



NEWSLETTER

Vol. 49, No. 6, March 24, 2023

Application period for CML Executive Board candidacy opens in April

By Kevin Bommer, CML executive director

Beginning on Monday, **April 3**, CML will start accepting applications for members interested in running for the CML Executive Board. Applications will be accepted through 5 p.m. on Monday, **June 12**.

Members whose names are placed on the ballot by the CML Nominating Committee will be voted on by the membership at the CML Annual Business Meeting scheduled for Tuesday, **June 27**, at the 101st CML Annual Conference in Aurora. Voting procedures will be detailed in the Notice of Annual Business Meeting that will be sent to all member municipalities prior to the annual meeting. CML Executive Board members are elected at-large, which means each member municipality is entitled to vote at the CML Annual Business Meeting for their choices in all population categories.

The vacancies to be filled at the election are:

- One position from municipalities with a population of 250,000 or more for a two-year term
- Three positions from municipalities with a population from 50,000-249,999, each for two-year terms
- Three positions from municipalities with a population from 8000-49,999, each for two-year terms
- Three positions from cities and towns with a population less than 8,000, each for two-year terms.

Under CML bylaws, population figures for the June 2023 election will be based upon population estimates from the Colorado Department of Local Affairs.

These are the same figures that were used in computing 2023 municipal dues for member municipalities and may not be the most recent DOLA estimate.

Colorado Municipal League bylaws require CML Executive Board members to be elected or appointed officials of member cities and towns.



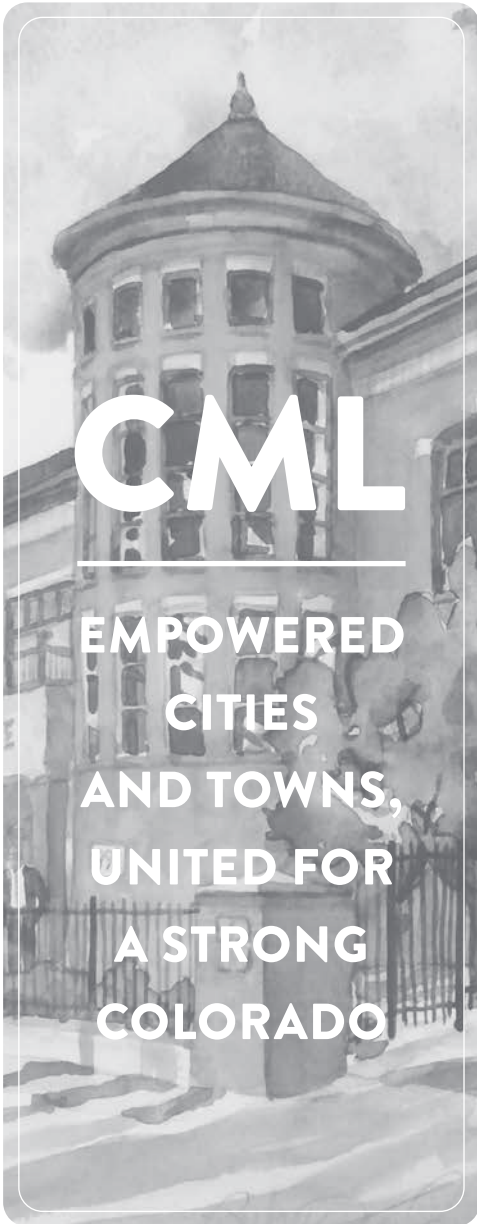
Any official who desires to be nominated for a position on the CML Executive Board can ensure nomination by:

- Filing an application for nomination, in a letter or other written form, with the CML Nominating Committee. The application must be received in writing by the CML office at least 15 days prior to the annual business meeting, that is, by 5 p.m., Monday, **June 12**

- Including with the application an endorsement in writing from the applicant's city council or board of trustees, which also must be received by the CML office by Monday, **June 12**. Please note that a city council or board of trustees may endorse the nomination of only one official from the city or town for election.

Sample application and endorsement letters will be available by **April 3** on the CML website. Information and reminders will be published in subsequent newsletters, on CML's website, direct communication to members.

Questions about the CML Executive Board or the election process should be directed to Kevin Bommer, executive director, at kbommer@cml.org, (303) 831-6411, or (866) 578-0936.



RECOGNITION

CML wishes to recognize several municipal leaders who will be leaving office with the conclusion of their current term.

Long-serving (8+ years) municipal leaders include:

- City of Aspen Councilmember **Rachel Richards**
- City of Colorado Springs Mayor **John Suthers** and Councilmembers **Bill Murray** and **Tom Strand**

- City of Denver Mayor **Michael Hancock** and Councilmembers **Kendra Black**, **Jolon Clark**, **Chris Herndon**, and **Robin Kniech**.

“Many of these folks have committed several years to serve their communities. Among them are good friends and strong supporters of CML,” said Kevin Bommer, CML executive director. “The League and its staff are honored to have been in service to them.”

Municipal funding in Biden’s budget proposal

The National League of Cities has written a report detailing local government priorities in President Joe Biden’s proposed budget for Fiscal Year 2024. Highlights include:

- \$4.4 billion for preventing violent crime and gun violence. This includes \$880 million in grants to state and local law enforcement agencies and \$3.3 million in grants for the Office of Community Oriented Policing and the Office of Justice Programs.
- \$3.3 billion for Community Development Block Grant programs.
- \$100 million for the Thriving Communities program, which provides technical assistance for local infrastructure projects.

- Funding for water infrastructure grant programs for sewer overflows, water infrastructure workforce development, and removing lead from drinking water.

- Funding to the U.S. Department of Housing and Urban Development for programs to prevent homelessness and boost the nation’s supply of affordable housing.

- Funds to expand the U.S. Postal Service delivery capability in underserved areas.

Read the full report on the National League of Cities’ website, <https://bit.ly/40fVJLd>.



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, 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>.

SPRING MUNICIPAL ELECTION PREVIEW



Town & city leadership, sales taxes, future of Park Hill Golf Course to be decided

Seven municipalities will hold elections in April to elect city and town councilmembers.

Voters in Colorado Springs, Denver, Durango, Glenwood Springs, Grand Junction, and Ward will select their municipal leaders **April 4**. Georgetown will hold its regular election **April 3**. Aspen held its regular election on **March 7**.

Mountain Village voters go to the polls in **June**. Ridgway canceled its election, as permitted by law, citing a lack of competitive races.

Voters will also decide the fate of a handful of ballot questions, which are detailed below.

COLORADO SPRINGS

Voters are being asked to extend the sales and use tax for trails, open space, and parks, through 2045.

DENVER

Denver has three questions on the ballot:

- to remove language concerning the Board of Adjustment from the charter and require the procedures for appeals, variances, and exceptions from the zoning code be addressed in city ordinance
- to amend the charter to clarify city council's authority regarding zone districts and require that zoning protests be initiated by Denver property owners
- to release the city-owned conservation easement on privately owned property known as the Park Hill Golf Course to allow for commercial and residential development.

GRAND JUNCTION

Voters will consider two questions:

- to increase the sales and use tax rate to finance construction of a community recreation center
- to amend the charter to increase the authorized lease term for certain city property to a non-profit organization offering adaptive outdoor recreation for people with disabilities.

SPECIAL ELECTIONS

Littleton held a special election **March 7** to consider a citizen-initiated charter amendment regarding initiatives and referenda procedures that would adopt certain parts of the Municipal Election Code, reduce the percentage of signatures required for initiative and referendum petitions to 5 percent, and require that the city follow statutory time frames for the timing of initiative and referendum elections. The measure failed.

On **March 28**, voters in Keystone will decide whether to incorporate as a town, and if incorporation is approved, whether to create a charter commission responsible for drafting a home rule charter that would be submitted to voters for consideration at a later date.

Walsenburg will conduct a recall election **May 16**.

CML thanks the city and town clerks who assisted CML staff in compiling this election information.



UPCOMING WEBINARS

MUNICIPAL PHILANTHROPY: LESSONS FROM CITY GIVE

Wednesday, March 29, 12-1 p.m.

In 2019, the City of Fort Collins launched City Give, a formalized structure for philanthropic partnerships and charitable giving. This “in-house” approach to philanthropy allows the city to respond to strategic priorities and community needs that fall outside the city budget but are well-positioned for private funding. Presented by City Give Director Nina Bodenhamer, this webinar will cover topics ranging from charitable tax receipts to philanthropic policy, from financial governance to accepting cash of real property, and from

how best to partner with friends groups to naming rights. Register at <https://bit.ly/3HrSNDv>.

LEGISLATIVE UPDATE

Friday, April 7, 12-1 pm

Get the latest news on this session of the Colorado General Assembly during this webinar with the CML advocacy team. You will have the opportunity to hear about potential legislation and to ask questions about issues that could affect your city or town. Register at <https://bit.ly/3DvGWDe>.

HOUSING NEEDS ASSESSMENT HOW-TO WITH THE CITY OF GOLDEN

Wednesday, May 3, 12-1 p.m.

City of Golden officials will walk you through the life cycle of a housing needs assessment. The presentation will teach you what to expect when undertaking a housing needs assessment for your community, including the RFP process, community outreach, and implementation of the plan. The webinar is an opportunity to learn from Affordable Housing Policy Coordinator Janet Maccubbin, Director of Community and Economic Development Rick Muriby, and Mayor Laura Weinberg. Register at <https://bit.ly/3yRMeGz>.

TRAINING

TWO-DAY GRANT WRITING WORKSHOP IN FORT COLLINS

A two-day grant writing workshop will teach participants how to write grant proposals from start to finish and how to locate and track grant opportunities.

The workshop, presented by the Larimer County Sheriff's Office and Grant Writing USA, will take place April 26-27 in Fort Collins.

This training is for grant seekers across all disciplines. Beginning and experienced grant writers from municipal, county, and state agencies, as well as healthcare organizations, nonprofits, K-12, colleges, and universities are encouraged to attend.

Online reservations are necessary. More information including learning objectives, class location, graduate testimonials, and online registration is available at <https://bit.ly/3LiVpr4>.

MUNICIPAL GRANTS

FUNDS AVAILABLE FOR ELECTRIC VEHICLE INFRASTRUCTURE

The Colorado Energy Office has announced the opening of the Spring 2023 funding round for the Direct Current Fast-Charging Plazas program. This includes updated DCFC Plazas program guidance that reflects new sources of funding from both the National Electric Vehicle Infrastructure program and the Community Access Enterprise.

Applications are available on the DCFC Plazas webpage, <https://bit.ly/3JGTF9C>. Applications must be submitted online by 5 p.m. **May 5**. The webpage is up-to-date with the new incentive structure and program resources and additional resources are available at <https://bit.ly/3mTOAC7>. Questions may be emailed to ceo_transportation@state.co.us.

BHA RELEASING \$130 MILLION IN COMMUNITY GRANT PROGRAMS

The Behavioral Health Administration has made available more than \$130 million in grant opportunities for local governments through four programs, the Criminal Justice Early Intervention Grant Program (\$49 million), Community Investment Grant Program (\$34 million), Children, Youth, and Families Grant Program (\$39 million), Substance Use Workforce Stability Grant Program (\$14 million).

The administration is accepting applications on a rolling basis with periodic review through February 2024 or until all funding is allocated. The administration will offer technical assistance and support for local governments submitting applications. For more information, visit <https://bit.ly/3Pcu17p>.

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RAIL SAFETY

After railroad disaster, hazardous materials face new inspections

Federal Railroad Administration Administrator Amit Bose has announced a national initiative for inspections on routes carrying high-hazard flammable trains and other trains carrying large volumes of hazmat commodities. Working with the United States Department of Transportation's Pipeline and Hazardous Materials Safety Administration, the Railroad Administration will identify these routes and prioritize them for inspection beginning immediately. The inspections will start in East Palestine, Ohio, and expand to communities nationwide.

Railroad Administration inspectors, using a combination of human visual inspections and technology, will assess the overall condition of rail infrastructure as well as railroads' compliance with regulations. Information will be shared with railroads and rail labor organizations, and it will be periodically published for the public, to increase transparency.

"Safety is always our number one priority, and the Norfolk Southern derailment

reminds us of the importance of ensuring no industry can put its profits over the safety of its workers and the communities it serves," said Transportation Secretary Pete Buttigieg. "As our investigators continue their work to support [the National Transportation Safety Board's] investigation, we are also taking additional steps right now to prevent future disasters, and we insist that the rail industry do the same."

The Automated Track Inspection Program's inspection vehicles, which are paired with human inspections, surveyed about 180,000 miles of track last year, and they help remediate about 10,000 track safety defects annually.

"[The Federal Railroad Administration] is vigorously responding to the concerns expressed by residents of East Palestine and the surrounding areas, and as a result of the recent derailment, we are ramping up our safety efforts across the country," said Administrator Amit Bose. "Many more inspections will follow, and the data they

yield will allow us, as well as railroads, labor, and state and local governments, to implement better-informed decisions and policies regarding rail safety."

In addition to the initiative in East Palestine, USDOT continues to pursue several other safety-related actions:

- Advancing a rule requiring two-person train crews
- Targeting legacy tank cars — especially those carrying hazmat — for inspections and safety reviews
- Deploying resources made available by President Biden's Bipartisan Infrastructure Law to upgrade and modernize rail infrastructure and to make safety improvements over the long-term
- Evaluating new rules that would require electronically controlled pneumatic brakes on High Hazard Flammable Trains and other trains transporting large quantities of hazardous materials.

CML LEGAL CORNER



Zoning by popular (local) opinion

Robert Sheesley, CML general counsel

The Colorado Supreme Court has long held that zoning, a matter of local concern, expresses the legislative judgment of a city council or town board as to how land in the municipality should be used and where the boundaries of those uses should be drawn. As the General Assembly considers unsettling a century of respect for local control of zoning and land use matters, the next two Legal Corners will discuss a unique aspect of local control of zoning in this state – the ability of voters to directly control zoning matters using the reserved powers of initiative and referendum under Article 1, Section 1 of the Colorado Constitution. The Colorado Supreme Court’s protection of these powers reflects a strong commitment to local determination of land uses.

REZONING IS SUBJECT TO REFERENDUM

Initiative allows voters to present a law to a municipal governing body for consideration, while referendum places the repeal of an existing law before the body. If the body declines to act, voters can approve or deny the question at an election. Generally, only ordinances that are legislative in nature are subject to these powers; administrative or quasi-judicial matters are not.

Initial zoning and broad land use changes are legislative matters. Over time, however, individual properties can be rezoned according to public needs, landowner desires, changed circumstances, and other reasons. In the 1981 decision, *Margolis v. District Court*, 638 P.2d 297, the Colorado Supreme Court decided that – at least for purposes of initiative and referendum – a rezoning decision also was a legislative action.

Rezoning can significantly impact a municipality and the neighbors of the subject property, as well as the property owner.

Because of that impact, local voters have a significant opportunity to weigh in on a rezoning. First, interested residents get to voice their opinions in public hearings. Second, those dissatisfied with a decision can try to overturn the body’s action through a referendum.

ZONING REFERENDA & DUE PROCESS

Voters’ ability to control the outcome of a rezoning decision presents a curiosity of Colorado law. Voters’ rezoning decisions are reviewed differently than a governing body’s. If a governing body makes a rezoning decision, a court can review that outcome and process as a quasi-judicial matter. That is because the rezoning may affect property interests and follows details procedures that include a hearing, evidence, and an objective, criteria-based decision. The quasi-judicial process is designed to protect the rights and interests of landowners and others.

Referendum campaigns, however, do not provide for such due process. Nevertheless, in the *Margolis* case, the Supreme Court rejected concerns that a referendum campaign could be tainted by a lack of process or that property owners’ rights would be abused. The Court presumed that courts could remedy “any unreasonable, arbitrary, or capricious decision on the part of the people.” *Margolis*, 638 P.2d at 305. How they would do so is unclear.

THE DISORDERLY EFFECTS OF ZONING REFERENDA

While zoning decisions made by a governing body rely on a comprehensive plan to guide development in a harmonious way, a referendum decision is left to the collective will of the people in the moment without the guide of policy standards. The League raised a concern about the lack

of policy consistency in an amicus curiae brief in the *Margolis* case, arguing:

Zoning decisions made by popular vote will have little, if any, relationship to a comprehensive plan. Instead, the operative factor will be the size of election campaign the applicant (or opponents) can afford. Without adherence to a comprehensive plan, zoning can degenerate into fragmented, disconnected decisions devoid of any discernible continuity. Such a result thwarts the goal of zoning in the first place, creates public cynicism for the zoning process, and contravenes the legislative intent evidenced by the [planning statutes].

The Supreme Court rejected concerns that zoning referenda would “lead to chaos, significant delays in development, and ultimately to unplanned growth and development.” *Margolis*, 638 P.2d at 305. Citing to similar powers being used in other states like California, the Court noted that there was no evidence that allowing for zoning referenda would create “significant problems or delays in planning the growth and development.”

This view may not have aged well, in light of our current affordable housing problems. Municipal officials have worked diligently to plan to accommodate growth and to develop housing options for all residents. As demonstrated by the many examples of referenda, those efforts can be disrupted or delayed, if not outright defeated, if the people of a municipality believe the rezoning decision was in error.

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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