



# NEWSLETTER

Vol. 49, No. 18, September 8, 2023

## BIDs, DDAs, and URAs in action

### A journey through Colorado's successful redevelopment efforts

On Aug. 31, a group of urban planners, financial and collaborative partners gathered to embark on day-long exploration of revitalization and community transformation in two vibrant Colorado communities: Parker and Englewood. Hosted by the Downtown Colorado, Inc. (DCI) and CML, this mobile tour aimed to showcase the power of Business Improvement Districts (BIDs), Downtown Development Authorities (DDAs), and Urban Renewal Authorities (URAs) in rejuvenating downtown and commercial areas.

#### PARKER: A VISION FOR URBAN RENEWAL

This visit included concise presentations by Tony DeSimone, partner/CEO of Confluence Companies, and Weldy Feazell, director of P3 Parker. These presentations shed light on the exciting opportunities available for realizing the community's vision of a vibrant, pedestrian-friendly downtown. They also delved into Parker's innovative urban renewal authority approach, aiming to foster growth and connectivity among various downtown subareas, transforming them into a dynamic, mixed-use destination with bustling public spaces.

Following these informative talks, participants embarked on a guided walking tour. This tour provided invaluable insights into the ongoing projects like the Art Walk and School House, which play pivotal roles in revitalizing the town.



CML PHOTO BY DENISE WHITE

Attendees listen to a presentation during a tour of redevelopment programs.

#### ENGLEWOOD: A TALE OF RENEWAL AND COLLABORATION

Participants next travelled to Englewood where Hilarie Portell, executive director of Englewood Downtown Development Authority, provided a comprehensive understanding of the city's renewal efforts and collaborative endeavors.

The Wellness District, anchored by two prominent hospitals, highlighted street designs for enhanced safety and multimodal use. A walking tour of South Broadway, Englewood's traditional main street, revealed newly improved public spaces — paseos which knit public pathways into the downtown fabric — as well as a planned regional trail.

The tour concluded at Englewood's CityCenter, the civic heart of the community. Here, participants learned about large-scale redevelopment plans

and an interim vacant space activation program, gaining valuable insights into the city's comprehensive redevelopment initiatives. This collective experience underscored Englewood's dedication to renewal and collaborative excellence across its diverse urban areas.

The DCI-CML Mobile Tour provides a unique opportunity for municipalities and partner agencies to take a firsthand look at how BIDs, DDAs, and URAs are shaping the future of Colorado's communities. Through engaging discussions, site visits, and interactions with local leaders and businesses, attendees gained a deeper understanding of these vital tools for revitalization.

For more information about the work in Parker and Englewood, visit [p3parker.com](http://p3parker.com) and [englewooddowntown.com](http://englewooddowntown.com). Learn about DCI at [downtowncoloradoinc.org](http://downtowncoloradoinc.org).

Empowered cities and towns, united for a strong Colorado

# EMPOWERED CITIES AND TOWNS, UNITED FOR A STRONG COLORADO

## EDUCATION & TRAINING



## Small Communities Workshop to highlight affordable housing, water strategies

The Colorado Department of Local Affairs is hosting the 2023 Small Communities Workshop in Johnstown. The workshop is an opportunity to discuss a number of critical issues, including affordable housing strategies, water efficiency and conservation, disaster recovery, and construction of sustainable public facilities. The Small Communities Workshop will

take place Oct. 10-11 at the Larimer County Emergency Operations Center in Johnstown. A networking event will be held on the 10th, followed by a full day of programming on the 11th. DOLA is hosting the event with the support of the Special District Association of Colorado, Colorado Counties, Inc., and the Colorado Municipal League.



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: Denise White**  
**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.

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## CELEBRATE WITH CML

CML wants to hear about your community's successes. Tell us about a 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](mailto:amiller@cml.org), or complete the form at <https://bit.ly/3YF8XRM>.



## Wanted: Your time capsule ideas

Help curate CML's history!

In October, CML is marking the 25th anniversary of the Ken Bueche CML Municipal League Building as part of CML's century of service celebration. The remarkable facility building has been a cornerstone, enabling the League to deliver on its vision of empowering cities and towns for a united and strong Colorado.

During the upcoming festivities on Oct. 19, staff will unveil the building's original time capsule, preserved since 1998 when our doors first opened to welcome CML members. While anticipation builds as we

prepare to reveal the capsule's long-held secrets, we're also looking forward.

CML has plans to curate fresh contents that encapsulate this moment in time, to be sealed away for a future anniversary celebration in 2048. Here's where you come in:

What should we include in the time capsule to represent 2023?

CML's 100th-anniversary commemorative pin? A memento from a Taylor Swift concert? Something that symbolizes our ongoing affordable housing challenges? A pandemic mask? Perhaps a significant item from your own community? The

possibilities are endless, and we're eager to hear your ideas!

Please email your ideas to CML Meeting and Events Planner Karen Rosen at [krosen@cml.org](mailto:krosen@cml.org). We can't wait to see what treasures you suggest (no donations please, ideas only at this time).

Let's gather a collection of items that paint a vivid picture of this unique moment in 2023. If you're interested in diving deeper into the CML's 25/100 celebration, Karen can provide more details.

## Interim Final Rule issued on ARPA Flex

By Kevin Bommer, CML executive director

The National League of Cities recently provided details on the Aug. 10 release of the "Interim Final Rule on ARPA Flex." ARPA Flex was an amendment to the American Rescue Plan Act in December 2022. The rule opened three new expenditure categories for Coronavirus State and Local Fiscal Recovery Funds:

- Spending to provide emergency relief from natural disasters.
- Spending on transportation infrastructure eligible projects and matching funds.

• Spending on any program, project, or service that would also be eligible under HUD's Community Development Block Grant program.

The interim rule is published in the Federal Register for a 60-day comment period, <https://tinyurl.com/4f6cxbpr>. However, it is unclear how long it will take following the end of the comment period to issue a final rule, especially considering it took eight months to issue the interim rule. ARPA Flex was a provision passed by Congress in December 2022. The rule opens new expenditure categories and outlines potentially burdensome strings to using the money.

An overview of the interim final rule and the new expenditure categories created by ARPA Flex can be found at <https://tinyurl.com/3fp9h6h5>, and a quick reference guide to use of SLFRF funds is at <https://tinyurl.com/595sht9r>.

Municipal members are reminded that ARPA funds must be obligated no later than the end of 2024 and fully expended no later than the end of 2026.

The full article from NLC is available at <https://tinyurl.com/yc347u8d>.

### UPCOMING WEBINARS

#### CONSULTING FIRM SEEKS INFORMATION FROM COLORADO RECYCLING STAKEHOLDERS

Thursday, Sept. 7 and Sept. 14, at noon

Eunomia Research & Consulting is conducting research for a needs assessment for Colorado's Extended Producer Responsibility recycling program. The program will require producers of packaging to cover the cost of recycling. To gather data for the assessment, Eunomia invites municipalities and other stakeholders to participate in a pair of webinars. Register online at <https://tinyurl.com/4ms3txp5>.

#### CUSTOMS AND BORDER PROTECTION — A LOOK AT LOCAL RESOURCES AND EFFORTS TO INTERRUPT DRUG FLOWS

Tuesday, Sept. 26, 12-1 p.m.

This session, featuring Tiffany Olizarowicz and Montana Whitehead, delves into Customs and Border Protection's efforts to combat drug flows. CBP's Office of Field Operations Denver showcases their operational presence in Colorado, emphasizing preparedness and modernization. The Office of Intelligence provides insights into drug smuggling tactics post-COVID, including illicit e-commerce. Registration will open soon at [CML.org](https://cml.org).

#### CIVILIAN CYBER RESERVES AND CYBERSECURITY

Wednesday, Oct. 11, 12-1 p.m.

A civilian cyber reserve is a group of public and private cybersecurity professionals that assist communities by improving their cyber defense. This webinar focuses on understanding how a civilian cyber reserve could bolster Colorado local governments' cybersecurity. Jaime Clintsman, Outreach Coordinator at the National Cybersecurity Center, shares information on the model while also soliciting feedback to explore how Colorado cities and towns can participate. Registration will open soon at [CML.org](https://cml.org).

## Lyons looks back on flood of 2013

The Town of Lyons proudly presents “Grit, Grace, and Gratitude,” a 10-year flood remembrance on Sunday, Sept. 10. Beginning at 11 a.m. at Sandstone Park, the official remembrance ceremony of the 2013 flood launches a day of reflection. After the ceremony, explore town-wide exhibits at locations like Town Hall, Visitor’s Center, Lyons Regional

Library, Lyons Redstone Museum, Lyons Elementary School, and Lyons Valley Townhomes. Join our Silver Linings Tour, a guided golf cart journey showcasing inspiring flood recovery projects at Sandstone Park from 12:30-4 p.m. At LaVern M. Johnson Park from 3-7 p.m., a community gathering will celebrate Lyons’ resilience with a picnic, live music,

and dance. The remembrance concludes Monday, Sept. 11, from 6:30-8:30 p.m., with a candlelight vigil at Confluence Circle (4th Avenue and Prospect Street).

The Town of Lyons invites you to join them as they reflect on their journey and honor the unshakable strength of community. More information is available at [townoflyons.com/10yearflood](http://townoflyons.com/10yearflood).

## Department of Justice proposes rules for ADA web accessibility

The U.S. Department of Justice issued a Notice of Proposed Rulemaking, [bit.ly/45Vfdqz](http://bit.ly/45Vfdqz), regarding web accessibility standards under Title II of the Americans with Disabilities Act, along with a fact sheet, <https://bit.ly/44AxIjM>. The proposed rule would establish minimum standards for local websites and mobile applications. Using WCAG 2.1, Level AA, as the technical standard, the rulemaking contemplates several exceptions and an implementation timeline of two to three years depending on government size. Comments are due by Oct. 3, 2023.

## Eco-Cycle releases tools for reducing plastic waste

Eco-Cycle is excited to announce the release of its newest tools to support the Plastic Pollution Reduction Act (HB21-1162). They’ve published a webpage, <https://tinyurl.com/5bu8sa9t>, on the polystyrene takeout container ban that will be effective Jan. 1, 2024, and toolkit, <https://tinyurl.com/kjtbxc7j>, to help restaurants make environmentally friendly decisions about their use of serviceware and single-use items. Headquartered in Boulder, Eco-Cycle is one of the nation’s oldest and largest nonprofit recyclers.

## Highway Users Tax Fund 2023 revenue forecast available

Each year, the Colorado Department of Transportation’s Office of Financial Management and Budget prepares a forecast of expected revenues in the Highway Users Tax Fund for upcoming years. CML uses these HUTF forecasts to assist municipalities in developing their annual road and bridge budgets. We and the OFMB utilize updated information from the Department of Revenue on lane miles, bridge deck area, vehicle miles traveled, and vehicle registrations. The OFMB team maintains an annual revenue model, which is updated each quarter to help better predict future revenues. In addition to information from the Department of Revenue, OFMB

uses national economic performance indicators, state population and demographic data, the forecasted and aggregated annual interest rates on new car loans and retail gasoline prices, and estimated vehicle costs to inform the model. Beginning this fiscal year, OFMB will provide a quarterly revenue estimate for state transportation revenue, as well as local government HUTF revenue allocations, alongside the quarterly state revenue forecast. By releasing quarterly information, the annual estimates that CML provides will be more up-to-date and accurate. CML’s 2023 HUFT memo and revenue forecasts for municipalities are online at <http://tinyurl.com/3fhcvb74>.

## EPA creates one-stop shop to help wastewater utilities cope with drought

Do you need help developing a drought contingency plan? Do you have any projects in mind to address drought and need funding? Do you need help identifying possible mitigation strategies to address drought and other associated hazards? If you answered yes to any of these questions, the U.S. Environmental Protection Agency would like to hear from you.

The EPA is coordinating with federal and state partners to offer a one-stop shop to help water and wastewater utilities identify drought mitigation strategies, as well as to help utilities understand the types of funding available and who to contact to get started.

Projects that could be eligible for funding include aquifer storage and recovery, groundwater replenishment, green infrastructure, deeper wells, infiltration wells, water reuse, alternative water sources, floodplain and stream restoration, flood diversion and storage, water loss audits, and leak detection projects. Nature-based solutions are especially encouraged.

To get free advice or assistance for your water or wastewater utility, email the utility name, city, state, and phone number to [DroughtQuestions@epa.gov](mailto:DroughtQuestions@epa.gov), and the EPA will contact you. Small and overburdened utilities are encouraged to reach out.



## Fall District Meetings are bringing CML to a city or town near you

Autumn is the time of year when the leaves are changing and the weather turns cool, and it's also when CML travels across Colorado to visit our municipal members. Our annual Fall District Meetings are an excellent opportunity to meet CML staff face-to-face, network with colleagues from neighboring communities, and learn about the upcoming legislative sessions and how it could affect you and your municipality. The meetings are educational, and they are also a lot of fun!

Above all, CML will be there to listen. Tell us what's happening in your community. We want to know all about the unique needs of your municipality and how CML can help.

The meetings are a great way to get some one-on-one time with CML's staff members and really dive into the issues and challenges that matter to you. Have a specific question that you want to brainstorm on? Want to know if any of your neighboring municipalities are experiencing the same challenges? Want to know what specific resources CML has that could help you? The answers to all these questions, and more, can be found at these meetings.

Fall District Meetings began Sept. 6 and will continue throughout the month of September. More information and registration are available on the CML website, <https://tinyurl.com/2rzjd63e>. For questions about the meetings, contact CML Meeting and Events Planner Karen Rosen, [krosen@cml.org](mailto:krosen@cml.org).

We at CML look forward to this time each year to meet with you in your backyard. We can't wait to hear what's going on in your city or town!

### 2023 FALL DISTRICT MEETING SCHEDULE

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#### WEDNESDAY, SEPT. 6

- District 10 in Delta *Sponsored by Garfield & Hecht, P.C.*
- District 3 in Lone Tree *Sponsored by Michow Guckenberger McAskin LLP*

#### THURSDAY, SEPT. 7

- District 9 in Bayfield/Ignacio *Sponsored by TBK Bank*

#### TUESDAY, SEPT. 12

- District 8 in Alamosa *Sponsored by Adams State University School of Business*

#### WEDNESDAY, SEPT. 13

- District 13 in Silver Cliff/Westcliffe
- District 11 in Craig *Sponsored by Trapper Mine, Memorial Regional Health and Bank of Colorado*

#### THURSDAY, SEPT. 14

- District 12 in Silverthorne

#### WEDNESDAY, SEPT. 20

- District 1 in Sterling *Sponsored by Bank of Colorado*

#### THURSDAY, SEPT. 21

- District 6 in Lamar *Sponsored by JVA*

#### FRIDAY, SEPT. 22

- District 7/14 in Pueblo *Sponsored by HUB International Colorado*

#### WEDNESDAY, SEPT. 27

- District 4 in Fountain
- District 2 in Loveland

#### THURSDAY, SEPT. 28

- District 5 in Hugo

## Local government perspectives sought for geothermal regulation

Senate Bill 23-285 renamed the Oil and Gas Conservation Commission the Energy and Carbon Management Commission. The act expanded the commission's authority to regulate a broader scope of energy and carbon management areas beyond oil and gas. The act specifically authorizes the commission to regulate deep geothermal operations (deeper than 2,500 feet). Like oil and gas operations, local governments have siting authority written into statute for deep geothermal operations, and state regulations of deep geothermal operations shall not impair, alter, or negate the ability of a local government to regulate land use related to intrastate underground natural gas storage facilities.

The commission is in the process of developing its deep geothermal regulatory concept paper. Feedback from local governments is sought, and the commission intends to draft an initial set of rules to inform the deep geothermal rulemaking process. That process is anticipated to take place in the fall of 2023.

CML will host a stakeholder meeting, in which the commission will give a general overview of geothermal technologies and the regulatory concept paper, answer questions, and gather feedback from municipalities about what should be included in the paper. Please join us via zoom for the meeting on Tuesday, Sept. 12, from 1-3 p.m. Please email Meghan MacKillop,

[mmackillop@cml.org](mailto:mmackillop@cml.org) to RSVP and receive the zoom link.

The commission encourages municipalities to review and submit feedback ahead of the meeting. You can access the Deep Geothermal Regulatory Concept Paper at <https://tinyurl.com/3c4f4nnu>.

Please provide any desired written feedback in the form best suited to you, including redlines, comments, a separate document, or other written feedback. Send feedback and comments to Michael Rigby, [michael.rigby@state.co.us](mailto:michael.rigby@state.co.us) and Brett Ackerman, [brett.ackerman@state.co.us](mailto:brett.ackerman@state.co.us).

## 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**  
**MT. CRESTED BUTTE, COLORADO**



# CML LEGAL CORNER



## “Clear expression” challenges after the Prop HH litigation

By Rachel Bender, CML associate counsel

On the last day of the 2023 legislative session, the General Assembly passed SB23-303, which referred Proposition HH to voters in the November 2023 election. HH seeks to provide property tax relief, limit growth in property tax revenue for certain local governments, and obtain voter approval to retain and spend part of the state surplus (TABOR cap), which will then be used to provide a partial and contingent backfill for local governments, to provide some relief for renters, and to fund K-12 school districts.

After a group of individuals and entities (“petitioners”) sued to challenge SB23-303 and HH, the Colorado Supreme Court quickly issued an opinion rejecting the petitioners’ claims. Although the Aug. 21, 2023, opinion addresses a measure referred by the General Assembly, part of the Court’s decision may impact future legal challenges to municipal ballot measures.

### SB23-303 AND PROP HH LAWSUIT

The lawsuit, *Ward v. State of Colorado*, claimed that SB23-303 and HH violated the Colorado Constitution’s single subject requirement and that HH violates the constitution’s “clear expression” requirement. Article V, Section 21 of the Colorado Constitution states that “No bill . . . shall be passed containing more than one subject, which shall be clearly expressed in its title.” The clear expression requirement is satisfied if legislation is germane, relevant, and appropriate to the general subject in the title of the legislation; the title need not include all the provisions or details in the legislation.

Although there is no similar “single subject” or “clear expression” limitation

for referred measures, the Court applied this language in addressing the challenge to HH — a referred measure. The Colorado Supreme Court never reached the “single subject” question because, in line with “long-settled precedent,” it held that the courts do not have subject matter jurisdiction to review SB23-303 or HH for compliance with the single subject requirement unless and until approved by voters. Accordingly, the courts may see a renewed challenge if HH passes in November.

The Court also held that the petitioners failed to establish a “clear expression” violation, but the statutory basis for the challenge presents a new development in election law. The parties and the court relied upon C.R.S. § 1-11-203.5. That law requires a challenge to “the form or content of any ballot title” to be filed within five days after the title is set. When passed in the 1990’s, this statute was intended to require pre-election challenges of alleged technical defects in the wording or format of TABOR ballot measures for which there is constitutionally prescribed wording, instead of drawn-out post-election legal challenges. The reliance on this statute in *Ward* establishes that, in addition to more technical challenges, it can be used to challenge state ballot titles for compliance with the constitution’s clear expression requirement.

### MUNICIPAL BALLOT TITLES

The *Ward* Court’s holding that C.R.S. § 1-11-203.5 can be used to challenge state ballot titles for compliance with the constitution’s “clear expression” requirement may, in some cases, provide a basis for something like a “clear expression” challenge to a local ballot title.

Generally, barring some local provision to the contrary, municipal ballot titles for referred measures, as well as initiated measures, must “correctly and fairly express the true meaning and intent of the measure.” C.R.S. § 31-11-111(3). The same statute also provides that protests of ballot titles “shall be conducted as provided by local charter, ordinance, or resolution.”

Municipalities may want to review local provisions for ballot title protests in light of the *Ward* decision. C.R.S. § 31-11-111 seemingly provides a path forward for any municipality looking to establish a different process that has not yet done so. While far from settled, for those municipalities that have not established a local process, C.R.S. § 1-11-203.5 might provide a default process for a legal challenge to a ballot title, particularly where the municipality relies on the Uniform Election Code.

Furthermore, even if a municipality has established a local process for challenging the title of a local ballot measure, C.R.S. § 1-11-203.5 may still be the default in any subject area where the local charter or ordinance is silent. For example, if a local ordinance establishes an appeal process for proponents of a measure but is silent as to appeal by opponents, opponents may be able to invoke C.R.S. § 1-11-203.5 to challenge the local ballot measure. Municipalities should consult with their attorney and address these considerations in determining whether to revise or implement a local law for contesting a local ballot title.

*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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