



NEWSLETTER

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LAWS ENACTED 2023

CML book details new laws affecting Colorado cities & towns

By Kevin Bommer, CML executive director; and Heather Stauffer, CML legislative advocacy manager

ON May 8, 2023, the General Assembly adjourned sine die. The 2023 legislative session was one of the most challenging sessions in many years, as far as protecting municipalities from state preemption and unfunded mandates. Key issues included land use, housing, employment, criminal justice, and accessibility. CML takes pride in the work done by our advocacy and legal teams to provide the highest level of service to our 270 member cities and towns.

During the 2023 Legislative Session, the CML Advocacy Team followed 288 bills. CML supported 62 pieces of legislation with an 80% passage rate. Additionally, CML opposed 43 pieces of legislation, 67% of which were either defeated or amended to remove CML's opposition.



Each year, CML analyzes the laws passed by the General Assembly that affect cities and towns. "Colorado Laws Enacted Affecting Municipal Governments" focuses on selected acts that have a particular significance for municipal operations, services, and powers — it is not a comprehensive listing of all new legislation enacted into law affecting municipal government.

For information or assistance on any legislative questions, contact CML at 303-831-6411 or 866-578-0936. The League is continuing its commitment to its members by providing the information they need as inexpensively and easily as possible. 2023 Colorado Laws Enacted Affecting Municipalities will be available to all for free — along with several past years' editions — online at cml.org.

Registration open for 2023 NLC City Summit in Atlanta

The National League of Cities City Summit is one of the most comprehensive municipal conferences of the year. It is a consortium of local elected officials, municipal leaders, experts, and industry leaders gathering to share expertise and exchange knowledge.

City Summit is an opportunity to make new connections, access resources, and learn

new things that help municipalities thrive. City Summit attendees explore emerging and trending topics and legislation that impact everyday decisions, and they get informed about the changing landscape of federal funding programs and grants and how those can benefit communities of all sizes. The summit offers access to experts and technologies that help munic-

ipalities be more effective and efficient, and opportunities to network with more than 4,000 attendees in an inspiring and informative environment.

The NLC City Summit will take place **Nov. 16-18** in Atlanta, Georgia. For more information or to register, visit the NLC website, <https://tinyurl.com/3b6at6p2>.

Empowered cities and towns, united for a strong Colorado

EMPOWERED CITIES AND TOWNS, UNITED FOR A STRONG COLORADO

TRAINING OPPORTUNITIES

CYBERSECURITY TRAINING FOR WATER & WASTEWATER UTILITIES

EPA's Water Infrastructure and Cyber Resilience Division is offering a Cybersecurity Overview and a Tabletop Exercise for Water and Wastewater Utilities. This online training will allow drinking water and wastewater utility staff to assess their cyber response practices, identify ways to improve their cybersecurity posture, and engage with cybersecurity experts from EPA, CISA, and FBI to receive recommendations to enhance cybersecurity practices. The training will take place 10 a.m.-1 p.m. on **July 12**. Registration is available online at <https://tinyurl.com/d7378rk7>.

STATE REVOLVING FUND WATER WORKSHOP

The Colorado State Revolving Fund Program is hosting a full-day in-person workshop to cover State Revolving Fund basics, funding options for drinking water and wastewater infrastructure, planning, asset management, available technical assistance, and current and upcoming regulations. The Northwest Regional Workshop will take place **Aug. 9** in Rifle. Local government decision-makers, finance staff, and operators, along with private nonprofits that operate drinking water systems are

encouraged to attend. More information is available from the Department of Local Affairs, <https://tinyurl.com/2p9uh8yu>.

OPIOID ABATEMENT CONFERENCE IN MONTROSE

Colorado Attorney General Phil Weiser and the Colorado Opioid Abatement Council are excited to invite leaders and stakeholders from across the state to the second Opioid Abatement Conference, in Montrose, **Aug. 16-18**.

This interactive, three-day conference will include collaborative break-out rooms and networking sessions, presentations on best practices for addressing the opioid crisis, the nuts and bolts of opioid settlement funds, and how to leverage state and national resources. This year, the conference includes some engaging local tours and more time for networking.

The conference is for all members of the Regional Opioid Abatement Councils, providers, subject matter experts, and community stakeholders engaged in opioid abatement in Colorado.

There is no cost to attend. More information is available at bit.ly/42MAuCm.



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>.

BROADBAND CAPITAL PROJECT FUND ACCEPTING APPLICATIONS

The Advance Colorado Broadband Capital Projects Fund Colorado Broadband Grant Program is accepting applications through **Aug. 21**.

Colorado has \$162 million to award for broadband infrastructure projects that will deliver high-speed broadband to

homes and businesses, primarily in rural areas, where the majority of Colorado's unserved population resides. These grants will fund broadband projects that will connect nearly 18,000 unserved Colorado homes to high-speed internet.

Advance-CPF Grant Program is a competitive grant program administered by the Colorado Broadband Office

housed within the Governor's Office of Information Technology.

A goal of the program is to bolster economic opportunity by connecting 99% of residents, particularly those in rural communities, to high-speed internet by 2027.

More information is available online at <https://tinyurl.com/cte3thpz>.

Communications infrastructure preemption bill advances

By *Angelina Panettieri*,
National League of Cities

On May 24, the House Energy and Commerce Committee marked up 19 bills. One bill, H.R. 3557, the American Broadband Deployment Act of 2023, is of particular interest to local governments. This legislation would codify in statute recent actions taken by the Federal Communications Commission to preempt local authority over wireless telecommunications facility siting and cable franchises and impose several new preemptions. The bill advanced along partisan lines as amended, with Ranking Member Pallone and Reps. Ruiz, Dingell, Matsui, and Tonko offering their own amendments to eliminate or reduce these preemptions. Those representatives also noted the outspoken objections of local and tribal government to the bill.

When the committee held an initial hearing on broadband permitting streamlining, including a draft of the American Broadband Deployment Act, no state or local government was invited to testify. NLC and other local stakeholders highlighted the lack of local input, as well as the harms of communications infrastructure preemption for local governments. In particular, NLC flagged the "deemed granted" provisions included in the passed version of H.R. 3557, which go beyond existing regulatory preemption and would automatically grant requests to construct communications equipment if the local government has not made a determination within as few as 60 days, depending on the request type.

This bill is part of a larger trend in state and federal preemption in recent years affecting local governments on a wide range of issues, from housing and ride-sharing to minimum wage and telecommunications. With the passage of the Bipartisan Infrastructure Law, permitting streamlining has developed renewed interest as a policy focus for lawmakers from both parties and an opportunity for further preemption. Members of Congress have raised concerns that local government oversight will slow or increase the cost of infrastructure deployment and have introduced legislation to preempt that oversight.

Local officials must proactively communicate the value of local decision-making to their representatives in the House. Most Members of Congress have not served in municipal government, and do not understand why telecommunications permitting and franchising are important functions for local governments. Through permitting oversight, collection of fees and the negotiation of franchises and license agreements with broadband and cable providers, local governments can protect their residents and valuable public resources.

Local permitting and cable franchising processes are intended to make sure that communications infrastructure is deployed equitably and in the public interest, that work is done safely and in a way that protects valuable public resources, including the rights of way. Local governments are the stewards of these finite public resources. There is no evidence that heavy-handed preemptive mandates,

such as harsh permitting shot clocks, deemed granted policies, or restrictions on permitting fee arrangements or cable franchises, have expedited the deployment of broadband infrastructure.

It is unclear when, if at all, H.R. 3557 will be scheduled for a floor vote by the full House. However, another bill that passed the markup with bipartisan support, H.R. 3565, the Spectrum Auction Reauthorization Act of 2023, will likely become a vehicle for other communications legislation. H.R. 3565 would reauthorize the Federal Communications Commission's authority to auction spectrum, which has been lapsed for most of this year, and authorize using the auction proceeds to support grants to remove banned Chinese network equipment and to support the rollout of Next Generation 911. While these actions would at best help, and at worst have no major effect on local governments, the linking of the two bills could be catastrophic.

City leaders should call their members of Congress and urge them to oppose H.R. 3557. Local governments are just as eager for their residents to have access to high-quality broadband service as broadband and cable providers are to deploy it. Cities must call on Congress to treat local governments as partners in the effort to close the digital divide, not enemies. Congress and federal agencies must respect local processes, which are best managed at the level of government closest and most responsive to the people. To access talking points and find your representative's office phone number, visit <https://tinyurl.com/4a4b5rxu>.

SPRING OUTREACH

CML staff crisscrossed Colorado in June to connect with our member municipalities. Spring Outreach is an opportunity for CML to listen to the people who work in local government, engage in productive discussions, and keep our members up to date on important developments at the state legislature.



CML Legislative and Policy Advocate Meghan MacKillop, left, meets with representatives of the Town of Hooper.



CML Associate Counsel Rachel Bender, second from left, and CML's Meghan MacKillop, fourth from left, meet with representatives of the Town of Winter Park.



Representatives of the Town of Flagler pose for a photo at the Municipal Building.

CML LEGAL CORNER



Accessibility requirements for public meetings

By Sarah Walker,
CML law clerk

Accessibility to local government services and programs continues to be a key issue in Colorado. While HB23-1308 (Access To Government By Persons With Disabilities) was postponed indefinitely during the 2023 legislative session, public meeting and public facility accessibility will likely be considered by the new Subcommittee on Physical and Programmatic Basic Access within State and Local Government for Persons with Disabilities, created by HB23-1296. Therefore, it is essential for municipalities to understand current accessibility requirements for public meetings under the Americans with Disabilities Act (ADA) and Colorado law, consider which parts of their public meetings might have accessibility issues, and see how some municipalities approach the reasonable accommodation process.

ADA REQUIREMENTS

Under Title II of the Americans with Disabilities Act of 1990, codified under 42 U.S.C. § 12132, “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity.” The Colorado Anti-Discrimination Act currently provides similar protections but sometimes goes beyond ADA requirements (as with digital accessibility under HB21-1110).

As part of compliance with the ADA, public entities are only required to provide reasonable modifications to qualified individuals who request a modification. So, a municipality does not need to act if it can demonstrate that the action would “result in a fundamental alteration in the nature of a service, program, or activity or in undue financial or administrative burdens.” However, this remains a high burden for municipalities to meet.

Whether a modification is reasonable or a fundamental alteration, especially in the con-

text of a public meeting, is not always clear. While there is not extensive case law in Colorado on this issue, non-binding cases can provide some helpful insight. In *Tyler v. City of Manhattan*, 857 F. Supp. 800 (D. Kan. 1994), a citizen using a wheelchair could not attend a city commission meeting because there was no working elevator. The court found that the city did violate Title II because the city failed to show that the meeting could not have been moved to an accessible location or that the issues discussed in the meeting were so time sensitive that they could not have been addressed at a later date.

ACCESSIBILITY BARRIERS TO PUBLIC MEETINGS

Some accessibility barriers to public meetings are obvious, while others are less so. First, a lack of physical accessibility for persons with impaired mobility can arise when qualified individuals cannot attend and participate in the public meeting due to their disability. Examples of this can include stairs without ramps or elevators and narrow hallways that do not accommodate all accessibility aids. The ADA does not require public entities to necessarily modify those buildings. Instead, public meetings could be held in alternative spaces that are accessible. Modern technology might allow municipalities to use interactive remote video software to make meetings accessible.

Second, a vision or hearing impairment can prevent a qualified individual from participating in a public meeting. This can be a barrier to either an in-person or virtual public meeting. The modification that will make a meeting accessible will depend on the specific needs of each person. Some of these modifications include qualified interpreters in-person or through video remote interpreting (VRI), computer-aided transcription services (CART), open and closed captioning, written materials, screen reader software, or large print materials.

HOW MUNICIPALITIES APPROACH ACCESSIBILITY

Since local governments are required to provide reasonable accommodations when qualified individuals request them, the ADA requires a way for people to submit requests so the government entity can determine an appropriate response. Denver, Boulder, and Lakewood provide examples of how municipalities can facilitate modification requests.

One way all three municipalities comply with the notice requirement under 28 C.F.R. § 35.106 is by making the ADA requirements available on their websites. Along with that they provide contact information for the designated ADA Coordinator or, for Denver, the Office of Disability Rights. Lakewood also includes a teletypewriter (TTY) number, which allows people who have a hearing or speech impairment to communicate over the phone. However, under 28 C.F.R. § 35.107, a municipality must only designate a responsible employee to coordinate compliance if it employs 50 or more people.

Both Boulder and Denver state that the reasonable accommodation request must be submitted at least 48 hours before the scheduled event. This gives them adequate time to make the necessary modifications to the public meeting or provide another accommodation, although other governments may need additional time.


Changes to public meeting accessibility requirements are on the horizon. Municipalities must continue to comply with and may go beyond the ADA's requirements to ensure public meetings are accessible to all people. Colorado's Department of Personnel & Administration has published guidelines for creating accessible meetings for state agencies that municipalities might find helpful: <https://tinyurl.com/3t2bkzu6>.

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



CML FALL DISTRICT MEETINGS

CML hits the road in September to visit member municipalities and provide details about our legislative agenda. Don't miss these opportunities to connect! Visit the Networking & Events page at cml.org for additional information and a schedule.



ANNUAL SEMINAR ON MUNICIPAL LAW

CML's 2023 Annual Seminar on Municipal Law will provide expert Colorado-specific information directly relevant to the daily practice of municipal attorneys in the state, as well as opportunities to network with peers.

October 6-7 in Mt. Crested Butte, Colorado



Thank you!



101st ANNUAL CONFERENCE

The Colorado Municipal League thanks the attendees and sponsors of the 101st Annual Conference. We hope your experience at the conference was informative and productive and that you feel newly empowered to pursue good governance in your municipality. We look forward to seeing you next year at the 102nd Annual Conference in Loveland!





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Featured in this issue:

- CML publishes new edition of *Colorado Laws Enacted*
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