municipalities can also request background information, although most pertinent information is typically contained in the license application forms issued by the state.

If an applicant has a master file with the state liquor enforcement division (typically only applicants who already have five or more licensed locations have a master file), a municipality cannot require the applicant to file additional background investigation forms or fingerprints for a background check. A local licensing authority, however, can still conduct its own investigation and require verification of any information provided by the applicant.

#### *Marijuana Licensing*

Municipalities can adopt an ordinance for issuance of various types of marijuana licenses. Any such ordinance must set forth specific standards for license issuance; if a municipality issues marijuana-related

licenses but has not enacted such an ordinance, it must follow the minimum licensing requirements established in Title 44, Art. 10, Part 3, of the Colorado Revised Statutes. The specific standards for issuance of a marijuana license can include a background check of all potential licensees and may be more thorough than that conducted by the state.

#### *Other Business Licenses*

Municipalities may require background checks for business licenses. For example, C.R.S. § 31-15-407, which went into effect Aug. 10, 2022, requires a home rule municipality that adopts an ordinance to license a massage facility, to have its police department conduct a background check on the applicant's criminal history record. State statute does not contain this type of requirement for other types of business licenses, leaving it open to home rule municipalities as to how they handle the issuance of those licenses.

### Municipal Employment

While employers generally have an obligation to exercise reasonable care in hiring employees, whether to conduct a background check, and to what extent, often depends on the job responsibilities at issue. For example, municipalities should always conduct a background check for law enforcement positions and those that have direct contact with vulnerable persons. While not all criminal convictions can prevent employment (see C.R.S. § 24-5-101, and below, for more details), it is important to consider any criminal convictions in relation to the position at issue. For example, a conviction for theft may be relevant to a position that regularly handles money whereas a speeding conviction would likely not.

Prior to conducting a background check, the municipality should request a signed waiver from the applicant. The background check may include investigation

into driving records, vehicle registration, credit, criminal/court history, education, references, and workers' compensation. Again though, the scope of the information sought should be related to the responsibilities of the position in question. If the background check includes pulling any consumer reports, which are defined quite broadly, the applicant should sign a disclosure under the Fair Credit Reporting Act.

### Important Limitations

When conducting background checks or seeking background information, there are other limitations. First, background checks should not be part of the initial employment application process unless the information is substantially related to the employee's current or potential job; for most positions, a background check should not be conducted until later in the process. Next, under C.R.S. § 24-72-702 and -703, employers cannot require an applicant to disclose any information contained in sealed or expunged criminal justice records and cannot deny applicants based on a refusal to disclose that information. Finally, in both the employment and licensing contexts, C.R.S. § 24-5-101 establishes prohibitions on the use of certain criminal records and provides applicants rights with regard to how other criminal records are evaluated; however, the use of the term "agency" in the statute makes it unclear how those restrictions might apply to municipalities.

Please remember that this article does not contain every legal requirement or limitation associated with background checks. This nuanced area of the law can be difficult to navigate, and it is important to always consult with your municipal attorney when any questions arise.

*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

### Resignation & recruitment: State & local workforce 2022

**A** June 2022 research report from MissionSquare Research Institute, conducted in collaboration with the International Public Management Association for Human Resources and the National Association of State Personnel Executives, explores a range of topics pertaining to workforce and compensation changes, recruitment and retention efforts, and future public employer priorities. The survey was conducted from May 3 to April 24, 2022. View the full report at <https://bit.ly/3Tw8yi3>.

► Respondents reporting separations in organization's workforce in the past year as compared to 2020.

#### TURNOVER

► Top reasons for leaving given by employees in exit interviews.

Compensation not competitive: **51%**

Retirement: **36%**

Lack of internal advancement opportunities: **33%**

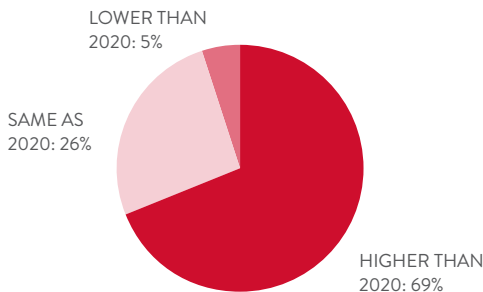
Advancement with another public employer: **31%**

Dissatisfaction with supervisors: **28%**

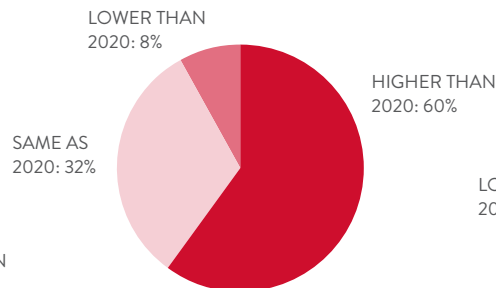
Advancement with a private employer: **28%**

Personal/family priorities: **20%**

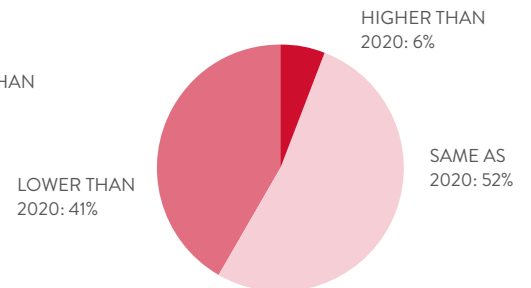
#### QUITTING



#### RETIREMENTS



#### LAYOFFS



Note: Some figures may not sum to 100% due to rounding.

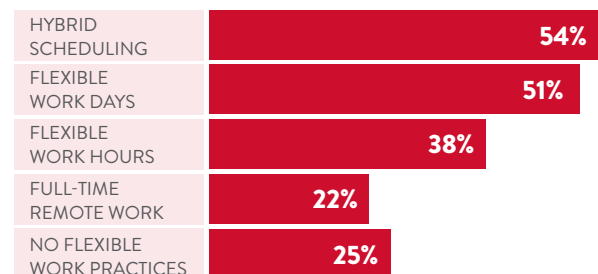
#### RECRUITMENT

► Positions reported as hardest to fill (excluding health care).



#### COMPENSATION, BENEFITS, AND WORK SCHEDULE

► Over the past year, organizations reported an increase in flexible work options.



**44%** Percentage of respondents who believe the **wage** compensation they offer is competitive.

**85%** Percentage of respondents who believe the **benefits** compensation they offer is competitive.



COLORADO  
MUNICIPAL  
LEAGUE

USPS 075-590

Periodical postage  
PAID  
at Denver, Colorado

1144 Sherman St. • Denver, CO • 80203-2207

## Featured in this issue:

- CML webinar answers questions about kratom
- Highway User Tax Fund revenues bounce back
- State launches Opioid Settlement Funds dashboard
- Legal Corner: Navigating municipal background checks
- Research Corner: State & local workforce survey

# NEWSLETTER

Vol. 48, No. 18, September 9, 2022

COLORADO  
MUNICIPAL  
LEAGUE

