



## **TOWN BOARD WORK SESSION**

May 6, 2024 - 5:30 PM

Town Board Chambers, 301 Walnut Street, Windsor, CO 80550

To view Town Board meeting broadcasts, visit  
[www.windsorgov.com/MeetingsOnDemand](http://www.windsorgov.com/MeetingsOnDemand).

### **AGENDA**

**GOAL of this Work Session is to have the Town Board receive information on topics of Town business from the Town Manager, Town Attorney and Town staff in order to exchange ideas and opinions regarding these topics.**

Members of the Public in attendance are asked to be recognized by the Mayor before participating in any discussions of the Town Board

#### **WORK SESSION AGENDA ITEMS**

1. Elected Officials Training - Sam Light, CIRSA
2. Town of Windsor Board Member Legal Fee Reimbursement Policy - D. Money, Town Attorney
3. Town Board Technology Orientation - J. Humphries, Administrative Services Director
4. Future Meetings Agenda

The Town of Windsor will make reasonable accommodations for access to Town services, programs, and activities and will make special communication arrangements for persons with disabilities. Please call (970) 674-2400 by noon on the Thursday prior to the meeting to make arrangements.



# Elected Official Presentation

Town of Windsor • May 6, 2024

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Presented by: Sam Light, CIRSA Deputy Executive  
Director/General Counsel

# Introduction – Overview

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- Suggestions for best practices that will enhance your effectiveness and success as elected officials and members of the governing body – which in turn will reduce risk for the Town and you individually. Topics we will touch on include:
  - The role of public official
  - Organizational structure & liability
  - Transparency requirements
  - Code of Ethics
  - Due process
- Presentation is a training resource only; is not intended to address or provide legal advice on any specific, pending issues.

# One: Commit to the Role of Public Official

- Being a public official means your role has changed:
  - Citizen → government official (24/7!)
  - Outsider → insider
  - Critic/proponent → representative-ambassador-**fiduciary** of the Town as an entity and of the Town Board as an institution.
- In the eyes of the community, you are always a public official.

# The Role of Public Official

- As local government officials, part of your role is delivering good governance which, at root, is based both practically and legally on a few core concepts:
- **Openness & Transparency** (open meetings/records laws);
- **Fundamental Fairness** (due process);
- **Predictability & Evenhandedness** (equal protection, certiorari claims, etc.); and
- **Mutuality of Respect**

## Two: Commit to Supporting the Town Structure

- Another important risk management principle for everyone within the organization is to recognize and honor their role—it is important that everyone “swim in their lane” to avoid risks of liability, including the risk of personal liability.
  - You have protection from personal liability under Colorado Governmental Immunity Act (CGIA) if you are “within the scope of employment” and not acting “willfully and wantonly.”
  - Means everyone needs to know and respect their “job description.”
  - Conduct that is “outside the scope” or “willful and wanton” can result in a loss of governmental immunity and create liability, including the potential of personal liability for you.

# Supporting the Town Structure

- Can also result in potential loss of insurance coverage. Public official liability (POL) policies follow “course and scope” and “willful and wanton” concepts. That is, they extend coverage to elected officials “in their capacity as such” (or similar) and have provisions excluding coverage where liability is based on willful & wanton conduct, or malicious, fraudulent, or criminal acts, etc.
- The CGIA provides a form of qualified immunity, but it is not an absolute shield. Similarly, a federal form of qualified immunity protects government officials from liability for civil damages “insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”
- Recognize that certain liability risks—in particular employment practices and civil rights claims—can be exacerbated by “bad facts” that suggest (or are perceived to be based upon) retaliatory or reactive conduct.

# Supporting the Town Structure

- What is the Town structure? The Town Board “job description”?
- Windsor operates as a home rule Town, with a Board-Manager form of government (Charter Sec. 2-3). Under this structure, there is an allocation of powers (policy/administration) and this is the most common form of municipal structure.
  - **Town Board:** “Governing body” (Governance)(See Charter Sec. 3-1). Mayor is presiding officer and head of government for ceremonial purposes.
  - **Manager:** “Chief administrative officer” of the Town; responsible for administrative affairs and operations (See Charter Art. VIII).
- By charter, ordinance, etc., certain duties are performed by the Town Board and certain duties are performed by staff. These allocations of authority and responsibility not only define the Town’s structure; they define “scope of employment” for everyone in it.

# Supporting the Town Structure

## Where Does the Town Board Focus its Efforts?



## Corporate Governance is:

- Policy-setting, big picture, and forward-looking, rather than dealing with day-to-day operations, and rather than making reactive, case-by-case decisions as issues arise, or after-the-fact.
- Examples: Legislation (ordinances) and policy making, annual budget, decisions regarding corporate assets, appointment and supervision of the Town Board's direct reports, corporate matters reserved to the Board.
- The governing body should:
  - Have longest time horizon—looks down the road.
  - Have broadest interests in mind.
  - Work together in its fiduciary role to protect the Town as an entity and Town Board as an institution.

# Supporting the Town Structure

- From a risk management perspective, role discipline is particularly important in the areas of employee relations and administrative matters assigned to staff.
- Except for the Town Board's direct reports, elected and appointed officials are not employee supervisors. Similarly, neither the Board nor its individual members have authority or responsibility for administrative matters that are assigned to staff. Thus,
  - Don't get individually and improperly involved in personnel issues, or in administrative matters, that have been assigned to staff.
  - Such activities undermine your organizational structure, weaken the Town Board as an institution, impact morale, and can create risks for the Town and for you individually.
  - Remember your Charter: *Section 8-5. Town Board's Relationship to Employees.*

# Supporting the Town Structure

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## **"Section 8-5. Town Board's Relationship to Employees.**

Neither the Town Board, the Mayor, nor any Board Member shall dictate or interfere with the appointment of, or removal of, or the duties of any Town employee subordinate to the Town Manager, the Town Attorney, or the Municipal Judge, or prevent or interfere with the exercise of judgment in the performance of the employee's Town responsibilities. The Town Board, the Mayor, and each Board Member shall deal with such employees solely through the Town Manager, the Town Attorney, or the Municipal Judge as applicable and shall not give orders or reprimands to any such employee. The Town Manager alone shall be responsible to the Town Board for the proper administration of all matters placed in the Manager's charge by or pursuant to this Charter."

# Supporting the Town Structure

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- But, commit, individually and collectively, to conduct that strengthens your structure and the Town Board as an institution:
  - Use your Town Manager as a resource, point of contact, etc.
  - Resolve to speak with one voice to your Manager and other direct reports. This is how the Board achieves clarity, credibility, and accountability to its voice.
  - In the personnel area, focus on the few big picture items appropriate for the Board; e.g., determining overall budget, selecting and supervising Board's "direct reports," setting resource allocation and work plan priorities at the governance level.
- Recognize elected officials act primarily as a group and exercise responsibilities mainly by voting in a public meeting. Therefore, think "We" ... not "I"! If you find yourself about to act in terms of "I" rather than "we" ...that's a red flag.

# Supporting the Town Structure

- Commit to personnel conduct that strengthens the WE - the governing body as an institution. This sometimes requires personal sacrifices, such as:
  - Setting aside a personal interest or agenda when there is lack of support.
  - Accepting “the Town Board has spoken” though one preferred a different outcome.
  - Accepting when “Our work is done”; i.e., the hand-off from Town Board → staff.
  - Recognizing that individual efforts—e.g., liaison and representative roles—are in service of the entity and governing body (the WE).
  - Avoiding perceptions (internal or external) of “getting ahead” of or “speaking for” the voice of the Board where the Board has not yet spoken.

## Three: Commit to Transparency

- Honor the “openness” requirement of the Open Meetings Law (OML). Applies when 3 or more members of governing body “meet” to discuss “public business”.
- The OML requires that such discussions occur at a meeting that is open to the public. And, if action will be taken or a quorum will be present, there must be timely notice.
- A “meeting” includes any gathering to discuss public business, in person, by phone, or electronically.
- In using executive sessions, make sure you comply with the OML and your local rules, and that you honor your fiduciary obligation to protect Town confidential information.
- Questions about other transparency related rules and risks?

# Four: Commit to Ethical Conduct

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- Become familiar with the Town's Code of Ethics (Article V of the Town Charter) and other ethics rules governing your conduct. Make them your "best friend" in addressing ethics issues. Some key areas:
  - Conflicts of Interest: Disclose, recuse, don't vote, leave the room (or move to public seating), and don't further participate (unless clearly and expressly doing so only as a general member of the public).
  - Don't disclose or use any confidential information for any personal or private gain or any other personal or private purposes.
  - Decline gifts that seem connected to your service and abide by gift rules.
  - Avoid situations that may create an appearance of impropriety. Recognize that in matters of ethics, fair or not, sometimes perception = reality and reality = perception.

# Five: Commit to Providing Due Process

- Much of the time you're acting as "legislators"—making general policies that apply generally—or handling Town Board-level business matters.
- But at other times you make decisions affecting a specific applicant's property rights. For these "quasi-judicial" matters—e.g., Board-level land use public hearings—you as the decisionmakers are essentially acting as judges. In this role you have heightened responsibilities to provide "due process" and a failure to provide due process exposes you and the Town to liability.
- So, be familiar with the due process "rules of engagement" that apply to quasi-judicial matters.
- These rules have a familiar source: "No person shall be...deprived of life, liberty, or property, without due process of law."

# Due Process - Tips for Quasi-Judges

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- Limit your involvement to just your participation at the public hearing. That is, irrespective of the level of citizen interest or staff activity, wait until the QJ matter is “ripe” for the governing body.
- Remain neutral; don't make up your mind before the hearing and don't make prejudicial pre-hearing statements.
- Don't engage with one side or the other, or with your fellow quasi-judges, before or outside the hearing (ex parte contacts).
- **Deliberations Matter.** Make sure your deliberations and decision are focused and based on the relevant, existing criteria and not other factors. Use Sam's “Rule of Why.”
- For more on quasi-judicial “rules of engagement”, see these presentations:  
<https://www.cirsa.org/wp-content/uploads/2020/05/Quasi-Judicial-Proceedings.mp4> and  
[https://www.cml.org/docs/default-source/uploadedfiles/events/annual-conference/cml-2022-conference---qj-decision-making.pdf?sfvrsn=b0a4e3a3\\_0](https://www.cml.org/docs/default-source/uploadedfiles/events/annual-conference/cml-2022-conference---qj-decision-making.pdf?sfvrsn=b0a4e3a3_0).

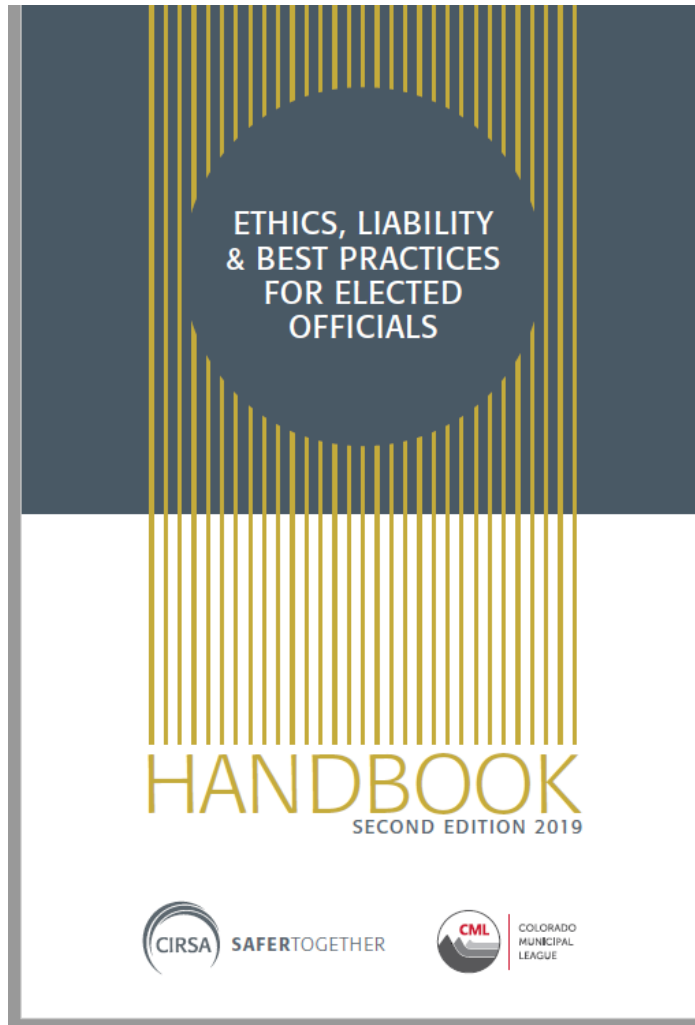
# Concluding Thoughts

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- While there are many aspects of risk management that municipalities and their elected officials cannot fully control—e.g., public perceptions, the actions of claimants, the inclinations of judges, the enactments of federal and state legislatures, etc.—embracing wise leadership in the areas we can control will support your success and reduce your risks. Some examples:
  - Committing to a “no surprises” approach.
  - Committing to great process irrespective of outcome and to considering issues on their merits alone.
  - Committing always to civility & mutuality of respect, and to dealing effectively with discord.
  - Touting your governing body’s, your organization’s, and your staff’s successes—builds faith and trust that your government is getting good things done!
  - Committing to service of the Town as an entity and the governing body as an institution, and embracing the fiduciary, stewardship, and “We” responsibilities of Board membership.

# Resources

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CIRSA Elected Officials Handbook:  
<https://www.cirsa.org/wp-content/uploads/2019/06/EthicsLiabilityBestPracticesHandbookForElectedOfficials.pdf>

CIRSA elected and appointed officials' resources:  
<https://www.cirsa.org/safety-training/elected-officials/>.

CIRSA news & events page:  
<https://www.cirsa.org/news-and-events/news/>

CIRSA Training & Events Calendar:  
<https://www.cirsa.org/news-and-events/events-calendar/>

CIRSA Safety YouTube Channel:  
[https://www.youtube.com/@CIRSA\\_Safety/videos](https://www.youtube.com/@CIRSA_Safety/videos)

# About the Colorado Intergovernmental Risk Sharing Agency (CIRSA)

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- Public entity self-insurance pool for property, liability, and workers' compensation coverages.
- Formed by in 1982 by 18 municipalities pursuant to CML study committee recommendations.
- Not an insurance company, but an entity created by intergovernmental agreement of our members.
- Total membership today stands at 289 member municipalities and affiliated legal entities
- Member-owned, member-governed organization.
- No profit motive – sole motive is to serve our members effectively and responsibly.
- CIRSA Board made up entirely of municipal officials.
- Seek to be continually responsive to the liability-related needs of our membership – coverages and associated risk management services, sample publications, training, and consultation services, as well as specialty services such as home rule charter review.
- We have the largest concentration of liability-related experience and knowledge directly applicable to Colorado municipalities.

# Speaker Bio

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Sam Light is Deputy Executive Director / General Counsel for the Colorado Intergovernmental Risk Sharing Agency (CIRSA). Previously, Mr. Light was a partner with the Denver law firm of Light | Kelly, P.C., specializing in municipal and other public entity law, insurance law and defense of public entities and elected officials. Sam is a frequent speaker on public entity risk issues and municipal law and has practiced in Colorado since 1993.



## MEMORANDUM

**Date:** May 6, 2024  
**To:** Mayor and Town Board  
**From:** Daniel Money, Town Attorney  
**Re:** Town of Windsor Board Member Legal Fee Reimbursement Policy - D. Money, Town Attorney  
**Item #:** 2.

### **Background / Discussion:**

This Policy provides an overview of when the Town of Windsor may provide legal representation or subsequently reimburse a member of the Town Board for the payment of legal fees and costs incurred as a result of any action that occurs within their official capacity and performing their duties in a reasonable course and scope of Town Board activities, or where a Town Board member has been named in the litigation in their individual capacity or as a necessary party due to an interpretation of Town Charter, Code, or State Statutes, and that member acted according to Town direction or policy. Further, this policy takes effect when the related legal fees and costs are not otherwise covered by the Town's insurance policy.

### **Financial Impact:**

May vary

### **Relationship to Strategic Plan:**

### **Recommendation:**

### **CC:**

### **Attachments:**

1. Town of Windsor Legal Fee Policy 2024

## **TOWN OF WINDSOR TOWN BOARD MEMBER LEGAL REPRESENTATION OR LEGAL FEE REIMBURSEMENT POLICY**

**Section 1. Background and Purpose.** This Policy provides an overview of when the Town of Windsor may provide legal representation or subsequently reimburse a member of the Town Board for the payment of legal fees and costs incurred as a result of any action that occurs within their official capacity and performing their duties in a reasonable course and scope of Town Board activities or where a Town Board member has been named in the litigation in their individual capacity or as a necessary party due to an interpretation of Town Charter, Code, or State Statutes, and that member acted according to Town direction or policy. Further, this policy takes effect when the related legal fees and costs are not otherwise covered by the Town's insurance policy.

**Section 2. Scope.** This Policy is intended to cover only the limited situations in which a Town Board member may require legal representation or incur legal fees and costs as a direct result of serving as a Town Board member or has been listed in their individual capacity or as a necessary party to litigation brought against the Town Board member or Town due to interpretations of the Town Charter, Code or State Statutes. This Policy does not apply when the need for legal services is unrelated to service as a Town Board member or where legal fees and costs are otherwise covered by the Town's insurance policy.

For example, this Policy covers situations where a Town Board member is sued in an individual capacity for acts or omissions taken in the course and scope of their service as a Town Board member or is named as a necessary party in litigation involving the Town's interpretation of the Charter, Code or State Statutes, and that the litigation is not subject to the protections provided by the Town's insurance policy. This policy additionally covers situations in which a Town Board member must take legal action to protect themselves or their family members, such as filing a protective order, as a direct result of their participation on Town Board.

**Section 3. Definitions.** For purposes of this Policy, the following terms shall have the following meanings:

"Course and Scope" means acting within the specified duties of a Town Board member pursuant to the Town of Windsor Home Rule Charter, the Town of Windsor Municipal Code, and/or applicable state and/or federal law.

"Legal Fees and Costs" means any fee charged or cost accrued directly related to litigation against the Town Board member needing legal representation. This may include reasonable legal fees charged by the Town member's attorney and any costs related to filing or obtaining court documents, the taking of depositions, or the transcribing of witness testimony. This may also include any fees or costs ordered to be paid by direction of the court.

"Willful and Wanton" means conduct purposely committed in which the member must have realized as dangerous, done heedlessly and recklessly, without regard to consequences or for the rights and safety of others.

**Section 4. Conditions Under Which the Town Will Provide Legal Representation When the Town Board Member Is a Defendant.** The Town may provide, subject to the conditions of this

Policy, legal representation that may be reasonably necessary to defend a claim or lawsuit filed against such Town Board member resulting from any conduct, act, or omission made in the course and scope of that Town Board member's service to the Town Board or where that Town Board member is named in their individual capacity or as a necessary party in litigation involving the Town's interpretation of the Charter, Code or State Statutes.

A. Conditions. The Town may only provide legal representation when:

1. The claim against the Town Board member arose from an act or omission that occurred in the course and scope of that member's duties as a Town Board member or where that Town Board member is named as a necessary party in litigation involving the Town's interpretation of the Charter, Code or State Statutes;
2. The defense of sovereign or governmental immunity is not available under the Colorado Governmental Immunity Act to bar the claim against the Town Board member, or whether this protection is unclear at the time of being named as a defendant;
3. The Town's insurance policy does not otherwise provide coverage for the lawsuit or claim;
4. The Town Board member has not compromised or settled the claim without the consent of the Town;
5. The Town Board member has notified the Town in writing about the claim or lawsuit within fifteen (15) days after being provided notice of such claim or lawsuit. This notification is satisfied if the Town is also named in the lawsuit; and
6. The Town Board member has not knowingly failed to notify the Town of the incident or occurrence that led to the claim within a reasonable time after such incidence or occurrence if such incidence or occurrence could reasonably have been expected to lead to a claim.
7. The Town Board member has not accepted funds for legal defense from private parties for the same occurrence.

B. Willful and Wanton Behavior. In no event shall the Town provide legal representation when the act or omission committed by the Town Board member was willful or wanton or when the act or omission was done in opposition to Town direction involving the interpretation of Charter, Code or State Statutes. The Town Board, with advice from the Town Manager and Town Attorney, with the subject Town Board member recusing him or herself, shall make the determination if the act or omission was willful or wanton or in opposition to Town direction involving the interpretation of Charter, Code or State Statutes.

C. Outside Counsel. The Town may pay reasonable legal fees and costs of defense and/or representation. The Town Board may determine to limit the total amount of legal

fees and costs to be reimbursed pursuant to this Policy, and any expenditures extending beyond the current year shall be subject to annual appropriation.

Section 5. Conditions Under Which the Town Will Reimburse Legal Fees and Court Costs When the Town Board Member Is the Plaintiff. The Town may provide, subject to the conditions of this Policy, reimbursement of legal fees and costs incurred by such Town Board member who files a claim or lawsuit against a third-party when the claim or lawsuit becomes necessary to protect the health and safety of such member, the health and safety of the member's family, or the protection of the member's personal/real property that becomes necessary within the scope of service as a member of the Town Board.

A. Conditions. The Town will only reimburse legal fees when, as a direct result of serving as a Town Board member, the member has been subject to:

1. Being required to file claims or lawsuits subject to:
  - a. Harassment;
  - b. Threats of bodily or mental injury to the Town Board member, or the Town Board member's family; or
  - c. Threats of harm to the Town Board member's property interests.
2. Any reasonable fears of harassment or threats that will result in actual bodily or mental injury to his or her person, family members, or the member's personal or real property, OR such harassment or threats actually results in such injury;
3. In response to such reasonable fears or in response to actual injury, the Town Board member files a claim or lawsuit seeking protection or reimbursement from such injury;
4. The Town's insurance policy does not otherwise provide coverage for the lawsuit or claim; and
5. The Town Board member provides notice, as soon as practical, of his or her intention of filing a claim.

B. Legal Fees and Costs. The Town may reimburse the Town Board member for reasonable legal fees and costs related to the prosecution of the claim or lawsuit. The Town Board may determine to limit the total amount of legal fees to be reimbursed pursuant to this Policy, and any expenditures extending beyond the current year shall be subject to annual appropriation.

Section 6. Conflict With Provisions of Insurance Policies. The provisions of this Policy do not constitute a policy of insurance, and nothing contained in this Policy shall be construed to modify or amend any provisions of any insurance policy where any Town official or employee thereof is the named insured or a covered party.

Section 7. No Liability to Third Parties. This Town Board Policy shall inure only to the benefit of Town Board members, and this Policy shall not be construed so as to expand, in any way, the Town's liability to third-party claimants, whether under the provisions of the Colorado Governmental Immunity Act or otherwise, or otherwise create any third-party beneficiaries.



## FUTURE TOWN BOARD MEETINGS

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|----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| May 13, 2024<br>5:30 p.m.  | Town Board Work Session<br>Grove Dedication (5 pm)<br>Board/Manager/Attorney Monthly Meeting<br>MOU with DOLA for Main Street Program<br>Mobile Food Vendor Code Update |
| May 13, 2024<br>7:00 p.m.  | Town Board Regular Meeting                                                                                                                                              |
| May 16 & 17, 2024          | Town Board Strategic Plan Retreat<br>Sylvan Ranch, Loveland, CO                                                                                                         |
| May 20, 2024<br>5:30 p.m.  | Town Board Work Session<br>Police Department Over Hire Discussion<br>Red Light Cameras<br>Facilities Over Hire Discussion                                               |
| May 27, 2024               | Canceled – Memorial Holiday                                                                                                                                             |
| June 3, 2024               | Canceled – 1 <sup>st</sup> Monday                                                                                                                                       |
| June 10, 2024<br>5:30 p.m. | Town Board Work Session<br>Board/Manager/Attorney Monthly Meeting<br>Metro/Special District 101 Discussion                                                              |
| June 10, 2024<br>7:00 p.m. | Town Board Regular Meeting                                                                                                                                              |
| June 17, 2024<br>5:30 p.m. | Town Board Work Session<br>Sewer Plant expansion discussion with JACO and Hensel Phelps                                                                                 |
| June 24, 2024<br>5:30 p.m. | Town Board Work Session                                                                                                                                                 |
| June 24, 2024<br>7:00 p.m. | Town Board Regular Meeting                                                                                                                                              |
| July 1, 2024               | Canceled – 1 <sup>st</sup> Monday                                                                                                                                       |
| July 8, 2024<br>5:30 p.m.  | Town Board Work session<br>Board/Manager/Attorney Monthly Meeting                                                                                                       |
| July 8, 2024<br>7:00 p.m.  | Town Board Regular Meeting                                                                                                                                              |

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|----------------------------|-----------------------------------------|
| July 15, 2024<br>5:30 p.m. | Town Board Work Session                 |
| July 22, 2024<br>5:30 p.m. | Town Board Work Session                 |
| July 22, 2024<br>7:00 p.m. | Town Board Regular Meeting              |
| July 29, 2024              | Canceled for the 5 <sup>th</sup> Monday |

**Future Work Session Topics**

- Budget: August 5<sup>th</sup> – Revenue Estimates
- Budget: September 9<sup>th</sup> – Staffing Needs
- Budget: September 16<sup>th</sup> – Capital Improvement Projects
- Budget: October 5<sup>th</sup> (Saturday) – Operating Requests
- Budget: October 21<sup>st</sup> – Utility Rates for 2025
- Budget: Work Session – Budget Wrap-Up/Revisions