



TOWN BOARD WORK SESSION

May 9, 2022 - 5:30 PM

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

To view Town Board meeting broadcasts, visit
www.windsorgov.com/MeetingsOnDemand.

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

AGENDA

1. Board/Manager/Attorney Monthly Meeting
5:30 - 6:00 pm
2. Introduction to Colorado FAMLl employee leave law, local government employer options - I. McCargar, Town Attorney; J. Butcher-Trujillo, Human Resources Director
3. Water lawyer update - I. McCargar, Town Attorney
Brad Grasmick, Esq.
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.



MEMORANDUM

Date: May 9, 2022
To: Mayor and Town Board
From: Ian McCargar, Town Attorney
Jennifer Butcher, HR Director
Re: Introduction to Colorado FAMLI employee leave law, local government employer options - I. McCargar, Town Attorney; J. Butcher-Trujillo, Human Resources Director
Item #: 2.

Background / Discussion:

The Colorado FAMLI Act is a voter-approved statute that allows employees paid leave for certain medical, military and family-related purposes. Local government employers have certain options for participation under the law. During this work session, staff wishes to introduce the topic, discuss the options and consider recommended deadlines for taking required steps.

Colorado voters approved Proposition 118 in November 2020, paving the way for a state-run Paid Family and Medical Leave Insurance (FAMLI) program. Colorado's FAMLI program will be administered by the Division of Family and Medical Leave Insurance. FAMLI is different from FMLA due to the 'paid leave nature' of the program.

Local government employers' three options to participate in the FAMLI program:

1. Participate fully in FAMLI

The Town pays the premiums by 0.45% of wages and remits the employees' share of the premium (0.45% of wages) and submits wage data to the FAMLI Division once a quarter. Employees will see payroll deduction starting January 1, 2023 and be able to apply for FAMLI benefits starting January 1, 2024.

2. Decline all participation in FAMLI

The Town Board must formally vote to not participate and then The Town will notify the FAMLI Division of the decision. The decision to opt out must be revisited at least every eight years. Employees still have the right to participate in the FAMLI program even if the vote is for the Town to not participate by self-electing coverage the same way self-employed workers would. The participating employee would need to report their own wages and remit the employee's share of the premium (0.45% of wages every quarter) by creating an account in the FAMLI system once it's deployed this fall. The Town would not participate in employee opt-in under this option.

3. Hybrid - - Town declines employer participation in FAMLI, but Assists Employee Participation

If the Town Board votes to decline, the Town still has the option to assist its employees who want to individually participate in FAMLI. This means the Town would facilitate voluntary payroll deductions and streamlining the process for employees by remitting the employee share of the premium, and submitting the wage data once a quarter to the FAMLI Division. The deduction on employee's paychecks would start January 1, 2023 and employees would be eligible to apply for benefits in 2024.

Timing. In order to meet the statutory and regulatory requirements for opting out, Town Board must take official action by the regular meeting scheduled for June 27, 2022. This deadline is built to assure

employees who later choose to opt in have enough time to make their choices. Before taking official action, the law requires the customary transparency for adopting a resolution.

Further input from employees. HR will be surveying Town employees over the next week or so to gather input for Town Board prior to June 27, 2022.

Other benefits. In 2020, the state legislature enacted the Healthy Families and Workplaces Act (HFWA) in 2020, which requires all Colorado employers to provide at least 48 hours per year of fully paid sick leave to all employees.

The Town of Windsor meets the standards required by both of these new laws, as shown below:

FAMLI	HFWA	TOWN OF WINDSOR
Up to 12 weeks of partial rate of pay for leave for: Employees own serious health condition, serious health condition of a family member, care of a new child (birth, foster placement, adoption, caring for child within the first year from birth, making arrangements for military deployments or immediate safety needs and impact of domestic violence/sexual assault.	Employees must receive one (1) hour of sick leave per 30 hours worked, up to 48 hours per year at normal rate of pay for any mental or physical illness, injury, or health condition that prevents work; doctor visits; preventive care; victims of sexual or domestic violence. Leave accrues from year to year but an employer can deny use of more than 48 hours in one year.	Full-time employees accrue sick/safe time (paid at 100% of normal rate of pay) at 6.67 hours per month (80 hours per year), up to 480 hours (12 weeks) for the same reasons as required by FAMLI. Part-time, Seasonal and Temporary employees will receive one hour of paid sick leave for every 30 hours worked, up to a maximum of 48 hours per year and are allowed to carry over unused leave to the next year. Full-time employees also earn vacation time of 88 to 160 hours per year, which accrue. Town of Windsor has a Shared Leave Program. Full-time employees having worked for the Town for a minimum of one year and at least 1250 hours during the 12 months prior to requesting shared hours or offering to share hours are eligible to participate in the program. No premium
Premium of .9% of Employees Salary	No premium	No premium

The Colorado Healthy Families and Workplace Act (HFWA) is mandatory for all Colorado employers, and the Town of Windsor already provides almost double the amount of leave required by that Act for full-time employees, and allows part-time employees to accrue the leave they earn from year to year and use more than 48 hours in a year.

The Town also offers employees long-term and short-term disability benefits. HR will provide further information on how these programs work.

On the other hand, FAMLII is not mandatory for local governments and Town Board is required to determine which option they elect to implement (please see the three options listed above). An important consideration, that will be discussed during the May 9, 2022 work session, is that the state program only pays a portion of the employee's wages. HR will have some illustrative examples of how the benefits work under FAMLII for your consideration.

Effect on existing benefits. If the Town Board votes to opt in the state-run FAMLII program, the Town will only pay for the state-mandated 48 hours per year of sick leave and employees requiring more would need to file a claim with the state FAMLII program to be reimbursed for lost wages above 48 hours each year. There would no longer be any accrual of leave as the state insurance program would replace the Town's sick leave after the first 48 hours.

If the Town Board does opt out, employees may still voluntarily opt into the state FAMLII program on their own, at a cost of 0.45% of their annual salary. Please note that their benefit is the same even if Town Board opts out; employees will not be required to pay more if we opt out. Employees who opt in must pay into the program beginning January 2023, agree to stay in for at least 3 years, and cannot apply for benefits until January 2024. If the Town has opted out, and an employee opts in on their own, the Town would still pay for leave under its current policies.

Mr. Hale will provide his further thoughts on this during the work session. HR Director Jennifer Butcher-Trujillo and Town Attorney Ian D. McCargar will be available as well.

Financial Impact:

To be determined.

Relationship to Strategic Plan:

Fiscal responsibility

Recommendation:

Discuss FAMLII, local government employer options, direct staff

CC:

Shane Hale, Town Manager

Jennifer Butcher-Trujillo, Human Resources Director

Attachments:

1. 4-2022 CML bulletin re FAMLII opt-out



COLORADO
MUNICIPAL
LEAGUE

April, 2022

APRIL
2022

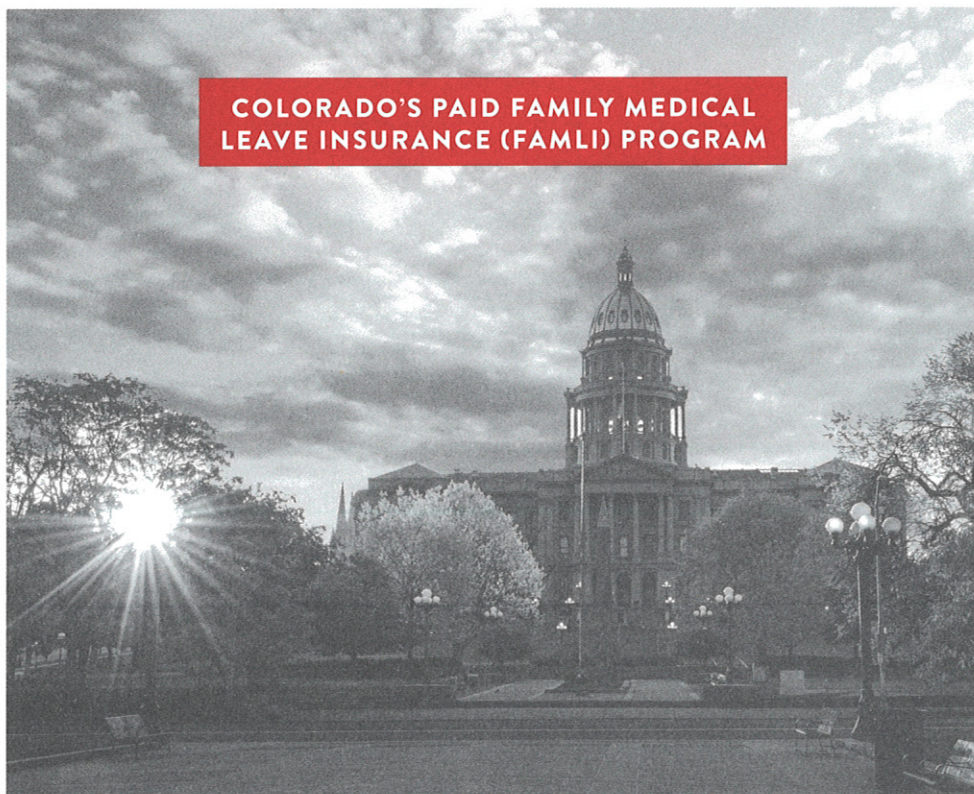
Knowledge

KNOWLEDGE NOW – PRACTICAL RESEARCH ON TIMELY TOPICS

Briefing

- The FAMLI program provides employees with 12 weeks of paid leave to take care of themselves or a family member
- Participation in FAMLI is automatic for municipalities unless they formally opt out
- Opt-out votes and notice to the FAMLI Division should occur before the end of 2022 to avoid premium assessments in 2023
- Employees can take part in FAMLI even if their municipality declines to participate

COLORADO'S PAID FAMILY MEDICAL LEAVE INSURANCE (FAMLI) PROGRAM



FAMLI: WHAT'S RIGHT FOR YOUR CITY OR TOWN?

URGENT ACTION IS NEEDED. Colorado municipalities must make immediate decisions regarding their participation in Colorado's Paid Family Medical Leave Insurance (FAMLI) program. Participation will have a substantial impact on your municipal budget, operations, and employee relations. **Participation is automatic for any municipality unless your council or board formally votes to decline participation or opt out. The**

FAMLI Division must be notified by the end of 2022 to avoid premium liability. CML is not encouraging municipalities to participate or to decline participation in the program. Each municipality should assess the program for themselves. Opting out now does not prevent later participation, and employees can still participate individually and should receive the full benefit of the program.

Continued on page 2

Colorado Municipal League
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What is FAMLI?

In November 2020, Colorado voters approved Proposition 118, which paved the way for a state-run Paid Family Medical Leave Insurance (FAMLI) program. FAMLI is codified at C.R.S. §§ 8-13.3-501 to -524, and is administered through the Colorado Department of Labor and Employment, Division of Family and Medical Leave Insurance (famli.colorado.gov). Premiums will be collected (including employer and employee shares) starting **Jan. 1, 2023**, and benefits will be available starting **Jan. 1, 2024**.

FAMLI provides covered employees with 12 weeks of paid leave to take care of themselves or a family member during life events like injury, serious illness, or pregnancy. An additional 4 weeks are available to employees who experience pregnancy or childbirth complications. Payments would be a rate below the employee's weekly rate, as described below. Leave can be taken together or intermittently. FAMLI benefits are portable between jobs.

FAMLI also provides job protection for employees who were employed for at least 180 days before the protected leave occurs. This means that an employer must return the employee to the same or an equivalent position with equivalent benefits, pay, and other terms and conditions following the leave. Employers must also maintain healthcare benefits during the leave, but the employee would have to continue to pay their share of the cost. Accrual of seniority and other benefits are not protected.

FAMLI is a separate program from the paid sick leave requirements of the Healthy Families and Healthy Workplaces Act and the Federal Family and Medical Leave Act (FMLA).

What will participation in FAMLI cost my city or town?

Participating employers and employees will contribute to premiums for FAMLI, and municipalities will bear the administrative costs of compliance. Premiums will be 0.9% of an employee's wage (HB22-1305 is pending in the General Assembly and

would reduce this to 0.81% for the first six months of the program). Wages and exempt items are determined under administrative rules (7 CCR 1107-1:1.5.3 and 1.5.4). A municipality can expect to contribute an amount equal to at least 0.45% of its current employee "wages" on an annual basis and possibly up to 0.90% of that figure. The FAMLI Division will provide notice of expected premiums and publish due dates and guidance on premium remittance.

A participating municipality (unless it has fewer than 10 employees) must remit 100% of the premium for each employee. The employer must directly contribute at least 50% of that amount (i.e., 0.45% of the employee's wage) and may require the employee to deduct the remaining 50% from their paycheck (i.e., employees would see a deduction of about 0.45% from their pay). An employer can choose to contribute part or all of the employee portion of the premium. For a municipality with fewer than 10 employees there is no "employer share"; the municipality can require the employee to deduct up to 50% but can also choose to contribute part or all of the employee portion.

An employer is responsible for any error it makes in calculating, deducting, and remitting premiums, including the employee portion.

If a municipality does not participate in FAMLI, the employee would be solely responsible for 50% of the premium if the employee elects to participate individually. The municipality can, but need not, deduct the employee portion from payroll and remit it to the state. If the municipality is involved in deducting or remitting the employee portion, any error would be the municipality's responsibility.

Why would my city or town not participate in FAMLI?

Declining participation in the FAMLI program is a significant decision, but it must be made quickly to meet FAMLI's initial deadlines. If a municipality does not opt out now, it must wait three years to decline participation. If a municipality opts out now, it can opt in any future year. It must renew its decision to decline participation at least every eight years.

The cost of the FAMLI program may outweigh the benefits to the municipality and its employees. FAMLI program participation will increase municipal budgets by at least 0.45% of its employees' wages annually and potentially more. FAMLI also includes additional administrative work for finance and human resources staff and raises employer liability concerns. Employees who want the paid benefits of FAMLI can participate individually at no greater personal cost and without imposing a cost on the municipality and other employees who do not want to participate.

Municipalities may want to make a local decision as to how to provide employee benefits and protections. Participation in the FAMLI program could conflict with existing employer benefits plans or collective bargaining agreements. Alternatives, like a private plan pursuant to C.R.S. § 8-13.3-521 (or adopted independently after opting out of FAMLI by a vote) or a supplemental insurance program, could be a better fit for your organization.

Because FAMLI is a new program and the program rules have not been fully established, a municipality may choose to be cautious and opt out initially so it can evaluate the program in operation to determine if it is the best choice for the municipality. By opting out, a municipality can determine budgetary and employment impacts locally. Because FAMLI assigns the costs of errors in calculating and remitting premiums to employers, a municipality may wish to wait until procedures can be developed to ensure compliance. Finally, the FAMLI Division has yet to issue all necessary administrative rules, including explaining the interplay between the program and other federal and state laws.

What is best for our employees?

Employees can still participate individually (C.R.S. § 8-13.3-514) and should receive the same benefits, even if the municipality declines participation. Benefits rules to be issued this year will hopefully confirm that benefits will apply equally. The cost to the employee who wants FAMLI coverage is the same whether the employer



Employees can participate in FAMLI individually and should receive the same benefits, even if their municipality declines participation.

participates or not; employees who do not want this coverage would not have to pay any premium.

Employees who choose to participate individually when the municipality opts out would be required to remit their premium share directly to the FAMLI Division unless the municipality chooses to handle this payment by deducting the premium from the employee's pay or paying it on the employee's behalf.

Employees may benefit from a municipality opting out because the municipality would have no financial responsibility for 50% of the premium. The municipality could choose to use that savings to benefit employees directly, such as by paying for some or all of the 50% premium for employees who participate individually.

Employment protections under the statute do not apply if a municipality declines participation in FAMLI, but the

Federal Family and Medical Leave Act (for employers with 50 or more employees in the current or prior year) and any local standards would still apply.

What are the costs and benefits for employees?

Employees bear up to 50% of the premium (or 0.45% of their weekly wage) if the municipality participates or the employee chooses to participate individually. Employees who do not want to participate must still pay a premium if the municipality does not decline participation. Job protections defined in C.R.S. § 8-13.3-509, apply only if a municipality participates in the program.

By statute, an employee would receive a weekly benefit under FAMLI in the amount of 90% of their weekly wage that is equal to or less than 50% of the state average weekly wage, and 50% of their weekly wage that is more than 50% of the state

average weekly wage. Weekly benefits are capped at 90% of the state average weekly wage until 2025, when the maximum weekly benefit is limited to \$1,100 per week. The FAMLI Division suggests that an employee would receive benefits between 37% (\$1,100 based on a weekly wage of \$3,000 or more), 55% (\$1,100 based on a weekly wage of \$2,000), 68% (\$1,018 based on a weekly wage of \$1,500), 77% (\$768 based on a weekly wage of \$1,000), and 90% (\$450 based on a weekly wage of \$500) of the employee's weekly wage.

Benefits rules have not been finalized. The FAMLI Division provides a premium and benefits calculator on its website. Federal income tax may apply to benefits, but benefits are exempt from state income taxes.

How do we opt out?

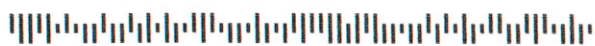
All municipalities are included in FAMLI by default, regardless of size. A municipality



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*****AUTO**ALL FOR AADC 800

Ian McCargar, Town Attorney
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301 Walnut St
Windsor, CO 80550-5141

1823 3 3

Knowledge

KNOWLEDGE NOW — PRACTICAL RESEARCH ON TIMELY TOPICS

Colorado's Paid Family Medical Leave Insurance (FAMLI) program

may opt out and avoid the employer portion of premiums by a vote of a governing body. The opt-out procedure is governed by C.R.S. § 8-13.3-514 and administrative rules at 7 CCR 1107-2. Declination takes effect 180 days after the vote so employees can elect to individually participate in the FAMLI program if they choose. A municipality cannot decline part of FAMLI's provisions.

Pre-vote notices: The municipality must give prior notice of the vote in the same manner it notices other public business. Under the Colorado Open Meetings Law, this means at least 24 hours advance notice must be posted. Local requirements may apply.

Special notice must be provided to employees in writing before the vote indicating the voting process and providing an opportunity to submit comments to the governing body. Information about individual opt-in may also be required (see 7 CCR 1107-2: 2.6.A.4), although those standards likely apply only to post-vote notices. The rules do not indicate that email communication is not appropriate (7 CCR 1107-2: 2.6.A.2). Municipalities might consider both email and written communications to employees.

A description of the voting process could identify the local requirements for the governing body to approve an action, including the potential to make a motion, council or board deliberation, and vote requirements. Municipalities could also consider allowing both oral testimony at the meeting and a written comment option.

Hearing and vote: The vote must occur at least 180 days before the declination will be effective (This deadline appears to apply to an initial declination before the program even begins in 2023, but the rules are not clear). While a formal hearing is not required, the rules require the governing body to take testimony before voting. This could include both verbal and written comments from any interested person.

The rules require that the vote follow the entity's procedures for formal votes and be a "decision by an affirmative vote of the local government's governing body



to decline participation in the [FAMLI] program" (7 CCR 1107-2: 2.6.A). The rules do not indicate that any formal approval mechanism is required, unless one is required by local standards. A motion, resolution, or ordinance may suffice but could modify the "voting process" that needs to be detailed to employees in the advance notice. At a minimum, the document should probably include language indicating that notice was given to employees and the public as required, testimony was taken, and that the body voted affirmatively to decline participation in the FAMLI program.

Post-vote actions: After a vote to decline participation, the municipality must provide several notices. First, the municipality must provide written notice to the FAMLI Division "memorializing the decision" and identifying the date of the vote. The rules are silent on the timing of notice to the FAMLI Division; prompt action is advised. The FAMLI Division has suggested that a letter would be sufficient and expects to have an electronic portal for submissions ready in late 2022. A certified record of the meeting (e.g., minutes showing the motion, vote, and date; resolution; ordinance) with a cover letter would provide a more concrete explanation of the vote and demonstrate compliance with other requirements (7 CCR 1107-2: 2.5.A and, 2.6.A).

Second, the municipality must provide written, individual notices to employees within 30 days after the vote. This notice must indicate the vote to decline coverage and "the impact toward FAMLI, or other paid family and leave insurance coverage" (7 CCR 1107-2: 2.6.A.3). The notice must explain the difference between the FAMLI program and any private plan offered by the local government and identify FMLA eligibility and other local benefits.

The employee notice (and possibly the pre-vote notice) must also provide information on the right of the employee to voluntarily opt in to FAMLI pursuant to C.R.S. § 8-13.3-514, and FAMLI Division contact information (7 CCR 1107-2: 2.6.A.4).

Third, the municipality must post the post-vote notice in a "conspicuous and accessible place in each establishment where employees are employed" (7 CCR 1107-2: 2.6.A.4). Email notice or posting on a web- or app-based platform is recommended and is required for employers with no physical workplace and for employees who work through a web- or app-based platform or work remotely.

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Special Notice Standards: The post-vote notice, at a minimum, and potentially all notices must be provided in English and any language representing the first language spoken by at least 5% of the municipality's workforce.

The FAMLI Division will make posters and notices available, but municipalities must request the materials and should expect to pay printing and mailing costs. Notices and posters in languages other than English or Spanish must be specially ordered.

Declination renewal: The declination must be renewed every eight years or the municipality is automatically added back in to FAMLI (7 CCR 1107-2: 2.5.C). The rules require "a similar vote process and margin." That likely means the same number of votes needed to approve an action, not passage by the exact same number of votes as the prior declination.

How do we opt back in to the FAMLI program?

A municipality that previously opted out of the FAMLI program may opt back in by affirmative vote "of a quorum of the governing body" at the beginning of the annual local budgeting cycle, as determined by the municipality (7 CCR 1107-2: 2.5 and 2.6). Coverage would begin no later than the quarter after the vote and submission of one quarter's premium. Municipalities who opt into FAMLI must stay in the program for at least three fiscal years.

Opting back in also involves employee notice requirements. No more than 90 days after the vote, individual employees who opted in must be personally notified in writing that the municipality has opted back into FAMLI. The notice must include the date for the municipality's first submittal of quarterly premiums and any potential lapses or changes in benefits eligibility. The local government must publicly post a notice of the date the employer will begin paying FAMLI premiums and when coverage is expected to start. Employees who did

not opt in must also be notified in writing, both publicly and personally, no later than 180 days after the vote to opt back into FAMLI. The notice must contain a detailed explanation of employee rights under the FAMLI program, including program requirements, benefits, claims processes, payroll deductions, premiums, and employee protections like the right to job protection and benefit continuation and protection against retaliatory or discriminatory information, among other things.

Anticipate updates to FAMLI program.

Municipalities must act now to determine if they want to participate in the FAMLI program, but they should expect updates throughout 2022. Several administrative regulations have yet to be finalized, including benefits rules and the interaction between FAMLI and other federal and state leave laws. The Colorado Supreme Court is also considering a court challenge to the premium requirement that might be decided this year.



MEMORANDUM

Date: May 9, 2022
To: Mayor and Town Board
From: Ian McCargar, Town Attorney
Re: Water lawyer update - I. McCargar, Town Attorney
Item #: 3.

Background / Discussion:

Special Counsel Brad Grasmick will be joining us to provide an update on the matters his office is handling for the Town, and to give us a brief Kern Board 101. Brad has served as our lead water counsel for close to 15 years, and is fully familiar with the Town's water rights history.

Financial Impact:

None

Relationship to Strategic Plan:

Infrastructure, water

Recommendation:

Receive information, ask questions.

CC:

Shane Hale, Town Manager
John Thornhill, Community Development Director

Attachments:

None



MEMORANDUM

Date: May 9, 2022
To: Mayor and Town Board
From: Karen Frawley, Town Clerk
Re: Future Meetings Agenda
Item #: 4.

Background / Discussion:

Not applicable

Financial Impact:

Not applicable

Relationship to Strategic Plan:

Not applicable

Recommendation:

Not applicable

CC:

Not applicable

Attachments:

1. 2022 Future Meetings Agenda



FUTURE TOWN BOARD MEETINGS

May 14, 2022 9:00 a.m. – 10:30 a.m.	Mayor's Legislative Breakfast Town Hall Board Chambers
May 16, 2022 5:30 p.m.	Town Board Work Session Benchmarking Presentation
May 19 – 20, 2022 All-day both days	Town Board Strategic Planning Retreat
May 23, 2022 5:30 p.m.	Town Board Work Session Meet the Board Regional Transportation Discussion
May 23, 2022 7:00 p.m.	Town Board Regular Meeting
May 30, 2022	Canceled – Memorial Day Holiday
June 6, 2022 5:30 p.m.	Town Board Work Session Early Hires for Police Department
June 13, 2022 5:30 p.m.	Town Board Work Session Board/Manager/Attorney Monthly Meeting Packet and CivicClerk Review
June 13, 2022 7:00 p.m.	Town Board Regular Meeting
June 20, 2022 5:30 p.m.	Town Board Work Session
June 27, 2022 5:30 p.m.	Town Board Work Session Meet the Board
June 27, 2022 7:00 p.m.	Town Board Regular Meeting
July 4, 2022	Cancelled – Independence Day Holiday
July 11, 2022 5:30 p.m.	Town Board Work Session Board/Manager/Attorney Monthly Meeting
July 11, 2022 7:00 p.m.	Town Board Regular Meeting
July 18, 2022	Town Board Work Session

5:30 p.m.

July 25, 2022

5:30 p.m.

Town Board Work Session

Meet the Board

July 25, 2022

7:00 p.m.

Town Board Regular Meeting

August 1, 2022

5:30 p.m.

Town Board Work Session

August 8, 2022

5:30 p.m.

Town Board Work Session

August 8, 2022

7:00 p.m.

Town Board Regular Meeting

August 15, 2022

5:30 p.m.

Town Board Work Session

August 22, 2022

5:30 p.m.

Town Board Work Session

August 22, 2022

7:00 p.m.

Town Board Regular Meeting

August 29, 2022

Canceled – Fifth Monday

Future Work Session Topics

- DDA Entertainment District
- Telecom Code (Pending FCC Rules)
- Regional Water Treatment Plant Site
- Economic development/retail needs based on population levels (following retail assessment)
- Land Use Code Update
- Discuss Wells Used For Geologic Sequestration of Carbon Dioxide draft ordinance