



COLORADO
MUNICIPAL
LEAGUE

NEWSLETTER

Vol. 50, No. 9, May 3, 2024

See you in Loveland

Register now for CML's 2024 Annual Conference

Kharyl Jackson, CML marketing & communications specialist

Colorado's premier event for municipal leaders is back! Register now for the Colorado Municipal League 2024 Annual Conference, taking place June 18-21 in Loveland. CML's biggest event of the year draws more than 1,200 decision-makers from across the state to share the latest news on accomplishments, growth, legislation, and policies that affect municipalities.

EDUCATIONAL SESSIONS

The conference features more than 40 sessions that address the most pressing issues facing cities and towns. Topics include state legislation, home rule, eminent domain and condemnation litigation, liquor licensing, development, planning and land use, public comment and the First Amendment, ethics, contract litigation, and much more. This year's Meeting of the Mind's Luncheon will feature KC Becker of the U.S. Environmental Protection Agency. CML is pleased to provide



**2024 ANNUAL
CONFERENCE**
LOVELAND • COLORADO

conference programming that is relevant to all municipal government officials and employees, including mayors, councilmembers, managers, clerks, attorneys, and department heads.

CML PRESIDENT'S INITIATIVE: CIVILITY

Under the leadership of CML Executive Board President Jessica Sandgren, this year's conference will feature discussions, workshops, and initiatives geared toward foster-

ing civil discourse and inclusive decision making in local governance.

CELEBRATIONS AND CONNECTION

CML's Annual Conference is about more than just learning — it's about connecting. The conference is a unique opportunity to network with municipal leaders from across Colorado. It is also where CML announces the winner of the annual Sam Mamet Good Governance Award.

WHO SHOULD ATTEND?

From elected officials to municipal managers, staffers to dedicated partners — if you play a role in shaping Colorado's communities, this conference is for you. We welcome anyone interested in municipal government.

JOIN US

Register today to join CML at our 102nd Annual Conference. Visit www.cml.org/conference for a complete schedule of sessions and events. We look forward to seeing you in Loveland!

Empowered cities and towns, united for a strong Colorado

EMPOWERED CITIES AND TOWNS, UNITED FOR A STRONG COLORADO

IN MEMORIAM



NEAL BERLIN

Former Arvada City Manager Neal Gary Berlin, aged 87, passed away on March 19, 2024. He was born in Des Plaines, Illinois, and grew up in nearby Palatine.

He developed an early interest in public service and began planning to become a city manager. Majoring in public administration, he graduated from Illinois Wesleyan and then the University of Michigan. While working on a doctorate at University of Colorado he met Myrna, a music major.

They were married in 1961 and began life together in city management in Highland, Illinois. Neal was called to serve and deployed with the U.S. Army in Korea. Neal's next job was as assistant to the city manager in Pueblo. Over his career, he was manager of Highland; Hanover, New Hampshire; Iowa City, Iowa; Arvada; and Ann Arbor, Michigan.

In retirement, Neal and Myrna lived in Denver, where Neal served as a Denver Civil Service Commissioner.

"Neal was a wonderful guy and a true professional who was respected among his peers," stated Sam Mamet, retired Colorado Municipal League executive director.

Neal is survived by his wife and daughter, and numerous nieces and nephews. His was preceded in death by his parents, John and Bertha Gaare Berlin. Interment will be at Fort Logan later in the spring.

COLORADO MUNICIPALITIES

Colorado Municipalities



COLORADO MUNICIPALITIES APRIL ISSUE: CIVILITY STARTS HERE

The current edition of Colorado Municipalities magazine focuses on civility in local government. Learn about the CML President's Initiative "Civility Starts Here," get tips to manage conflict, and see how Colorado cities and towns are fostering respectful dialogue. Read the April issue online, <https://tinyurl.com/5n886e6u>.



COLORADO MUNICIPAL LEAGUE NEWSLETTER

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Get this newsletter by email. The CML Newsletter is available by email three days before it arrives in the mail! Sign up at bit.ly/CMLNewsletter.

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.



DOLA offers resources for land use and planning

HOUSING STRATEGIES PEER EXCHANGE — MONTHLY SERIES

The Community Development Office of the Department of Local Affairs (DOLA) is hosting a monthly peer exchange series for local governments working on affordable housing strategies and land use issues. This interactive virtual series will take place on the third Thursday of each month at 9-10 a.m. starting May 16.

The intent of the series is to provide a forum for sharing challenges, successes, and innovative approaches — to learn from peer communities across Colorado who are implementing solutions to local housing challenges. Each month will feature a different topic with brief presentations from selected Colorado communities, with ample time allowed for questions and discussion.

The first topic on May 16 will address Software Solutions for Expedited Review. Future topics will be selected based on participant input. Register at <https://tinyurl.com/5n7zt3ea>.

WEBINAR ON PROP 123 FAST TRACK REQUIREMENT

DOLA will host an informational webinar April 25 to provide guidance and clarity around the Proposition 123 requirement to expedite review of affordable housing. To remain eligible for Prop 123 funds in the next three-year cycle (2027-2029), local governments must demonstrate they have implemented an expedited review process for housing projects where at least half of the units are affordable. While the law states that expedited review must take place within 90 calendar days of a complete application submission, there are many additional details to consider. DOLA's guidance does not prescribe an approach but instead provides a list of strategies and approaches. Each community will need to determine which strategies are most effective for their local processes. Grant funding is available to support local governments with the implementation process.

More information is available at <https://tinyurl.com/wcw6vjbw>.

APPLY FOR A LOCAL PLANNING CAPACITY GRANT

Prop 123 funds are available to help you achieve your affordable housing goals. Local Planning Capacity (LPC) Grants support local government efforts to implement systems that fast track or expedite the development review process for affordable housing. These funds can also support local government capacity to achieve local affordable housing goals and local governments' Prop 123 commitments. The next round of applications for LPC Grants will be open May 1-June 3.

Interested applicants should review the program guidelines and application materials on the LPC Grant website, <https://tinyurl.com/3hn5ypwe>, then schedule a pre-application meeting with the LPC Program Manager Robyn DiFalco, <https://tinyurl.com/24swthkb>, to discuss the proposed project.

AI for Government webinar series

The Colorado Smart Cities Alliance is hosting a three-part webinar series, AI For Government. The webinars will equip attendees with the information and tools they need to intentionally and responsibly implement artificial intelligence (AI) technologies in their community.

AI has the potential to transform government by optimizing processes, enhancing service delivery, and enabling data-driven decision-making. Its successful implementation, however, requires careful planning, investment in infrastructure and skills development, and ongoing collaboration between governments, industry stakeholders, and civil society.

This event series is an opportunity to explore AI and determine relevant applications for your work.

HOW IT WORKS

May 16, 11 a.m.-12 p.m.

Before governments can use AI, they need to understand it. Peek inside the “black box” to understand what AI is, how it works, and the many different functionalities it presents for government agencies. Register online for free at <https://tinyurl.com/yn5jyv62>.

ETHICS AND RESPONSIBLE USE

May 30, 10-11 a.m.

Using AI holds tremendous opportunity and significant risk if not handled properly. Discover practical governance, risk, and compliance (GRC) questions and tools you can use to ensure your agency and partners are on the path to using AI in responsible and ethical ways. Register online for free at <https://tinyurl.com/yn5jyv62>.

AI SHOWCASE

June 20, 3-6 p.m.

Join the Colorado Smart Cities Alliance in the culminating event of the AI For Government series. The webinar will provide a hands-on showcase illustrating how AI can be used to help government agencies improve services and quality of life in their communities. The event will bring together innovative leaders from towns, cities, counties, utilities, and state agencies from across Colorado to engage with entrepreneurs, solution providers, and research organizations on the cutting edge of AI. Cost of registration varies. More information is available online at <https://tinyurl.com/4kr89bxv>.

THE FACES OF PUBLIC SERVICE



This month, CML is profiling various elected officials in cities and towns across the state concluding or continuing long terms of public service. Many of these officials have served municipal offices for years, others for decades.

By Rachel Woolworth, CML municipal research analyst



WENDY KOENIG, ESTES PARK MAYOR

Town of Estes Park mayor 2020-2024, mayor pro-tem 2014-2017, trustee 2010-2013

Q: What has serving in municipal office meant to you?

A: Serving as mayor of the Town of Estes Park has allowed me to give back to a community that has given so much to me over the years. I went through all my schooling in Estes Park. My senior year, I qualified to compete in the Munich 1972 Olympics and later competed in the Montreal 1976 Olympics. From the age of 13 on, the community raised funds to support my travel to competitions. In hindsight, my background living in Estes Park and knowledge of our community has allowed me to make better decisions for the benefit of the town. I am very proud to have served at the municipal government level for 12 years.

Q: What is one piece of advice you would like to leave with those who are about take municipal office?

A: My advice to anyone seeking office is that they listen to constituents, keeping an open mind and heart. One will always learn from others. Showing openness is the first step to good leadership.



RON SWEHLA, YUMA MAYOR

City of Yuma mayor 2018-2024, councilmember 2013-2018 and 1992-1996

Q: What has serving in municipal office meant to you?

A: I served as a councilperson, mayor pro-tem, and mayor which made the journey exciting. It has been fulfilling to have gone through a lot of changes and challenges with our city. The most disheartening issue, as with most small communities, was the shortage of money for what needed to be done. It has been amazing to see totally different personalities come together over the years and make decisions for the good of the whole community. I feel the council has made decisions that will be good for the community in the future.

Q: What is one piece of advice you would like to leave with those who are about take municipal office?

A: I believe it is imperative to understand your city's charter and live by it, as well as your municipal codes. Spend time with the council's direct reports to understand the operations of your community and what direct reports do. If you receive complaints, confer with the proper personnel before jumping to conclusions. Understand what is on your meeting agenda before the meeting. Remember your decisions should be for the good of the whole community.

RESEARCH CORNER

ROLE OF PROPERTY TAX IN MUNICIPAL BUDGETS

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

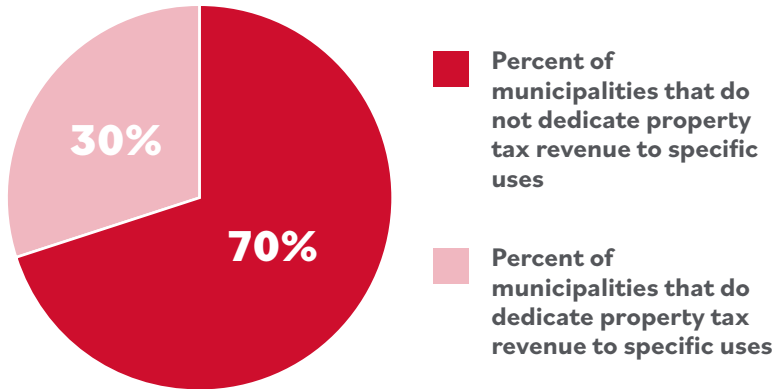
Property tax is a hot issue in Colorado. Soaring home values and the 2020 repeal of the Gallagher Amendment have contributed to substantial increases in property tax bills for residents of many cities and towns across the state.

Property tax increases offer varying levels of revenue growth for municipal governments. In Colorado Municipal League’s (CML) 2023 State of Our Cities and Towns survey, almost 50% of municipalities reported increased property tax revenue from the previous fiscal year. Yet as property tax revenue grows, costs for local governments often increase alongside it due to inflation, increased demand for services, and other factors.

Municipalities are generally less dependent on property tax than other local governments, such as counties and special districts. According to a recent CML survey, property tax revenue makes up less than 25% of municipal budgets for about 90% of responding cities and towns across the state. Some municipalities, such as Edgewater, Montrose, and Salida, don’t levy a property tax at all.

Most municipalities (about 70%) do not dedicate property tax revenue to specific operations or services. Cities and towns that do dedicate property tax, such as Lafayette, Fort Lupton,

PROPERTY TAX DEDICATION



and Superior, commonly dedicate such revenues to public safety, parks and recreation, and libraries.

Various pieces of state legislation enacted recently provide property tax relief to homeowners through exemptions and lowering of the state assessment rate. Two of these measures, Senate Bills 22-238 and 23B-001, require the state to reimburse local governments for some of the reductions in property tax revenue resulting from the bills.

The Colorado Division of Property Taxation recently released property tax revenue backfill reimbursement calculations for 2023. The total state reimbursement owed to local

governments for the 2023 property tax year under SB22-238 and SB23B-001 is almost \$292 million.

About 15% of this money will go to municipalities across Colorado; the rest is allocated to county governments (32%) and an assortment of special districts (53%). These proportions reflect the fact that municipalities generally take in less property tax revenue than other local governments, that there are thousands of special districts across the state, and that fire, ambulance, and health districts were guaranteed 100% backfill under SB23B-001 regardless of property value increases in their district.

STATE PROPERTY TAX BACKFILL REIMBURSEMENT

Reimbursement to special districts: \$152,622,449	Reimbursement to counties: \$94,561,592	Reimbursement to municipalities: \$44,739,446
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Total reimbursements to all local governments: \$291,923,487

Register now for CML Spring District Meetings

By Kharyl Jackson, CML marketing & communications specialist

Spring is the time of year for change, and these changes come alongside some exciting news: Colorado Municipal League will now hold district meetings in the spring. The League also revised the meeting format to begin with a social hour for networking and member connection.

Our new Spring District Meetings are an excellent opportunity for collaboration among municipalities. By working together, local governments can share best practices and foster meaningful progress for their communities. Each municipality brings its unique strengths and knowledge to the table.

Spring District Meetings will begin May 15 and continue throughout the month.

You can find additional information at <https://www.cml.org>. For questions about the meetings, contact Karen Rosen, krosen@cml.org.

These meetings are also a great way to get one-on-one time with CML staff to share issues and challenges that matter most to you and your community. We want to know all about the unique needs of your municipality and how CML can help.

CML members are always welcome to participate in any district meeting that interests them or fits their schedule.

Register for Spring District Meetings at <https://www.cml.org>. We look forward to meeting with members and hearing about what is happening in your city or town! A map of the new districts is available at <https://tinyurl.com/mr2zfty4>.

SCHEDULE

District 1 — Ft. Morgan on May 16

District 2 — Johnstown on May 29

District 3 — Northglenn on May 15

District 4 — Monument on May 30

District 5 — Burlington on May 16

District 6 — Rocky Ford on May 29

District 7/14 — Trinidad on May 17

District 8 — Monte Vista on May 21

District 9 — Cortez on May 20

District 10 — Montrose on May 23

District 11 — Palisade on May 22

District 12 — Granby on May 22

District 13 — Florence on May 23

District 15 — Dillon on May 23

CML EXECUTIVE BOARD

MAY 31 DEADLINE TO APPLY FOR SEAT ON CML EXECUTIVE BOARD

CML is accepting applications for members interested in running for the CML Executive Board. Per CML bylaws, half of the board seats have terms ending this year and will be on the ballot. Additionally, a vacancy in the large category means there will be an additional seat on the ballot. To see what board seats will be on the annual ballot, applicant qualifications, and the application procedure, please visit <https://tinyurl.com/4hhdX577>.

WATER GRANTS

REVOLVING FUND ELIGIBILITY SURVEYS OPENING MAY 1

The 2025 Drinking Water and Wastewater State Revolving Fund Eligibility Surveys will open on May 1. The survey identifies water, sewer, stormwater, and nonpoint source infrastructure improvement needs throughout the state. All municipalities are encouraged to participate. The survey can be completed online at <https://tinyurl.com/5xykjadf>.

CML WEBINARS

ELECTION WEBINAR SERIES: ELECTION DEBRIEF AND TALES TO TELL

Thursday, May 9, at noon

This is the final webinar in CML's 2023-2024 Election Webinar Series. 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 <https://tinyurl.com/4avt5sfe>.

COMPLYING WITH TECHNOLOGY ACCESSIBILITY STATUTES AND RULES

Friday, May 10, from 10 a.m.-noon

Colorado's Office of Information Technology wants to give you a foundation for success as cities and towns strive to comply with our state's technology accessibility rules. Join this online session, targeted for local government and special districts. The recording will be available after the live session, as well. Register at <https://tinyurl.com/5cduvbn>.

EMPOWER EMPLOYEES WITH COLORADO 529 SAVINGS PROGRAM

Tuesday, May 14, at noon

This 30-minute presentation invites you to discover CollegenInvest and how to offer your employees access to 529s in the workplace. Join Kaylynn Hemlock, senior employer plan advisor at CollegenInvest to learn how employees can self-enroll and manage their own accounts to pay for college, trade schools, and apprenticeships nationwide. You'll also learn about the tax benefits for qualified uses for Colorado residents. Plus, discover First Step, a free \$100 contribution for babies born in Colorado since Jan. 2020. This presentation is designed for Human Resources teams and those managing employee benefits programs; however, anyone interested is welcome to attend. Register at <https://tinyurl.com/3dnww46x>.

CML LEGAL CORNER



Impact fee challenges — coming soon?

By Robert Sheesley, CML general counsel

This month, the United States Supreme Court issued a new opinion in a decades-long assessment of the limits of land use exactions (or permit conditions requiring a developer give something to the public) under the Fifth Amendment’s taking clause, which requires “just compensation” for taking private property for a public purpose. The case — *Sheetz v. El Dorado County* — considered whether legislatively-adopted impact fees should be subject to constitutional scrutiny as discretionary project-specific exactions.

Municipalities have addressed impacts to the public resulting from development by imposing discretionary conditions on development approvals that can include the donation of property, the construction of infrastructure like roads and water lines, or a payment of funds. The Supreme Court has developed an “unconstitutional conditions” doctrine in the land use context that restricts local governments from demanding concessions from developers as conditions of approval or as the basis of a permit denial: the concessions must have an “essential nexus” to the government’s land use interest and must have a “rough proportionality” to the development’s impact on that interest.

The *Sheetz* decision has significant meaning for the phrase “development pays its own way” that dominates discussions of funding infrastructure and services to serve new development. Although the exact course is not clear, impact fees must now contend with a similar Takings Clause analysis that applies to other types of exactions.

NOLLAN, DOLAN & KOONTZ

In *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), authorities conditioned the building permit for a beach house on the donation of a public access easement across the property.

Rejecting the condition, the Court held that a demanded concession must substantially further a legitimate government purpose related to land use that would have justified the denial of the permit (i.e., an “essential nexus”).

In *Dolan v. City of Tigard*, 512 U.S. 374 (1994), a city conditioned approval of a retail store and parking lot expansion on the donation a recreational greenway for flood control purposes and the owner’s construction of a bike path to alleviate traffic. Rejecting the greenway using the *Nollan* analysis, the Court criticized using the condition to take property for a public amenity that did not actually further flood control efforts. Rejecting the bike path, the Court held that the city failed to show, for the specific project, that the concession (the bike path) bore a “rough proportionality” to the nature and impact of the development (435 trips a day) on the land use interest (traffic congestion).

The Court extended *Nollan/Dolan* to monetary exactions in *Koontz v. St. Johns River Water Management District*, 570 U.S. 595 (2013). In *Koontz*, the government denied a permit for wetlands development when the developer would not contribute funds to an offsite mitigation project benefiting other property.

SHEETZ V. EL DORADO COUNTY

Sheetz stands for a narrow concept — there is no categorical exemption for legislatively enacted impact fees under the Fifth Amendment and the *Nollan/Dolan*. The Court returned the case to lower courts to assess the constitutionality of a \$23,240 traffic impact fee, calculated according to a rate schedule.

Sheetz left more questions than it answered. The case is neither a prohibition nor an endorsement of legislatively-adopted impact fees. The Court did not consider whether such impact fees “must be tailored with the same

degree of specificity” as the concessions demanded in *Nollan* or *Dolan*.

IMPACT IN COLORADO

In the 1990’s, Colorado’s General Assembly codified the *Nollan/Dolan* requirements of by prohibiting land use conditions that required project-specific property concessions unless conditions of “essential nexus” and “rough proportionality” were satisfied. C.R.S. § 29-20-203. The law specifically exempted a “legislatively formulated assessment, fee, or charge that is imposed on a broad class of property owners.” The General Assembly would have to amend the statute to align with the constitutional standard expressed in *Sheetz*.

Colorado municipalities may be ahead of *Sheetz* regarding any impact fees focused on capital facilities. In 2001, the General Assembly enacted C.R.S. § 29-20-104.5, which authorizes legislatively adopted impact fees that apply to a broad class of property and defray projected impacts on capital facilities. Fees cannot be greater than necessary to defray “such impacts directly related to proposed development.”

Regardless, municipalities must consider the potential that their impact fees may meet additional resistance and potential litigation under constitutional standards. Municipalities should review the viability of any impact fees that relied on Colorado’s statutory requirements or otherwise exceeded the boundaries of *Nollan* and *Dolan*. As the Court stated in *Koontz*, a government “may not leverage its legitimate interest in mitigation to pursue governmental ends that lack an essential nexus and rough proportionality to those impacts.”

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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