



# NEWSLETTER

Vol. 49, No. 21, October 20, 2023



## FALL MUNICIPAL ELECTION PREVIEW



### Taxes, marijuana, home rule will be on the ballot

Voters in at least 70 cities and towns across Colorado will consider local candidates and ballot measures as part of the Nov. 7 general election. At least 20 municipalities will vote solely on candidates, while many more will vote on initiated and referred ballot issues and questions. More than 75 municipal ballot measures are being considered across the state. Ballot issues and questions being considered by voters include:

#### TAX AND BOND ISSUES

Sales and use tax increases will be on the ballot in:

- **Brighton** – for supporting public safety, including additional police officers, and equipment
- **Castle Pines** – for street improvements and maintenance

- **Cripple Creek** – for continuation and expansion of vocational education programs

- **Fort Collins** – for maintaining and upgrading parks and recreation facilities and the transit system, and for programs related to pollution reduction, renewable energy, and sustainability

- **Fountain** – to expand the boundaries of the Pikes Peak Rural Transportation Authority to include the city and to contribute funds through a tax increase

- **La Junta** – for the general fund

- **Louisville** – for acquisition and maintenance of open space, to mitigate fire risk on such lands, and to extend a 2012 sales tax to

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# EMPOWERED CITIES AND TOWNS, UNITED FOR A STRONG COLORADO



COLORADO MUNICIPAL LEAGUE **NEWSLETTER**

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## CML UPDATE

### RECORD ATTENDANCE AT ANNUAL SEMINAR ON MUNICIPAL LAW

Setting a record, over 170 attorneys gathered in the Town of Mt. Crested Butte from Oct. 6-7 for the 2023 Annual Seminar on Municipal Law. Each year, CML's Attorneys Section organizes the seminar to provide continuing legal education and networking opportunities for city and town attorneys. Highlights of this year's seminar included discussions of urban camping, Colorado's new take on discrimination laws, and a novel referendum in Steamboat Springs 2022 election. Materials from the seminar can be found on CML's website. The City of Colorado Springs will host next year's seminar on Sept. 20-21, 2024.

### 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](mailto:dwhite@cml.org).

## TRAINING & NETWORKING OPPORTUNITY

### 2023 STATE DEMOGRAPHY SUMMIT

Registration is now open for the annual State Demography Summit.

The conference, hosted by the State Demography Office, will offer attendees the opportunity to learn about the most current population and economic estimates and forecasts for the state, its regions, counties, and municipalities and discuss the implications of migration, housing, and planning. This year's summit will feature presentations on Colorado population estimates and forecasts, economic trends, changes in life expectancy, and housing.

The summit can be attended in-person or virtually. It will be held Nov. 3 at Arapahoe Community College in Littleton. More information is available online, <https://tinyurl.com/aerm8ahm>. Register at <https://tinyurl.com/3s58r6mh>.

## CELEBRATE WITH CML

CML wants to hear about your community's success. Tell us about a grant you've won, a new water tank, or anything else you're excited about. Email CML Publication & Design Specialist Alex Miller, [amiller@cml.org](mailto:amiller@cml.org), or complete the form at [bit.ly/3YF8XRM](https://bit.ly/3YF8XRM).

## Local Planning Capacity grant program opening soon

The Colorado Department of Local Affairs, with funding from the Statewide Affordable Housing Support Fund, has established the Local Planning Capacity grant program. The intent of the program is to increase the capacity of local government planning departments responsible for processing land use, permitting, and zoning applications for housing projects.

The program supports local governments' capacity to address affordable housing, especially by expediting review, permitting, zoning, and development for which 50% or more of the residential units constitute affordable housing. Grant funds could support new staff wages, hiring consultants, implementing new systems and technologies, revising land use development codes, regional collaborations, developing future

commitments, or other efforts that achieve fast track goals by 2026, as required by Proposition 123.

Interested applicants will first submit a letter of interest between **Nov. 1** and **Dec. 1**. By mid-December, DOLA will invite selected local governments to submit an application. More information about the grant program is available online, <https://tinyurl.com/bddsenwk>.

## DOLA launches grants for community microgrids

The Department of Local Affairs, through the Colorado Resiliency Office, is announcing new funding opportunities under the Microgrids for Community Resilience Program. The program is designed to build community resilience through minimizing electric grid disruptions. Three types of grants are being offered, and all three application windows are open and will close **Nov. 16**.

### CONSTRUCTION/ IMPLEMENTATION GRANTS FOR MICROGRIDS

These are available for the construction of storage/microgrid controller. Over two years, \$12.3 million is available in competitive grants. The Notice of Funding is online, <https://tinyurl.com/4dv4dkd4>.

### PLANNING GRANTS

\$500,000 is available in competitive grants for rural cooperative electric associations and municipally owned utilities. The Notice of Funding is available online, <https://tinyurl.com/yfhnpk8h>.

### CONSTRUCTION/ IMPLEMENTATION GRANTS AVAILABLE FOR MICROGRID-TIED GENERATION

An additional \$565,000 in competitive grants will be available for rural cooperative electric associations and municipally-owned utilities for one round of funding only. The Notice of Funding is online, <https://tinyurl.com/yvdev3cd>.

These grants are being made available by state funding from HB22-1013 and federal funding as part of the Bipartisan Infrastructure Law.

While utilities are only eligible to apply for this grant, the grant focuses on community-facing projects. Rural utilities are encouraged to partner with community-based anchor institutions, which include schools, libraries, hospitals, emergency medical service providers, government offices, and community organizations that support marginalized communities. More information is available on the program's website, <https://dlg.colorado.gov/microgrids>.

## UPCOMING RULEMAKINGS

### PUBLIC HEARING FOR PROPOSED RULES FOR URGENT INCIDENT RESPONSE FUND

The Colorado Department of Public Safety, Division of Homeland Security and Emergency Management, is hosting a public hearing for a proposed rulemaking concerning the Urgent Incident Response Fund. The rules establish the criteria for local governments and state agencies to apply, to determine eligibility for, and for the distribution and receipt of reimbursement for urgent incidents that do not rise to the level of disasters or emergencies.

The public hearing for this proposed permanent rulemaking will be **Oct. 30** at 1 p.m. on the virtual Google Meet

platform. The virtual meeting link is [meet.google.com/weh-uesr-rdf](https://meet.google.com/weh-uesr-rdf). More information is available by contacting Colorado Department of Public Safety Rulemaking Administrator Christine Moreno at [christine.moreno@state.co.us](mailto:christine.moreno@state.co.us).

### COMMENTS SOUGHT ON ACCESSIBILITY STANDARDS

The Governor's Office of Information Technology is preparing to promulgate rules to establish the accessibility standards for individuals with a disability for information technology systems.

Written comments about potential rules are invited and will be received for three weeks, through **Oct. 27**. Please submit comments through the Accessibility Rules

Potential Topics Form, online at <https://tinyurl.com/2y6kpc25>, or by email, [oit\\_rules@state.co.us](mailto:oit_rules@state.co.us).

### DEEP GEOTHERMAL REGULATIONS

The Colorado Energy & Carbon Management Commission is planning to initiate a rulemaking for deep geothermal operations in November. The commission has drafted a set of initial draft rules and is soliciting feedback from stakeholders as part of this process. Individuals who are interested in reviewing the draft rules should contact Geothermal Programs Coordinator Michael Rigby, [michael.rigby@state.co.us](mailto:michael.rigby@state.co.us). The commission requests feedback be provided by **Oct. 23**.



# FALL MUNICIPAL ELECTION PREVIEW

## FROM PAGE 1

be divided between separate parks and open space funds

- **Loveland** – for fire protection services
- **Rifle** – for street and sidewalk improvements and maintenance

**Boulder** is requesting an extension of its sales and use tax to fund arts, culture, and heritage, as well as the general fund.

**Frederick** is seeking authority to utilize a pre-existing sales and use tax that helps fund open space, to also fund the construction, acquisition, and maintenance of parks, trails, and related amenities.

Property tax mill levy increases will be on the ballot in:

- **Castle Pines** – for park, recreation, trail, and open space amenities
- **Fort Collins** – for funding affordable housing
- **Golden** – for capital needs and operational costs of the Golden Fire Department

**Longmont** is asking residents to approve three property and sales tax increases. One ballot measure seeks a mill levy increase for a new library and a sales tax increase to fund library maintenance and operations. A second measure seeks a mill levy increase for construction of an arts and entertainment center and a sales tax increase to fund the center's maintenance and operations. A third ballot measure seeks a mill levy increase to fund construction of multiple recreation facilities, as well as affordable housing in partnership with the YMCA, and a sales tax increase to fund the maintenance and operation of one of those facilities.

Lodging taxes will be considered in:

- **Pueblo** – for affordable childcare programs
- **Ridgway** – for tourism promotion, economic development, affordable

and workforce housing, childcare, and programs to facilitate home ownership

- **Salida** – solely levied on short-term rentals for funding affordable housing, in addition to imposing an annual license fee

Other tax issues include:

- **Avon** – a use tax on construction materials to fund any municipal purpose
- **Steamboat Springs** – a question asking residents to allocate revenues from the city's preexisting public accommodations tax to improve amenities that will enhance community identity, environmental sustainability, and economic health, to acquire property for parks and open space, and to preserve the city's natural resources
- **Wheat Ridge** – seeking authority to increase debt up to \$75 million and approval to extend the city's sales and use tax to fund sidewalk, bike lane, and street improvements

## REVENUE RETENTION

The following municipalities will be requesting authority to retain and spend all revenues collected from previously approved taxes:

- **Golden** – to retain and expend all revenues from the 2022 lodging tax for addressing visitor impacts and funding community projects and capital improvements
- **Littleton** – to retain and expend all revenues from the 2022 sales and use tax for street and sidewalk maintenance and traffic solutions
- **Telluride** – to retain and expend all revenues from the 2021 lodging tax to fund tourism, manage the effects of tourism, and fund other town purposes such as affordable housing and transportation

The following municipalities will be requesting authority to retain and spend all revenues collected from all sources:

- **Loveland** – for a 12-year period to fund police and fire, streets, parks, and affordable housing construction and maintenance

- **Idaho Springs** – for 2023 and each subsequent year

**Colorado Springs** is requesting authority to retain \$4.75 million of 2022 revenues for acquiring property and constructing a training facility for the Colorado Springs Police Department.

## HOME RULE

**Erie** voters will decide whether to adopt a proposed home rule charter and, if approved, whether to amend the new charter's provision on council compensation.

In **Superior**, voters will decide whether to form a home rule charter commission.

## GOVERNANCE

**Las Animas** residents will decide in separate questions whether to make the city clerk and city treasurer appointive rather than elected positions.

**Mt. Crested Butte** is asking voters to extend consecutive term limits for councilmembers to three terms.

## MARIJUANA

**Sterling** is asking residents to authorize medical and retail marijuana, and a separate contingent question authorizing a 5% tax on retail marijuana sales.

**Lochbuie** is asking residents whether they support marijuana sales.

## ELECTION CHANGES

**Evans** is asking voters to move their regular election from April in even-numbered years to November in even-numbered years.

**Westminster** is asking voters whether the city should propose electing some or all councilmembers from geographic wards rather than at-large.



# FALL MUNICIPAL ELECTION PREVIEW

## CHARTER AMENDMENTS

Several charter amendments are on the ballot in home rule municipalities across the state.

- **Boulder** – amendments relating to signatures on nominating petitions, timing requirements relating to the powers of initiative, referendum, and recall, referring to state law for initiated charter amendments
- **Commerce City** – allowing publishing of legal notices on the city’s website
- **Craig** – amendments to change the makeup of city council to select a council president from among the council in lieu of an elected mayor and to authorize the city manager to grant revocable permits for franchises and public utilities
- **Dacono** – amendments requiring council to appoint and remove appointed city officers by resolution and setting city manager employment expectations, incorporating an “Open Government Policy” for the council, amending provisions relating to new councilmembers taking office, and the appointment of a mayor pro-tem
- **Englewood** – amendments relating to provisions regarding initiative, referendum, and recall of elected officials, authority to approve subdivision plats, and authority to approve contracts and land conveyances
- **Fort Collins** – amending qualifications for elective office to replace the general prohibition against convicted felons holding elective office, clarifying language around the referendum and petition process, and removing residency requirements for certain city employees from the charter
- **Golden** – replacing terms used to describe city officers with generally applicable terms
- **Greeley** – amending provisions relating to positions eligible for collective bargaining in the police and fire departments

- **Loveland** – prohibiting taxes or fees on the retail sale of human food for home consumption, requiring voter ratification of certain urban renewal plans
- **Parker** – amendments concerning powers of the council, organization of municipal government, swearing in of police officers, and gifts and donations
- **Steamboat Springs** – extending the deadline for the city’s independent audit
- **Telluride** – conforming the charter’s definition of “qualified elector” with state law
- **Westminster** – amendments clarifying budget and contracting procedures, allowing publishing of legal notices on city website

## OTHER ISSUES

- **Boulder** – an initiated ordinance asking voters if the city should prioritize the removal of certain prohibited items on city property near school property or sidewalks
- **Brush and Sterling** – asking voters whether keeping backyard chickens should be permitted
- **Commerce City** – asking voters whether the council should authorize keeping chickens, ducks, and bees in backyards
- **Dacono** – requesting to be included in the High Plains Library District
- **Dolores** – authorizing the publication of ordinances by title only, authorizing a property donation to Dolores Fire Protection District
- **Steamboat Springs** – increasing council compensation, allocating 75% of short-term rental tax revenues through 2042 to the Yampa Valley Housing Authority for affordable and attainable housing at Brown Ranch

## HOUSING

Municipalities across the state are seeking funding for affordable and workforce housing initiatives in a variety

of ways. The ballot measures highlighted below are explained earlier in this article.

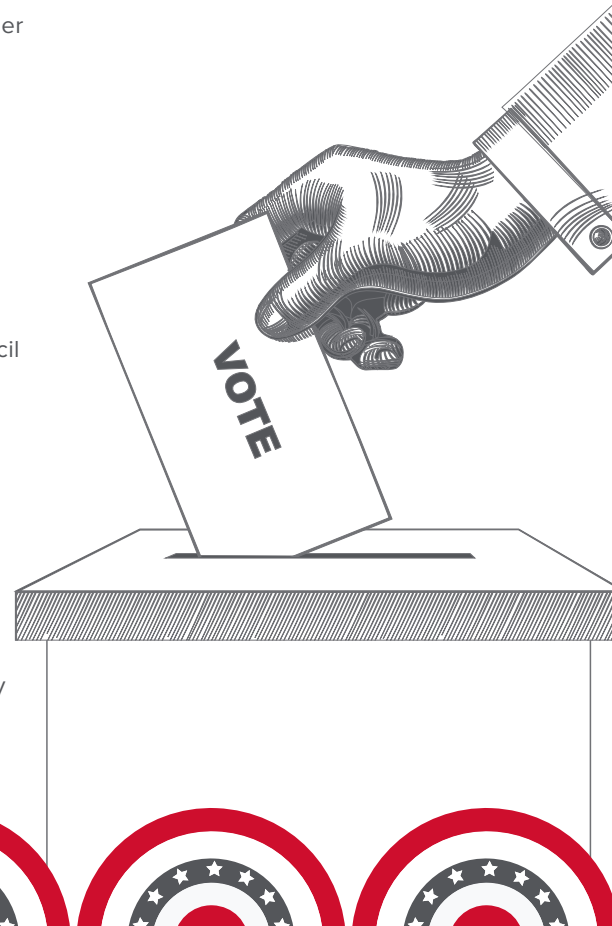
**Ridgway** and **Salida** are asking voters to increase their lodging tax while **Telluride** is asking for authority to retain and expend all revenues from the town’s 2021 lodging tax, all to fund affordable housing, among other objectives.

**Fort Collins** is asking voters to increase property tax while **Longmont** is asking voters to increase property and sales tax, both to support affordable housing.

**Steamboat Springs** is asking voters to allocate 75% of the city’s short-term rental tax revenues to the Yampa Valley Housing Authority through 2042 for affordable and attainable housing at Brown Ranch.

## NOTE

*Not all ballots were available at the time of publication. Any questions not included in this article will be included in the post-election summary. CML thanks the city, town, and county clerks who assisted CML staff in compiling this election information.*





# CENTURY OF SERVICE

To mark its hundredth year, the Colorado Municipal League is visiting all 270 of our member municipalities in 2023. We are getting close to achieving this goal! Here are a few pictures from recent visits.



CRAIG



LAS ANIMAS



PITKIN

# CML LEGAL CORNER



## The legal landscape on camping bans

By Rachel Bender,  
CML associate counsel

It comes as no surprise that homelessness is a significant and complex problem that requires communities to figure out how to provide for the safety and welfare of all its citizens — both housed and unhoused — and to preserve public spaces. Over time, the issue has grown, resulting in not only metropolitan areas, but also remote municipalities, trying to figure out how to respond to and manage the associated challenges.

Legal considerations regarding homelessness are often rooted in the Bill of Rights. Most recently, the Eighth Amendment's prohibition of cruel and unusual punishment has risen in the legal landscape on camping bans. That novel legal theory continues to evolve with a second attempt by a city to have the U.S. Supreme Court reject it, in *City of Grants Pass v. Johnson*, and through pending lawsuits against Colorado municipalities. Municipalities need to be aware of the current state of the law and pay attention to new developments that are bound to come.

### GUIDING CASES FROM THE NINTH CIRCUIT

*City of Grants Pass v. Johnson* comes out of the Ninth Circuit Court of Appeals (Colorado is in the Tenth Circuit). In this context, it is important to first discuss the 2018 opinion in *Martin v. City of Boise*, also out of the Ninth Circuit. While Ninth Circuit opinions are not binding in Colorado, *Martin* has paved the path for how some municipalities approach homelessness in the context of restrictions on sleeping or camping in public places, and has served as the basis for many of the current legal challenges, including those in Colorado.

In *Martin*, the Ninth Circuit found that “the Eighth Amendment prohibits the imposi-

tion of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter.” The Court equated camping bans to previously invalidated laws criminalizing the status of being addicted to alcohol as opposed to the act of consuming alcohol in an illegal manner. The Court clarified that this holding does not cover individuals that reject available adequate shelter (but did not clarify what constitutes “access to adequate temporary shelter”), in addition to suggesting that there are limited circumstances when criminalization of such acts may be permissible regardless of shelter options. The Supreme Court declined to review the decision.

In *Grants Pass*, the city's four shelters were inadequate to house the city's entire homeless population. Following its precedent in *Martin*, the Ninth Circuit held that the city's ordinances regulating sleeping outside were unconstitutional under the Eighth Amendment. Moreover, *Grants Pass* approved a class action for all persons that are “involuntarily homeless” solely due to the city's lack of adequate shelter, going beyond *Martin*'s requirement to conduct an individualized inquiry. Some municipalities have worked to provide more shelter to maintain anti-camping ordinances following *Martin*, but that path may narrow if the *Grants Pass* decision is upheld. The International Municipal Lawyers Association and others joined the city in seeking review, arguing that *Martin* and *Grants Pass* have paralyzed local governments and improperly imposed a judicial mandate to provide shelter.

### LEGAL CHALLENGES IN COLORADO MUNICIPALITIES

At least two Colorado communities are currently involved in litigation over camping bans and, in recent years, several have faced lawsuits asserting theories

similar to those in *Martin*. In 2022, the ACLU sued the City of Boulder over the legality of two ordinances under the Colorado Constitution. One ordinance bans overnight camping in parks and public spaces while the other prohibits people from using tents or other temporary structures for purposes of shelter or storing property. The ACLU seeks to have Boulder stop enforcing these ordinances under certain conditions such as when a person cannot access indoor shelter.

More recently, an unhoused man sued the City of Lafayette arguing the city does not provide enough shelter for people who are experiencing homelessness. As a result, the man is challenging Lafayette's ban on camping in public as a violation of the Colorado Constitution. Lafayette — population 31,000 — reportedly does not have any overnight shelter options, which is more common in communities of this size.

Although the claims in these cases mirror the legal challenges in the Ninth Circuit, these Colorado lawsuits rely on alleged violations of the Colorado Constitution rather than the U.S. Constitution. Municipalities in other states are also being sued in reliance on their respective state constitutions, often because state constitutions may provide more protection than federal law.

Ultimately, it is only a matter of time until the U.S. Supreme Court or an appellate court in Colorado issues an opinion on this topic and provides clarity for Colorado municipalities on the scope of permissible camping regulations. Until then, municipalities should give appropriate consideration to the decisions coming from other jurisdictions in deciding how to proceed.

*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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**Featured in this issue:**

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