



CML Executive Director Kevin Bommer, second from right, accepts one of 10 National League of Cities (NLC) Centennial Federal Advocacy Awards on March 11 at the NLC Congressional City Conference in Washington, DC.

Record Colorado turnout out at NLC in March

By Kevin Bommer, CML executive director

Over 120 municipal officials, staff, and youth commissioners descended on Washington, DC, March 11-13 for the National League of Cities (NLC) 2024 Congressional City Conference.

Like Colorado Municipal League last year, NLC is celebrating its 100th year that will culminate with the City Summit in Tampa, Florida, in November. In addition to the regular programming, federal advocacy committee, and NLC board work, as well as over 1,000 municipal officials on Capitol Hill on the last day, the conference had much to offer. The opening session concluded with a keynote address from the President of the United States Joe Biden, and there was an impressive slate of speakers throughout the conference.

CML was among state leagues receiving the NLC's Centennial Federal Advocacy award. The award honors and recognizes the contributions of the 10 state municipal

leagues that came together in 1924 in Lawrence, Kansas, for the first meeting of the group that would become the National League of Cities.

Colorado attendees had the opportunity to attend three special events, starting with the Colorado Welcome Reception on Monday, March 11. On Tuesday, March 12, about 80 people met with member of Colorado's delegation to the House of Representatives that were able to meet. The following day, a large group — including youth commissioners from Northglenn and Loveland — had a breakfast meeting with Sens. Michael Bennet and John Hickenlooper.

A video recap of the conference is available at <https://ccc.nlc.org>, and those interested in City Summit and its celebration of 100 years of NLC this November in Tampa should visit <https://citysummit.nlc.org>.

EMPOWERED CITIES AND TOWNS, UNITED FOR A STRONG COLORADO



COLORADO MUNICIPAL LEAGUE **NEWSLETTER**

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New rules for public employee speech

By Robert Sheesley, CML general counsel

The Colorado Department of Labor Employment (CDLE) enacted rules in February to implement 2023's "Protection for Public Workers Act" (PROPWA). Enacted through SB23-111, PROPWA adds to existing First Amendment protections of speech by public employees and disrupts the existing legal framework for evaluating how government employers are limited in affecting employee speech. PROPWA includes rights to discuss employee views about representation, workplace issues, and PROPWA rights; engage in "protected, concerted activity for the purpose of mutual aid or protection;" and fully participate in the political process while off duty and not in uniform. The law allows employees to speak with the governing body about terms and conditions of their employment and any matter of public concern and to engage in political activities like other private citizens.

Gov. Jared Polis instructed CDLE to create rules defining how public employers can "manage, engage and discipline employees" and address "the rights and allowances [of] public employers." Beyond procedural mechanisms, the rules establish substantive provisions for the review of different types of protected activity. These provisions mimic but do not mirror First Amendment frameworks and may create a double-standard for public employers to deal with. Notably, the rules exclude employee speech from protection if the employee's speech is part of duties they are paid to perform or they have a responsibility to perform. Other rules balance the protected speech or conduct against its impairment of government interests, like the delivery of public service.

The PROPWA rules, 7 CCR 1103-17, are effective July 1, 2024, when CDLE can begin investigating complaints and enforcing PROPWA. The law and rules allow CDLE to remedy "unfair labor practices" through a variety of means, including damages to the employee for lost wages or lost dues to an employee organization, reinstatement of an employee, and mandates of employer action.

WEBINARS

CML LEGISLATIVE UPDATE

Friday, March 29, at noon

Get an update on what is happening regarding legislation in front of the Colorado General Assembly in this webinar with the CML advocacy team. Ask questions about how you can get involved and potential impacts on your city or town. Register at <https://tinyurl.com/38u8bt3v>.

CML MUNICIPAL ELECTION SERIES: ELECTION DEBRIEF AND TALES TO TELL

Thursday, May 9, at noon

During this webinar, a wide-ranging conversation will engage attendees in an election debrief, provide insights, and share stories covering what worked, what did not, and what clerks wished they had known ahead of the elections. Register at <http://tinyurl.com/mtpv7eep>.

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.



Spring election preview

By Rachel Woolworth, CML municipal research analyst

ON April 2, voters in at least 80 cities and towns across Colorado will consider local candidates and ballot measures in municipal elections. At least 50 municipalities will vote solely on candidates, while no less than 30 will also vote on ballot issues and questions. More than 35 municipal ballot measures are being considered across the state. Almost 50 municipalities canceled their regular elections, citing a lack of competitive races.

Ballot issues and questions being considered by voters include:

TAX & BOND ISSUES

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

- **Arriba** — for capital investments
- **Deer Trail** — for infrastructure projects and general revenue
- **Dolores** — for street improvements and maintenance and other public improvements
- **Holly** — for the general fund
- **Garden City** — for general purposes including streets, law enforcement, and administration
- **Lyons** — for infrastructure improvements including streets, stormwater utility, and electric undergrounding
- **South Fork** — for staff wages and infrastructure improvements

Estes Park will request a ten-year extension of its sales tax to fund street improvements, stormwater infrastructure expansions, trail reconstruction, and wildfire mitigation. **Westcliffe** is requesting an extension of its sales tax in perpetuity to fund street improvements, among other uses.

Center will seek authority to dedicate a

pre-existing sales tax to its general fund and economic development fund.

Other taxes issues include:

Silver Plume will ask voters to increase the property tax mill levy to fund its portion of the Clear Creek Fire Authority.

Silverthorne will seek authority to increase its lodging tax to fund capital projects related to recreation and public safety, among other uses.

Larkspur will ask voters to consider an increase in admissions tax to fund infrastructure improvements and other general purposes.

Wiley voters will consider the creation of a use tax for motor and other vehicles to fund general operating and capital expenses.

REVENUE RETENTION & DEBT

Fruita will request authority to retain and spend all revenues collected from all sources to fund the implementation of the city's capital improvement plan.

Silverthorne will ask voters for authorization to increase the town's debt up to \$50 million to finance workforce housing projects.

GOVERNANCE

Campo voters will consider reducing the number of seats on the town council from seven to five.

Larkspur will ask voters to reduce the number of seats on the town council from six to four.

Sugar City voters will consider reducing the number of seats on the town board from six to four.

Empire will ask voters to eliminate term limits for the town's board of trustees and mayor.

MARIJUANA

Ordway voters will consider a sales tax increase on medical and retail marijuana and associated products to fund enforcement and administration of the town's marijuana industry.

Silverton will ask residents to increase the sales tax on retail marijuana and associated products to be used for any municipal purpose.

ELECTION CHANGES

Buena Vista, Green Mountain Falls, Garden City, and Poncha Springs will ask voters to move their regular elections to November of even-numbered years.

PUBLICATION REQUIREMENTS

To save money on publication costs, **Blue River** and **Buena Vista** will request authorization to publish ordinances by title only in the newspaper, provided the ordinances are published in full on the town's website.

La Jara will request authorization to publish ordinances by title only unless specifically required by state statute to be published in full.

CHARTER AMENDMENTS

Several charter amendments will appear on the ballot in home rule municipalities across the state:

- **Breckenridge** — amendments lengthening the term of election commissioners from two to four years and removing the requirement that board and commission appointees be electors and residents
- **Johnstown** — amendments adding a section on water policy to the town's charter, amending qualifications for elective office to replace the general

CONTINUED ON PAGE 4

Eric Bergman to be DOLA director of Division of Local Government

Colorado's Department of Local Affairs (DOLA) Executive Director Maria De Cambra has appointed Eric Bergman as the new Director of the Division of Local Government.

Bergman brings to the role over 25 years of experience working with local government, including serving as the policy director for Colorado Counties, Inc. for the past 14 years. He has also been recognized as a 2019 Top Influencer by Colorado Politics.

De Cambra expressed her enthusiasm for Eric's appointment in a March 8 press



release, <https://tinyurl.com/438hysjw>, highlighting his deep-rooted passion for local governance.

"If there is anyone we can count on to know local government better than Eric, I don't know who it is," said Kevin Bommer, CML executive director. "I've been in the trenches with Eric. He will be a fantastic representative of and advocate for municipalities within DOLA."

Before his role at Colorado Counties, Inc., Eric was the director of the Office of Smart Growth and a grant program manager at the Department of Local Affairs.

Bergman's official start date at DOLA is set for May 20.

La Junta bids farewell to city leader Rick Klein after 43 years

Rick Klein, a constant figure in La Junta's government, retired in February following 43 years of service to the community. Klein's departure marks the culmination of a remarkable career characterized by unwavering dedication and meaningful contributions to the city where he was raised. As a third-generation La Junta resident, Klein's journey in public service has been driven by a deep-rooted passion to enhance the lives of his fellow residents.

Klein's impact on the community began in 1981 when he assumed the role of Otero County engineer, spearheading critical projects such as the reconstruction of the Swink Bridge. In 1990, Klein answered the call of Dan Noller, then-city manager of La Junta, and transitioned onto a municipal path. Rising through the ranks, first as La Junta's city engineer, then as assistant city manager, before being



SECO News

named city manager in 1999, Klein played an instrumental role in shaping the city's infrastructure and economic landscape.

"When you think La Junta, you think of one guy, Rick Klein. No one has done more for that city and for the Valley than Rick. A leader in every sense," said Sam Mamet, retired CML executive director.

"When I started at CML in 1999, Rick was one of the first people I met, and it was

clear how much he loves La Junta," said Kevin Bommer, CML executive director. "He was also one of the first to reach out when I was hired as executive director 20 years later. He'll forever be one of the leaders I admire the most."

Reflecting on his career in his last council report as the city manager, Klein shared "I wanted to come back to the Valley and help. I hope I made a difference in your lives or your family's lives; that's all I wanted, and so hopefully, I did that."

As Klein embarks on a well-deserved retirement, the municipal government community expresses its gratitude for his exceptional service and enduring legacy. His contributions have left an indelible mark on the city's history, shaping its trajectory for generations to come.

FROM PAGE 3

prohibition against convicted felons holding elective office, and modifying electoral districts for councilmembers

- **Larkspur** — amendments changing the town's audit schedule to comply with state statute and reducing the number of councilmembers from six to four
- **Timnath** — to prohibit the town from annexing property with active state mining permits

OTHER ISSUES

Estes Park voters will consider a citizen-initiated measure regarding requiring adjacent property owner consent to development applications.

Fraser will ask voters to create a downtown development authority and to authorize the town to increase its debt by up to \$25 million in connection with the authority.

Nederland voters will weigh in on whether they support the permitting and construction of a local pump track.

SPECIAL ELECTIONS

Greenwood Village will conduct a special election on April 16 regarding a property owner's petition to disconnect a parcel of undeveloped property from the city.

Not all ballots were available at the time of publication. Any ballot questions not included in this press release will be included in the post-election summary. Colorado Municipal League thanks the municipal clerks who assisted CML staff in compiling this election information.

Register now for CML 2024 Annual Conference

Registration is open for the 2024 CML Annual Conference. The conference is the premiere educational event for municipal officials in Colorado. It draws over 1,200 leaders throughout the state to share the latest information on accomplishments, growth, legislation, and policies that impact their municipalities. The conference offers more than 40 sessions with two keynotes and two lunch programs. Session topics include Organizational Leadership, Professional or Personal Development, Strategic Planning, Affordable Housing, Technology, and much more. Hear from keynote speakers, explore the exhibit hall, connect, network, and exchange ideas. The conference will take place June 18-21 in Loveland. Register online at <https://www.cml.org/conference>.

Do you know a municipal superhero?

DEADLINE FOR SAM MAMET GOOD GOVERNANCE AWARD NOMINATIONS IS MARCH 29

Remember Mayor Marc Williams' inspiring leadership of Arvada? Lyons Town Administrator Victoria Simonsen's dedication to community through 10 years of flood recovery? These are just two examples of past heroes recognized by the prestigious Sam Mamet Good Governance Award, honoring exceptional individuals in municipal government. Now, the search is on for the 2024 champions!

Does someone in your community exemplify the principles of good governance? Are they champions of efficiency, transparency, accountability, innovation, and inclusivity? Do they go above and beyond to serve their community, inspiring others with their dedication and impact? If so, nominate

them for the Sam Mamet Good Governance Award!

This is your chance to shine a light on their achievements and empower them to inspire others. Recipients receive recognition and complimentary registration to the CML Annual Conference and the opportunity to share their story and motivate future generations of public servants.

Do not let their dedication to effective governance go unnoticed. Nominations are open now until March 29. Visit <http://tinyurl.com/rzefxway> to nominate someone today and help us celebrate excellence in public service.

Together, let us celebrate the unsung heroes shaping a brighter future for our municipalities.



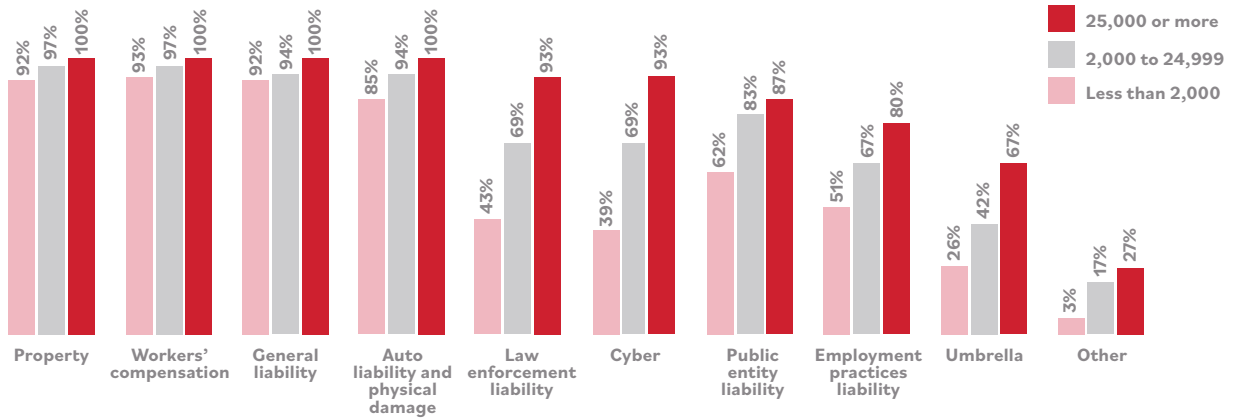
RESEARCH CORNER

THE RISING COSTS OF INSURING MUNICIPAL OPERATIONS

Data visualization by **RACHEL WOOLWORTH**, CML municipal research analyst,
and **ALEX MILLER**, CML publication & design specialist

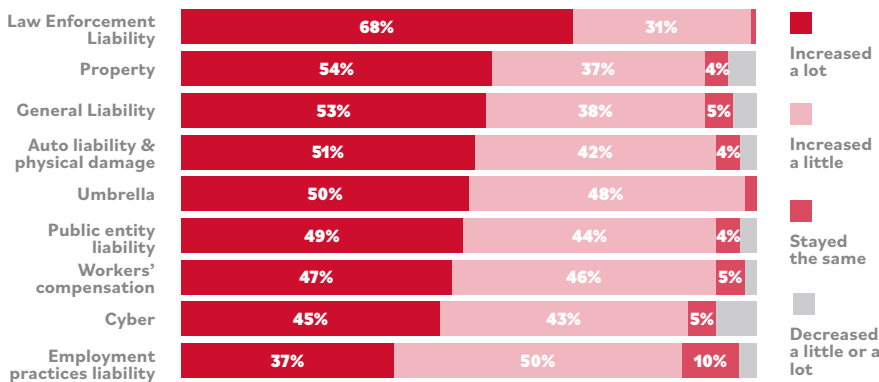
Municipalities across Colorado purchase liability insurance to protect against unanticipated expenses from lawsuits arising from their operations. Common lines of insurance held by cities and towns include general liability, property, workers’ compensation, and auto. Municipalities identified the rising cost of insurance premiums as a challenge throughout 2023 as new state laws required municipalities to do more, opening new avenues to seek damages against public entities. In response, Colorado Municipal League focused on the rising cost of insurance premiums in the organization’s 2024 State of Our Cities & Towns survey.

1 LINES OF INSURANCE HELD BY MUNICIPALITIES, BY POPULATION



According to survey results, the larger the municipality, the more likely they are to hold more lines of insurance, excluding those that remain self-insured. Specifically, cities with populations over 25,000 were more likely to hold law enforcement liability, cyber, and umbrella insurance when compared with smaller towns. CML was not able to verify whether responding municipalities had awareness of all the lines of coverage they retain.

2 HOW MUNICIPALITIES' INSURANCE COSTS HAVE CHANGED IN THE PAST THREE YEARS



Most responding municipalities reported increases in insurance premium costs across various lines of coverage in the last three years. Specifically, more than 50% of responding municipalities reported price increases of 10% or more for law enforcement liability, property, general liability, and auto liability and physical damage. Few municipalities reported insurance premiums decreasing in cost.

3 TAKING ACTION

About 70% of responding municipalities have not taken any action in response to rising insurance costs in recent years due, in part, to not having time to shop around. The 30% of municipalities that have attempted to lower costs reported taking the following actions:

- **Changed insurers**
- **Increased self-insured retention amounts**
- **Removed lines of coverage**
- **Reduced coverage limits**
- **Conducted risk mitigation**

CML LEGAL CORNER



Supreme Court clarifies rules for public officials on social media

By Robert Sheesley, CML general counsel

The United States Supreme Court has finally answered a question that public officials have struggled with for years: “How far can they go in blocking commenters or deleting comments on social media?” Of course, the answer is, “it depends,” but not just on status as a public official. Officials must both have and use authority to speak for their public entity before their social media activity infringes on the First Amendment rights of others.

The Supreme Court sent two cases back to lower courts for evaluation consistent with its new test. In *Lindke v. Freed*, a city manager deleted comments and blocked a commenter from his Facebook page on which he posted about both his family and his job, including responding to residents; he created the page in college but converted it to a “public” page as a “public figure,” noted his job title and work address.

In *O’Connor-Ratcliff v. Garnier*, two school board candidates continued to use campaign social media pages once elected, posting school district information and soliciting feedback from constituents. The pages described each as a “Government Official” and identified their positions.

A TWO-PART TEST

Liability for violating constitutional rights, such as those guaranteed by the First Amendment, requires governmental or “state action” under 42 U.S.C. § 1983. In *Lindke*, the Court unanimously adopted a two-part test for whether a public official engages in a “state action” on social media. If both parts are not satisfied, the official’s conduct would be deemed to be private and not a basis of liability.

First, the official must possess actual authority to speak on the public entity’s behalf on a particular matter. Courts must examine whether the official had “actual authority rooted in written law or long-standing custom to speak for” the public entity. Requiring more than just some authority to communicate, the Supreme Court described this as “whether making official announcements is actually part of the job that the [public entity] entrusted the official to do.”

Second, the official must purport to exercise that authority when speaking in the relevant social media posts. The Supreme Court stated: “If the public employee does not use his speech in furtherance of his official responsibilities, he is speaking in his own voice.” As an example, the Court noted that the same announcement in different contexts (a public meeting vs. a backyard barbecue with friends) would be considered differently. Just posting about something within an official’s authority does not equate to “purporting to exercise” that authority.

The Supreme Court also provided some warnings and suggestions. The type of social media involved can modify the analysis; page-wide blocking will require consideration of the entire use of the page and not just an individual post. The Court warned against “mixed use” social media and advised that a disclaimer of personal opinions would create a “heavy (though not irrebuttable) presumption” that posts on a page were personal.

MORE TO COME

The *Lindke* test likely will result in inconsistent outcomes given the variety of laws and customs across the country. Both *Lindke* and *O’Connor-Ratcliff* will return to their respective courts for a fact-

specific inquiry as to the specific official’s authority at the time of their action and as to the post at issue, as well as whether their action “purported” to exercise that authority.

What laws or customs would provide actual authority to a Colorado municipal official to communicate on a particular matter? When does an official “purport” to exercise authority to communicate on an issue as opposed to posting out of personal interest or as part of a campaign?

The decision also casts doubt on HB23-1306, a new state law that allows officials to block individuals for broad reasons. That bill defined “private social media” as neither using public resources nor being required by express law. The new test looks to “actual,” not just express, authority as defined by law or custom and may consider public resources as an aspect of whether the official purported to exercise that authority.

The *Lindke* decision recognizes that public officials have a First Amendment “right to speak about public affairs in their personal capacities.” The decision suggests that members of a municipal board have significant leeway in managing their social media. A line still exists, however, and the Supreme Court has left it to future cases to decide where that line is.

The Supreme Court’s has offered an excellent prompt to revisit your municipality’s social media policies and your personal social media practices. The first step may be identifying the actual authority of certain officials to communicate and modifying customs to prevent unintended exercises of authority.

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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- A preview of upcoming spring elections
- Research Corner: The rising cost of insuring municipal operations
- Legal Corner: Supreme Court clarifies rules for public officials on social media

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