

Posted on October 10, 2022 at: _____



TOWN OF WIGGINS

**BOARD of TRUSTEES
WORK SESSION**

October 12, 2022 at 7:00 P.M.

**304 CENTRAL AVENUE
WIGGINS, CO 80654**

***THE PUBLIC IS INVITED & ENCOURAGED TO ATTEND THE MEETING VIA ZOOM
OR WATCH ON YOUTUBE IF THEY ARE UNABLE TO ATTEND MEETING IN PERSON***

GO TO THE FOLLOWING SITE <https://us06web.zoom.us/j/88202736268> FOR THE MEETING LINK

WORK SESSION AGENDA

<u>AGENDA TOPIC</u>	<u>ESTIMATED TIME</u>
1. Discussion on the Approval of the 2023 Operating Plan and Budget for the Roberts 81 Business Improvement District	30 minutes
2. Discussion on Whether or Not to Opt Out of the State Paid Family and Medical Leave Insurance (FAMLI) Program	30 minutes
3. Discussion on Draft 2023 Town Budget	30 minutes
4. Other Items/Updates	45 minutes
a. Main Street 3 rd to 5 th Project Update	
b. USDA Water & WWTF Project Update	
c. Discussion on Recent Resident Concerns on Water Projects, Water Rates and Meter Readings	
5. Future Agenda Topics	5 minutes

The Board of Trustees may adjourn for a brief Special Meeting after the Work Session



STAFF SUMMARY

Board of Trustees Work Session October 12, 2022

DATE: October 4, 2022

AGENDA ITEM NUMBER: 1

TOPIC: Discussion on the Approval of the 2023 Operating Plan and Budget for the Roberts 81 Business Improvement District

STAFF MEMBER RESPONSIBLE: Deborah Lee, Town Clerk

BACKGROUND:

The Roberts 81 Business Improvement District (Roberts 81 BID) operates under the authorities and powers allowed under the Business Improvement District Act, Section 31-25-1201, *et seq.*, C.R.S., as amended, and as further described and limited by this Operating Plan. Section 31-25-1211, C.R.S requires the Roberts 81 BID to file an operating plan budget to the Town Clerk no later September 30th each year. Under the statute, the Town is to approve the operating plan and budget within 30 days of the submittal of all required information.

Pursuant to the provisions of the Business Improvement District Act, Section 31-25-1201, *et seq.*, C.R.S., as amended, this Operating Plan specifically identifies: (1) the composition of the Board of Directors; (2) the services and improvements to be provided by the District; (3) the taxes, fees, and assessments to be imposed by the District; (4) the estimated principal amount of the bonds to be issued by the District; and (5) such other information as the Town may require.

As may be further articulated in prior years' Operating Plans, the ongoing and/or contemplated purposes of this District for 2023 include financing, acquisition, construction, completion, installation, replacement and/or operation and maintenance of all of the services and public improvements allowed under Colorado law for business improvement districts. The District will own public improvements as constructed if such improvements are not otherwise dedicated to other public entities for operation and maintenance. It is anticipated that the District will enter into various agreements as required to facilitate the funding, construction, operation and maintenance of public improvements. The District is not currently a party to any significant active contracts or agreements. The District may also enter into agreements with other districts encompassing adjacent developments in order to cooperate on infrastructure projects.

Earlier this year, Roberts 81 requested the addition of another tract, Tract 6 was included in the Roberts 81 BID. The Board approved this inclusion on July 27, 2022.

SUMMARY:

The Roberts 81 BID was originally approved by the Board of Trustees in 2018 with Ordinance No. 09-2018. Under the State statute, the Town is to approve the operating plan and budget within 30 days of the submittal of all required information. The submittal was provided to the Town Clerk on September 28, 2022. This Operating Plan and subsequent Operating Plans previously approved by the Town are incorporated herein by reference, and shall remain in full force and effect except as specifically or necessarily modified hereby.

FISCAL IMPACT:

Approving the Roberts 81 BID has no impact on the Town's adopted budget.

APPLICABILITY TO TOWN OBJECTIVES AND GOALS TO PROVIDE SERVICES:

Approving the resolution complies with the Board of Trustees goal of supporting new commercial development in the Town of Wiggins.

QUESTIONS/INFORMATION REQUESTED FROM THE BOARD OF TRUSTEES:

- Does the Board of Trustees have any questions of Staff

2023
OPERATING PLAN AND BUDGET

ROBERTS 81
BUSINESS
IMPROVEMENT
DISTRICT

Town of Wiggins, Morgan County, Colorado

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2023
OPERATING PLAN FOR THE
ROBERTS 81 BUSINESS IMPROVEMENT DISTRICT

1. PURPOSE AND SCOPE OF THIS DISTRICT

A. Requirement for this Operating Plan. The Business Improvement District Act, specifically Section 31-25-1211, C.R.S., requires that the Roberts 81 Business Improvement District (the “District”) file an operating plan and budget with the Town Clerk no later than September 30 of each year.

Under the statute, the Town is to approve the operating plan and budget within 30 days of the submittal of all required information.

The District operates under the authorities and powers allowed under the Business Improvement District Act, Section 31-25-1201, *et seq.*, C.R.S., as amended, as further described and limited by this Operating Plan.

B. What Must Be Included in the Operating Plan? Pursuant to the provisions of the Business Improvement District Act, Section 31-25-1201, *et seq.*, C.R.S., as amended, this Operating Plan specifically identifies: (1) the composition of the Board of Directors; (2) the services and improvements to be provided by the District; (3) the taxes, fees, and assessments to be imposed by the District; (4) the estimated principal amount of the bonds to be issued by the District; and (5) such other information as the Town may require.

This Operating Plan and subsequent Operating Plans previously approved by the Town are incorporated herein by reference, and shall remain in full force and effect except as specifically or necessarily modified hereby.

C. Purposes. As may be further articulated in prior years’ Operating Plans, the ongoing and/or contemplated purposes of this District for 2023 include financing, acquisition, construction, completion, installation, replacement and/or operation and maintenance of all of the services and public improvements allowed under Colorado law for business improvement districts.

D. Ownership of Property or Major Assets. The District will own public improvements as constructed if such improvements are not otherwise dedicated to other public entities for operation and maintenance.

E. Contracts and Agreements. It is anticipated that the District will enter into various agreements as required to facilitate the funding, construction, operation and maintenance of public improvements. The District is not currently a party to any significant active contracts or agreements. The District may also enter into agreements with other districts encompassing adjacent developments in order to cooperate on infrastructure projects.

2. ORGANIZATION AND COMPOSITION OF THE BOARD OF DIRECTORS

A. *Organization.* The Roberts 81 Business Improvement District was organized by the Town of Wiggins, Colorado by Ordinance No. 09-2018.

B. *Governance.* The District is governed by an elected board of directors.

C. *Board of Directors.* The persons who currently serve as the Board of Directors are:

- 1) Janet Roberts
- 2) Mary Dilka
- 3) Vacancy
- 4) Vacancy
- 5) Vacancy

Director and other pertinent contact information are provided in **EXHIBIT A**.

D. *Term Limits.* The District held a special election on November 6, 2018, at which a ballot question was presented to eliminate term limits pursuant to Article 18, Section 11 of the Colorado Constitution. The ballot question passed.

E. *Advisory Board.* The Board of Directors may appoint one or more advisory boards to assist the Board of Directors on such matters as the Board of Directors desires assistance. The Board of Directors shall, upon the appointment of an advisory board, set forth its duties, duration, and membership. The Board of Directors may provide rules of procedure for the advisory board or may delegate to the advisory board the authority to provide such rules. No advisory boards have yet been appointed.

3. BOUNDARIES, INCLUSIONS AND EXCLUSIONS

The District is proposed to include approximately 81.895 acres with boundaries as depicted in **EXHIBIT D**. A legal description of the initial District boundaries and a corresponding map are attached hereto as **EXHIBIT C-1**. In 2023 and subsequent years, the District anticipates inclusion requests for additional property as boundaries are established and additional property owners participate in the District. The District may include additional property pursuant to statute. A legal description of the future inclusion area boundaries is attached hereto as **EXHIBIT C-2**.

4. PUBLIC IMPROVEMENTS

The District will be primarily concerned with the provision of public improvements and services within the boundaries of the District; however, there may be instances to provide improvements or services outside of the boundaries of the District as part of the project. The District shall have the authority to provide these improvements and services, but the revenue-raising powers of the

District to recoup the costs of extraterritorial improvements and services shall be as limited by state law.

The public improvements that the District anticipates it will construct, install or cause to be constructed and installed, include those public improvements the costs of which may, in accordance with the Business Improvement District Act, Section 31-25-1201, *et seq.*, C.R.S., lawfully be paid for by the District, including, without limitation, water services, safety protection devices, sanitation services, marketing, streetscape improvements, street improvements, curbs, gutters, culverts, drainage facilities, sidewalks, parking facilities, paving, lighting, grading, landscaping and storm and wastewater management facilities and associated land acquisition and remediation (“Public Improvements”).

5. ADMINISTRATION, OPERATIONS, SERVICES AND MAINTENANCE

The District shall provide for ownership, operation, and maintenance of District facilities as activities of the District itself or by contract with other units of government or the private sector.

6. FINANCIAL PLAN AND BUDGET

A. *2023 Budget.* The proposed 2023 Budget for the District is attached as **EXHIBIT B**.

B. *Authorized Indebtedness.* The District held an election on November 6, 2018 for the purpose of authorizing debt, taxes, revenue limits, spending limits, special assessments, and such other matters as may be necessary or convenient for the implementation of Art. X., Sec. 20 of the Colorado Constitution, and the Operating Plan. The initial maximum debt authorization for the District shall be \$10,000,000.00.

C. *Property Tax and Mill Levy Caps.* The District’s taxing ability shall be constrained to a mill levy limitation of up to 50 mills for debt service, general operations and maintenance expenses due to the on-going operations and maintenance to be undertaken by the District within its boundaries. The mill levy cap set forth in this paragraph may be subject to upward or downward adjustments addressing any abatement or statutory, legislative, or constitutional changes that adjust or impact the assessed or actual valuation of property or the assessment ratio pursuant to which taxes are calculated occurring after, but not before, January 1, 2004. Such upward or downward adjustments are to be determined by the Board of Directors in good faith (such determination to be binding and final) so that to the extent possible, the actual revenue generated by the mill levy, as adjusted for changes occurring after January 1, 2004, are neither diminished nor enhanced as a result of such changes.

D. *District Revenues.* The District anticipates developer funding for initial revenue sources and thereafter revenues derived from property taxes. The District may also be the beneficiary of revenues derived from a privately imposed public improvement fee.

E. *Existing Debt Obligations.* The District has no current debt.

F. Future Debt Obligations. The District may issue debt in 2023 to finance the construction of the Public Improvements.

G. Other Financial Obligations. The District may enter into agreements including reimbursement or similar agreements and leases; as well as agreements for ongoing services such as legal, administration, compliance, budget, audit, etc.

H. Non-Default Provisions. Limited tax general obligation bonds issued by the District shall be structured and/or credit enhancements provided such that the bonds cannot default as long as the District is imposing the required maximum allowed mill levy.

I. Not a Debt or Obligation of the Town. The debt of the District will not constitute a debt or obligation of the Town in any manner. The faith and credit of the Town will not be pledged for the repayment of the debt of the District. This will be clearly stated on all offering circulars, prospectus, or disclosure statements associated with any securities issued by the District.

7. 2023 ACTIVITIES, PROJECTS AND CHANGES

A. Activities

It is anticipated that the District will primarily be engaged in the early stages of development in 2023.

B. Projects and Public Improvements

The District may undertake projects or public improvements as development needs require.

8. DISSOLUTION

The District is anticipated to have ongoing operations and maintenance obligations that will necessitate perpetual existence. If the District no longer has such obligations the District will seek to dissolve pursuant to C.R.S. § 31-25-1225.

9. CONCLUSION

It is submitted that this Operating Plan and Budget for the District meets the requirements of the Business Improvement District Act and further meets applicable requirements of the Colorado Constitution and other law. It is further submitted that the types of services and improvements to be provided by the District are those services and improvements which satisfy the purposes of Part 12 of Article 25 of Title 31, C.R.S.

EXHIBIT A
Director and Other Contact Information

BOARD OF DIRECTORS:

- | | | |
|----|---------------|--|
| 1) | Janet Roberts | 317 High Street
Wiggins, Colorado 80654 |
| 2) | Mary Dilka | 19084 County Road 7
Wiggins, Colorado 80654 |
| 3) | Vacancy | |
| 4) | Vacancy | |
| 5) | Vacancy | |

DISTRICT CONTACT:

Russell W. Dykstra
Spencer Fane LLP
1700 Lincoln Street, Suite 2000
Denver, Colorado 80203

303-839-3845
rdykstra@spencerfane.com

EXHIBIT B

**2023 BID Budget
General Fund**

**Roberts 81 Business Improvement District
2023 Budget**

General Fund

<u>Expense</u>	<u>Adopted 2022</u>	<u>Actual 2022</u>	<u>Proposed 2023</u>
Beginning Funds Balance	\$ -	\$ -	\$ -
Revenue			
Property Taxes	\$ -	\$ -	\$ -
Specific Ownership Taxes	\$ -	\$ -	\$ -
Developer Advances	\$ 50,000	\$ -	\$ 50,000
Interest Income	\$ -	\$ -	\$ -
Miscellaneous Income	\$ -	\$ -	\$ -
Total Revenue	\$ 50,000	\$ -	\$ 50,000
Expenditures			
Accounting / Audit	\$ 20,000	\$ -	\$ 20,000
Election Expense	\$ 5,000	\$ -	\$ 5,000
Engineering	\$ 2,000	\$ -	\$ 2,000
Insurance/SDA Dues	\$ 500	\$ -	\$ 500
Legal	\$ 10,000	\$ -	\$ 10,000
Formation Costs	\$ 0	\$ -	\$ 0
Miscellaneous	\$ 2,500	\$ -	\$ 2,500
Contingency	\$ 10,000	\$ -	\$ 10,000
Total Expenditures	\$ 50,000	\$ -	\$ 50,000
Ending Funds Balance	\$ 0	\$ -	\$ 0

EXHIBIT C-1

Legal Description of Initial Boundary and Map

A PART OF LOT 1, STUB'S MINOR SUBDIVISION IN THE TOWN OF WIGGINS, MORGAN COUNTY, COLORADO, IN THE NW1/4 OF SECTION 12, T3N, R60W OF THE 6TH P.M., MORGAN COUNTY, COLORADO AS RECORDED IN RECEPTION NUMBER 1500393 OF THE MORGAN COUNTY RECORDS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE NORTH 84°21'15" EAST ALONG THE NORTH LINE OF SAID LOT 1 A DISTANCE OF 50.00 FEET; THENCE SOUTH 4°04'05" WEST A DISTANCE OF 50.00 FEET; THENCE SOUTH 84°21'15" WEST A DISTANCE OF 50.00 FEET TO A POINT ON THE WEST LINE OF SAID LOT 1; THENCE NORTH 4°04'05" EAST ALONG THE WEST LINE OF SAID LOT 1 A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 2464 SQUARE FEET, MORE OR LESS.

DESCRIPTION PREPARED FROM PLAT OF STUB'S MINOR SUBDIVISION IN THE TOWN OF WIGGINS, MORGAN COUNTY, COLORADO, IN THE NW1/4 OF SECTION 12, T3N, R60W OF THE 6TH P.M., MORGAN COUNTY, COLORADO AS RECORDED IN RECEPTION NUMBER 1500393 OF THE MORGAN COUNTY RECORDS AND DOES NOT REPRESENT A SURVEY OF THE PARCEL. TITLE TO THIS PARCEL CANNOT BE TRANSFERRED UNTIL A SUBDIVISION PLAT IS PREPARED AND APPROVED BY THE TOWN OF WIGGINS, COLORADO.

Description prepared by: Anne M. Korbe
RLS 26964
For and on behalf of Leibert-McAtee & Associates, Inc.
P.O. Box 442
Sterling, Colorado 80751
970-522-1960
7-25-2018

EXHIBIT C-2

Legal Description of Future Inclusion Area

PROPERTY DESCRIPTION

A parcel of land being a portion of the East Half (E1/2) of Section Eleven (11), Township Three North (T.3N.), Range Sixty West (R.60W.) of the Sixth Principal Meridian (6th P.M.), County of Morgan, State of Colorado and being more particularly described as follows:

COMMENCING at the South Quarter corner of said Section 11 and assuming the West line of the E1/2 of said Section 11 as bearing North 01°01'47" West being a Grid Bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/2011, a distance of 5265.93 feet with all other bearings contained herein relative thereto;

THENCE North 01°01'47" West along the West line of the E1/2 of said Section 11 a distance of 1783.89 feet to the intersection of the West line of the E1/2 of said Section 11 and the North Right of Way line of State Highway 6 and to the POINT OF BEGINNING;

THENCE North 01°01'47" West along the West line of the E1/2 of said Section 11 a distance of 1660.36 feet to the Southerly Right of Way line of Interstate No. 76 as conveyed to the Department of Highways, State of Colorado in a Special Warranty Deed (SWD) recorded November 24, 1958 in Book 608, Page 484 of the Records of Morgan County;

The following Five (5) courses are along the Southerly and Westerly Right of Way lines of said Interstate No. 76:

THENCE North 58°27'12" East a distance of 948.15 feet (SWD=947.0 feet) to a Point of Curvature;

THENCE along the arc of a curve concave to the Southeast a distance of 1205.36 feet (SWD=1204.9 feet), said curve has a Radius of 5580.00 feet, a Delta of 12°22'36" and is subtended by a Chord bearing North 64°38'30" East a distance of 1203.02 feet to the end point of said curve;

THENCE North 86°00'30" East along a line non-tangent to the aforesaid curve a distance of 590.90 feet (SWD=590.9 feet);

THENCE South 52°49'30" East a distance of 69.50 feet (SWD=69.5 feet);

THENCE South 07°18'00" East a distance of 452.87 feet (SWD=452.8 feet) to a line parallel with and 30.00 feet Westerly of, as measured at a right angle to the East line of the Northeast Quarter of Section 11;

THENCE North 88°54'44" East a distance of 60.00 feet to a line parallel with and 30.00 feet Easterly of, as measured at a right angle to the East line of the Northeast Quarter of Section 11 and to the Westerly line of the existing Town of Wiggins as described in the Map of Annexation to the Town of Wiggins, Colorado recorded March 12, 2001 at Book 9, Page 63, Reception No. 790503 of the Records of Morgan County;

THENCE South 00°56'06" East along said parallel line and along said Westerly line of the existing Town of Wiggins a distance of 356.44 feet to the Northerly line of the existing Town of Wiggins as described in the Annexation to the Town of Wiggins recorded October 17, 2000 at Book 9, Page 45, Reception No. 787884 of the Records of Morgan County, and to the Northerly line of that parcel of land described in a Warranty Deed recorded March 14, 1938 in Book 365, Page 149 of the Records of Morgan County, said line also being the Northerly Right of Way line of State Highway No. 6;

The following Two (2) courses are along said Northerly line of the existing Town of Wiggins:

THENCE South 54°39'10" West a distance of 1671.28 feet to the South line of the Northeast Quarter of Section 11 and to a point being 217.00 feet Northwesterly of, as measured at a right angle to the centerline of the existing main line of the Burlington Northern and Santa Fe Railroad;

THENCE South 54°42'26" West along the Northerly line of that parcel of land described in a Warranty Deed recorded March 14, 1938 in Book 365, Page 148 of the Records of Morgan County a distance of 210.62 feet to the Southeast corner of that parcel of land described in a Quit Claim Deed (QCD) recorded October 25, 2007 as Reception No. 845936 of the Morgan County Records;

The following Three (3) courses are along the East, North and West lines of said QCD:

THENCE North 01°06'01" West a distance of 344.45 feet (QCD=344.19 feet);

THENCE South 88°54'45" West a distance of 356.00 feet (QCD=356.00 feet);

THENCE South 01°06'01" East a distance of 586.40 feet (QCD=586.06 feet) to the Northerly line of the existing Town of Wiggins as described in the Annexation to the Town of Wiggins recorded October 17, 2000 at Book 9, Page 45, Reception No. 787884 of the Records of Morgan County, and to the Northerly line of that parcel of land described in Book 365, Page 148 of the Records of Morgan County, said line also being the Northerly Right of Way line of State Highway No.6;

THENCE South 54°42'26" West along said Northerly line of the existing Town of Wiggins a distance of 915.31 feet to the West line of the E1/2 of said Section 11 and to the POINT OF BEGINNING.

Said described parcel of land contains 81.895 Acres, more or less (\pm), and is subject to any rights-of-way or other easements of record or as now existing on said described parcel of land.

A PORTION OF THE SOUTHWEST CORNER OF PLANNING AREA 4 REFERENCED AS LOT 13 IN THE PRELIMINARY PD, TOTALING 1.5 ACRES IN SIZE, TOWN OF WIGGINS, MORGAN COUNTY, COLORADO, SITUATED AT THE NORTHEAST CORNER OF JAMES AVENUE AND HIGHWAY 6 IN WIGGINS, COLORADO.

EXHIBIT D

Boundary Map

ROBERTS 81 ANNEXATION TO THE TOWN OF WIGGINS

Situate in the East Half of Section 11, Township 3 North, Range 60 West of the 6th P.M.,
County of Morgan, State of Colorado

NOTICE OF PUBLIC HEARING:

WHEREAS the Board of County Commissioners, County of Morgan, State of Colorado, on the 10th day of August, 1919, authorized the Board of Commissioners to publish notice of the proposed annexation of the Roberts 81 Annexation to the Town of Wiggins, and to hear and determine upon the same at a public hearing to be held at the Court House, in the City of Wiggins, Colorado, on the 10th day of September, 1919, and to do any and all things that may be necessary to carry out the purpose of said resolution;

AND WHEREAS said public hearing was held on the 10th day of September, 1919, at the Court House, in the City of Wiggins, Colorado, and the Board of County Commissioners, County of Morgan, State of Colorado, did receive the following report of the Board of Commissioners:

The Board of Commissioners, County of Morgan, State of Colorado, has the honor to report to the Board of County Commissioners, County of Morgan, State of Colorado, that the Board of Commissioners, County of Morgan, State of Colorado, has had under consideration the proposed annexation of the Roberts 81 Annexation to the Town of Wiggins, and that the Board of Commissioners, County of Morgan, State of Colorado, has approved said annexation, and that the Board of Commissioners, County of Morgan, State of Colorado, has resolved to grant the same, and that the Board of Commissioners, County of Morgan, State of Colorado, has resolved to publish notice of the proposed annexation of the Roberts 81 Annexation to the Town of Wiggins, and to hear and determine upon the same at a public hearing to be held at the Court House, in the City of Wiggins, Colorado, on the 10th day of September, 1919, and to do any and all things that may be necessary to carry out the purpose of said resolution.

Respectfully Submitted,
T. J. [Signature]
County Clerk

LINE	BEARING	DISTANCE	REMARKS
1	S 75° 48' 30" E	256.00'	
2	S 75° 48' 30" E	507.83'	
3	S 75° 48' 30" E	507.83'	
4	S 75° 48' 30" E	507.83'	
5	S 75° 48' 30" E	507.83'	
6	S 75° 48' 30" E	507.83'	
7	S 75° 48' 30" E	507.83'	
8	S 75° 48' 30" E	507.83'	
9	S 75° 48' 30" E	507.83'	
10	S 75° 48' 30" E	507.83'	

LEGEND:

- SOLID LINE - SECTION LINE
- DASHED LINE - PROPERTY LINE
- SHADDED AREA - ANNEXATION
- SHADDED AREA - UNEXANNEXED
- CIRCLE WITH 'X' - CORNER
- CIRCLE WITH 'O' - CORNER

STATISTICS:

- CONTIGUOUS BOUNDARY - 3,152.65 L.F.
- TOTAL BOUNDARY - 9,427.64 L.F.
- RATIO - 1 = 2.990
- AREA - 61.095 ACRES

SCALE: 1" = 200'

VICINITY MAP: Shows the location of the property within the Town of Wiggins and County of Morgan.

13

DN 7105839.1
000018

ORDINANCE NO. 09-2018

AN ORDINANCE ORGANIZING THE ROBERTS 81 BUSINESS IMPROVEMENT DISTRICT, APPROVING ITS OPERATING PLAN AND BUDGET, AND APPROVING AN INITIAL BOARD OF DIRECTORS THEREFOR

WHEREAS, the Board of Trustees of the Town of Wiggins has received a Petition for the Organization of the Roberts 81 Business Improvement District within the Town of Wiggins (the "District"), a proposed Operating Plan and Budget, and list of proposed appointees to the Board of Directors thereof; and

WHEREAS, the Board of Trustees, following notice as required by Section 31-25-1201 *et seq.*, C.R.S. held and concluded a public hearing on September 27, 2018 at Town Hall, Wiggins, Colorado, at which time proponents and opponents of the District had the opportunity to be heard; and

WHEREAS, based upon the Petition for Organization and other evidence presented to the Board of Trustees in the aforementioned public hearing, the Board of Trustees has found and does hereby find that the Petition has been signed in conformity with Part 12 of Article 25 of Title 31, C.R.S., that the signatures on the petition are genuine, and that the signatures of petitioners represent the persons who own real or personal property in the service area of the proposed district having a valuation for assessment of not less than fifty percent of the valuation for assessment of all real and personal property in the service area of the proposed District and who own at least fifty percent of the acreage in the proposed District; and

WHEREAS, the Petition and Operating Plan set forth:

- (a) The name of the proposed District, which shall include a descriptive name and the words "business improvement district", to wit: "Roberts 81 Business Improvement District;"
- (b) A general description of the boundaries and service area of the proposed District;
- (c) A general description of the types of services or improvements or both to be provided by the proposed District;
- (d) The names of three persons to represent the petitioners, who have the power to enter into agreements relating to the organization of the District;
- (e) A request that the Board of Trustees appoint the initial members of the board of directors with subsequent members of the board of directors to be elected by the electors of the District pursuant to Section 31-25-1209(1)(d), C.R.S.;

(f) A request that the Board of Trustees designate the territory within the District as a location for new business or commercial development pursuant to Section 31-25-1203(10), C.R.S.; and

(e) A request for the organization of the District; and

WHEREAS, the allegations of the petition for organization are true; and

WHEREAS, if requested by the Town of Wiggins, sufficient security approved by the Town of Wiggins has been submitted as provided in Section 31-25-1205(3), C.R.S.; and

WHEREAS, the service area of the proposed District is entirely within the Town of Wiggins, the petition contains the items required by statute, sufficient security approved by the Board of Trustees has been submitted, sufficient genuine signatures exist on the petition of persons who are qualified to sign such petition, and the Board of Trustees has held and concluded a public hearing on the matter following due notice of such hearing as required by law, therefore the Board of Trustees is vested with jurisdiction to make the within findings and to organize the District.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF WIGGINS, COLORADO:

Section 1. Pursuant to its authority to organize Business Improvement Districts under Part 12 of Article 25 of Title 31, C.R.S. and specifically Section 31-25-1207(5), C.R.S., the Board of Trustees, as the governing body of the Town of Wiggins, hereby adjudicates all questions of jurisdiction to find that jurisdiction is vested in the Board of Trustees to organize the Business Improvement District described in the Petition for Organization of the Roberts 81 Business Improvement District within the Town of Wiggins.

Section 2. The Board of Trustees hereby declares the organization of the Roberts 81 Business Improvement District (“District”), which shall have the initial boundaries and service area set forth in Exhibit A, attached hereto and incorporated herein by reference.

Section 3. The District is hereby designated, after notice and public hearing, as a location for new business or commercial development.

Section 4. The District shall be a quasi-municipal corporation and political subdivision of the state with all powers and responsibilities thereof. The District shall hereafter have the corporate name specified in the petition: Roberts 81 Business Improvement District.

Section 5. Pursuant to Section 31-25-1209(1)(b), C.R.S., the Board of Trustees hereby provides for a board of directors for the District which shall have five members. Each member shall be an elector of the District and shall be elected by the eligible electors of the District as provided by law. The initial board of directors shall be:

(a) Judith Roberts

- (b) Steven Klecka
- (c) Lindsay Klecka
- (d) Janet Roberts
- (e) Mary Dilka

Such board of directors shall carry out the responsibilities required of such board by the Business Improvement District Act.

Section 6. The 2018-2019 Operating Plan and Budget filed with the Town Clerk for the approval of the Board of Trustees as provided in Section 31-25-1211, C.R.S. is hereby approved.

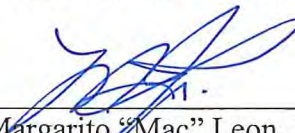
Section 7. The board of directors of the District shall file its future operating plans, budgets and amendments with the Town Clerk for approval by the Board of Trustees as provided in C.R.S. § 31-25-1211.

Section 8. The actions of the Town Clerk and petitioners in setting and providing public notice of the Public Hearing on the petition and in furtherance hereof are hereby ratified and confirmed.

Section 9. The initial mill levy of the District shall be determined by the Board of Directors as limited by the authorization provided by a duly held election of the District and the Operating Plan and Budget approved by the Board of Trustees.

INTRODUCED, READ, ADOPTED, APPROVED, AND ORDERED PUBLISHED, BY TITLE ONLY, by the Board of Trustees of the Town of Wiggins, Colorado this 26th day of SEPTEMBER, 2018.

TOWN OF WIGGINS, COLORADO


Margarito "Mac" Leon, Jr.

ATTEST:


Patricia Lentell, Town Clerk



STATE OF COLORADO, COUNTY OF MORGAN

CERTIFICATE OF MAILING NOTICE OF PUBLIC HEARING

IN RE THE MATTER OF ROBERTS 81 BUSINESS IMPROVEMENT DISTRICT,
WIGGINS, MORGAN COUNTY, COLORADO

Pursuant to Section 31-25-1206, C.R.S. as amended, the undersigned does hereby certify that the NOTICE OF PUBLIC HEARING regarding the organization of Roberts 81 Business Improvement District, as shown in Exhibit A attached hereto and incorporated herein by this reference, was deposited in the U.S. mail on August 27, 2018, to the property owners within the boundaries of the District, as listed in Exhibit B attached hereto and incorporated herein by this reference.

Nicole Nowak

Nicole R. Nowak, Attorney
Spencer Fane LLP
1700 Lincoln Street, Suite 2000
Denver, Colorado 80203

STATE OF COLORADO)

) ss.

CITY AND COUNTY OF DENVER)

Subscribed and sworn to before me this 27th day of August, 2018, by Nicole R. Nowak, Attorney.

Witness my hand and official seal.

My commission expires: December 2, 2021

(S E A L)

Rebecca A. Johnson

Notary Public

REBECCA A JOHNSON
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20134086985
MY COMMISSION EXPIRES DECEMBER 02, 2021

REBECCA A JOHNSON
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20134086985
MY COMMISSION EXPIRES DECEMBER 02, 2021

PUBLIC NOTICE OF HEARING ON PETITION FOR THE ORGANIZATION OF THE ROBERTS 81 BUSINESS IMPROVEMENT DISTRICT IN THE TOWN OF WIGGINS, COLORADO, AND CONSIDERATION OF AN ORDINANCE ORGANIZING THE ROBERTS 81 BUSINESS IMPROVEMENT DISTRICT, AND PROVIDING FOR THE ELECTION OF THE DIRECTORS THEREOF, AND APPROVE THE INITIAL OPERATING PLAN AND PRELIMINARY 2018 BUDGET THEREFOR

PUBLIC NOTICE IS HEREBY GIVEN that there was filed in the office of the Town Clerk of the Town of Wiggins ("Town Clerk") a Petition for the Organization of the Roberts 81 Business Improvement District ("Proposed District") in accordance with the provisions of the Business Improvement District Act, C.R.S. § 31-25-1201, et seq. Said Petition is pending the hearing on the sufficiency of said Petition and action on an ordinance to organize the Proposed District by the Board of Trustees as the governing body of the Town of Wiggins.

Said Petition states, among other things:

(a) A description of the boundaries and service area of the Proposed District, which is located south of Interstate 76 and north of Central Avenue in the Town of Wiggins, Morgan County, Colorado. A full legal description is available from the office of Spencer Fane LLP, 1700 Lincoln Street, Suite 1900, Denver, Colorado 80203.

(b) The Proposed District, pursuant to its Operating Plan, only if and as approved by the Town, shall be empowered to provide all or part of the services and improvements allowed under Colorado law for business improvement districts, including "Improvements" as that term is defined in Section 31-25-1203(5), C.R.S., services as described in Section 31-25-1212(1)(f), C.R.S., and other powers granted to such districts under Section 31-25-1212, C.R.S. Proposed public improvements include, to the extent set forth in its Operating Plan.

The petition is on file at the office of the Town Clerk and is available for public inspection.

NOTICE IS FURTHER GIVEN that by order of the Board of Trustees of the Town of Wiggins, a public hearing on said Petition shall be held at 7:00 p.m. on September 26, 2018 at 304 Central Avenue, Wiggins, Colorado, at which time and place any interested party may appear and be heard on the sufficiency of the Petition.

NOTICE IS FURTHER GIVEN that the Board of Trustees, at the conclusion of said hearing, if it determines that the Petition satisfies the requirements of the Business Improvement District Act, shall consider the adoption of a proposed ordinance creating and establishing the Roberts 81 Business Improvement District, providing for the election of Board Members of the District, and approving the initial Operating Plan and preliminary 2018-2019 budget therefor.

By: */s/ Patricia Lentell*
Patricia Lentell, Town Clerk
Wiggins, Colorado

PUBLIC NOTICE OF HEARING ON PETITION FOR THE ORGANIZATION OF THE ROBERTS 81 BUSINESS IMPROVEMENT DISTRICT IN THE TOWN OF WIGGINS, COLORADO, AND CONSIDERATION OF AN ORDINANCE ORGANIZING THE ROBERTS 81 BUSINESS IMPROVEMENT DISTRICT, AND PROVIDING FOR THE ELECTION OF THE DIRECTORS THEREOF, AND APPROVE THE INITIAL OPERATING PLAN AND PRELIMINARY 2018 BUDGET THEREFOR

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By: *As/ Patricia Lentell*
Patricia Lentell, Town Clerk
Wiggins, Colorado

Published: Fort Morgan Times August 30, 2018 - 1498469

Prairie Mountain Media, LLC

PUBLISHER'S AFFIDAVIT

County of Morgan
State of Colorado

The undersigned, Crystal Musser, being first duly sworn under oath, states and affirms as follows:

1. He/she is the legal Advertising Reviewer of Prairie Mountain Media LLC, publisher of the *Fort Morgan Times*.
2. The *Fort Morgan Times* is a newspaper of general circulation that has been published continuously and without interruption for at least fifty-two weeks in Morgan County and meets the legal requisites for a legal newspaper under Colo. Rev. Stat. 24-70-103.
3. The notice that is attached hereto is a true copy, published in the *Fort Morgan Times* in Morgan County on the following date(s):

Aug 30, 2018

Crystal Musser

Signature

Subscribed and sworn to me before me this
30th day of August, 2018.

Shayla Najera

Notary Public

SHAYLA NAJERA
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20174031965
MY COMMISSION EXPIRES JULY 31, 2021

(SEAL)

Account: 1051323
Ad Number: 1498469
Fee: \$52.90

Exhibit A

SERVICE AREA BOUNDARY

The service area of the Roberts 81 Business Improvement District is entirely within the Town of Wiggins, Morgan County, Colorado described as:

A PART OF LOT 1, STUB'S MINOR SUBDIVISION IN THE TOWN OF WIGGINS, MORGAN COUNTY, COLORADO, IN THE NW1/4 OF SECTION 12, T3N, R60W OF THE 6TH P.M., MORGAN COUNTY, COLORADO AS RECORDED IN RECEPTION NUMBER 1500393 OF THE MORGAN COUNTY RECORDS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE NORTH 84°21'15" EAST ALONG THE NORTH LINE OF SAID LOT 1 A DISTANCE OF 50.00 FEET; THENCE SOUTH 4°04'05" WEST A DISTANCE OF 50.00 FEET; THENCE SOUTH 84°21'15" WEST A DISTANCE OF 50.00 FEET TO A POINT ON THE WEST LINE OF SAID LOT 1; THENCE NORTH 4°04'05" EAST ALONG THE WEST LINE OF SAID LOT 1 A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 2464 SQUARE FEET, MORE OR LESS.

DESCRIPTION PREPARED FROM PLAT OF STUB'S MINOR SUBDIVISION IN THE TOWN OF WIGGINS, MORGAN COUNTY, COLORADO, IN THE NW1/4 OF SECTION 12, T3N, R60W OF THE 6TH P.M., MORGAN COUNTY, COLORADO AS RECORDED IN RECEPTION NUMBER 1500393 OF THE MORGAN COUNTY RECORDS AND DOES NOT REPRESENT A SURVEY OF THE PARCEL. TITLE TO THIS PARCEL CANNOT BE TRANSFERRED UNTIL A SUBDIVISION PLAT IS PREPARED AND APPROVED BY THE TOWN OF WIGGINS, COLORADO.

A map with the boundaries of the Roberts 81 Business Improvement District is provided on the following page.

- [Searching](#)
 - [Account Search](#)
 - [Sale Search](#)
- [View Created Report\(s\)](#)
- [Help?](#)
- [Logout Public](#)

Account: R020998

Location

Situs Address 16740 HWY 39
05039 HWY 6
Account Type 2000 -
COMMERCIAL
Neighborhood 2300 - WI,HI,LL C/I
Tax Area 164 - RE 50J WI
Parcel Number 1223-120-04-001
Legal Summary Subd: STUBS
MINOR SUBD, WI Lot: 01
Sibling Acc. Number P000894
P001509
BA Code

Owner Information

Owner Name STUBS GAS & OIL INC
Owner Address P O BOX 309
WIGGINS, CO 80654

Assessment History

Actual Value (2018)	\$838,750
Assessed	\$243,230
Tax Area: 164	Mill Levy: 108.388000
Type	Actual Assessed Acres
Improvement	\$455,670 \$132,140
Land	\$383,080 \$111,090 5.380

Transfers

<u>Sale Date</u>	<u>Sale Price</u>	<u>Doc Description</u>
<u>05/06/1983</u>	<u>\$0</u>	<u>QUIT CLAIM DEED</u>
<u>09/21/1989</u>	<u>\$0</u>	<u>QUIT CLAIM DEED</u>
<u>09/21/1989</u>	<u>\$0</u>	<u>QUIT CLAIM DEED</u>
<u>03/10/1998</u>	<u>\$0</u>	<u>JOINT TENANCY QUIT CLAIM</u>
<u>04/06/1998</u>	<u>\$0</u>	<u>QUIT CLAIM DEED</u>
<u>04/06/1998</u>	<u>\$0</u>	<u>QUIT CLAIM DEED</u>
<u>04/06/1998</u>	<u>\$0</u>	<u>QUIT CLAIM DEED</u>
<u>04/06/1998</u>	<u>\$0</u>	<u>QUIT CLAIM DEED</u>
<u>09/14/2016</u>	<u>\$0</u>	<u>QUIT CLAIM DEED</u>
<u>06/16/2017</u>	<u>\$0</u>	<u>SUBDIVISION PLAT</u>
<u>05/31/2017</u>	<u>\$0</u>	<u>QUIT CLAIM DEED</u>
<u>06/16/2017</u>	<u>\$0</u>	<u>QUIT CLAIM DEED</u>
<u>06/16/2017</u>	<u>\$0</u>	<u>QUIT CLAIM DEED</u>

Tax History

Images

<u>Tax Year</u>	<u>Taxes</u>	
*2018	\$26,363.20	• Photo
2017	\$26,363.20	• GIS

* Estimated



STAFF SUMMARY

Board of Trustees Work Session October 12, 2022

DATE: September 12, 2022

AGENDA ITEM NUMBER: 2

TOPIC: Discussion on Whether or Not to Opt Out of the State Paid Family and Medical Leave Insurance (FAMLI) Program

STAFF MEMBER RESPONSIBLE: Deborah Lee, Town Clerk

BACKGROUND:

In November 2020 Colorado voters passed Proposition 118. The proposition calls for implementation of a state-run program for paid family and medical leave insurance (FAMLI). Beginning January 1, 2024, the FAMLI program provides Colorado employees up to 12 weeks paid family and medical leave (up to 16 weeks for pregnancy/childbirth complications) during the following circumstances:

- To care for a new child, including adopted and fostered children
- To care for themselves, if they have a serious health condition
- To care for a family member with a serious health condition
- To make arrangements for a family member's military deployment
- To address the immediate safety needs and impact of domestic violence and/or sexual assault

To be eligible for leave under FAMLI, an employee must earn at least \$2,500 in yearly wages and must have worked for their employer for at least 180 days

The premium for FAMLI is .9% of an employee's wages, split 50/50 between the employee (0.45%) and employer (0.45%) Depending on income, when using paid leave under FAMLI employees would receive between 37% and 90% of your normal weekly wages. Benefits are capped at \$1,100 per week.

While FAMLI is mandatory for private employers, local government employers such as the Town of Wiggins have three options:

- Option 1: Participate in FAMLI
 - o The Town pays the employer share of the premium (at least 0.45% of wages) and deducts and remits the employees' share of the premium (0.45% of wages) to the FAMLI Division once a quarter. As an added benefit, the Town could choose to pay the employees' portion of the premiums as well.

- Option 2: Decline *employer* participation in FAMLI
 - o The Town would not pay the employer portion of the premium but would assist employees who want to individually participate in FAMLI by facilitating voluntary payroll deductions, with remittance of the employee share of the premium (0.45% of wages) and wage data once a quarter to the FAMLI Division.

- Option 3: Decline *all* participation in FAMLI
 - o Employees still have the right to participate in the FAMLI program even if the Town votes not to participate. Employees would self-elect coverage the same way self-employed workers would. Employees would need to report their own wages and remit the employee's share of the premium by creating an account in the FAMLI system once it's deployed this fall.

As noted above, even if the Town opts out of FAMLI, individual employees can still choose to participate in FAMLI. If the Town wants to opt out, it must do so before January 1, 2023.

SUMMARY:

Currently, the Town of Wiggins provides the following sick and medical leave benefit to its employees.

Sick Leave

- Full-time salaried employees receive the following sick leave credit per month:
 - o 1-10 years 1/2 day per month
 - o 11+ years 1 day per month
- A part-time employee accrues paid sick leave at the rate of fifty percent of the above listed accrual rates.
- There is a limit of 240 hours (30 days) on the total amount of sick leave an employee may accrue.
- Sick leave may be used only for the following purposes:
 - o Absence due to the employee's illness or injury
 - o Absence for a medical appointment of the employee
 - o If approved by the Town Manager, an illness, injury or medical appointment of an employee's family immediate family member
- An employee who has exhausted sick leave and has not accrued compensatory time or vacation time, may be granted leave without pay upon approval of the Town Administrator.
- Town staff will be amending its sick leave policy to ensure it complies with the Healthy Families and Workplaces Act, which requires employers to provide all employees (part-time and full-time) with a minimum of one hour of sick leave per 30 hours worked up to 48 hours per year. The Town currently provides the amount of sick leave required under the Healthy Families and Workplaces Act required for full-time employees, however the Town does not meet the minimum sick leave requirement for part-time employees of 1 hour of sick leave accrual per every 30 hours worked.

Medical Leave

- A medical leave of absence of not more than twelve weeks may be granted to full-time employees. This unpaid leave is for absences arising from a serious health condition. For a medical leave to be granted, the following conditions must be met:
 - o The employee has completed ninety (90) days of employment with the Town.
 - o Employees should make requests for medical leave to the Town Administrator at least 30 days in advance of foreseeable events and as soon as possible for unforeseeable events.
 - o The employee submits to the Town Administrator a written statement from a medical provider outlining the reason for leave and the estimated time needed. (The Town may require the employee to obtain an opinion from a medical provider selected by the Town.)
- Approvals are obtained from the Town Manager and the Board of Trustees prior to the leave.
- All available sick leave and earned vacation are used at the beginning of the leave of absence.
- The Town may reinstate an employee ready to return from a medical leave of absence when, in the opinion of the Town, it is practical to do so. The Town does not guarantee reinstatement of an employee to the former job. When the employee is available to return to work, the employee is free to apply for any vacancy available and may be considered along with other applicants.
- The Town currently continues health insurance benefits for an employee on leave for a maximum of twelve weeks as long as the employee continues to pay the employee's portion of the premium.

The primary differences between FAMLI benefits and the Town's current benefits include:

- FAMLI offers 12-16 weeks paid leave to eligible employees. The amount paid depends on income, but typically will be between 37% and 90% of the employee's normal weekly wages, up to a maximum of \$1,100 per week.
- The Town provides paid vacation leave and sick leave at 100% of the employee's salary. Once an employee exhausts that leave, they may request an unpaid medical absence. Leave under FAMLI is job-protected meaning that the Town has to hold the employee's position while they are out on leave. In contrast, employees taking unpaid medical leave under the Town's current policies are not guaranteed that their jobs will be reinstated.
- Participation in FAMLI will cost an employee up to 0.45% of their wages (unless the Town chooses to pay that portion).
- To provide the same 12-weeks of paid sick leave that the FAMLI program would provide, the Town could increase the sick leave allowance for employees.

FISCAL IMPACT: The impact to future budgets due to FAMLI will depend on the Board's decision regarding if the Town opts out of FAMLI entirely, fully participates in FAMLI, or opts out of the employer portion of FAMLI.

If the Board chooses to participate in FAMLI, the Town will be responsible for paying the employer and employee portion of the premium for each employee, which is 0.9% of the salary of both full-time and part-time employees in 2023 and future years. The estimated cost of this would be \$4,782.96 per year based on current salaries.

If the Board chooses to partially opt out by declining employer participation in FAMLI, there would be a minor impact to future budgets due to assisting the employee by collecting the 0.45% employees' portion through payroll deductions and remitting that portion to the state. However, employees would be required to participate at a cost of \$74.88 to \$427.44 based on current salaries.

If the Board chooses completely opt out of FAMLI, there is no impact to future budgets due to FAMLI. The employee can choose to participate in FAMLI if they desire.

APPLICABILITY TO TOWN OBJECTIVES AND GOALS TO PROVIDE SERVICES:

The Town continues to follow the rules and regulations of the State of Colorado and the wishes of the voters.

QUESTIONS/INFORMATION REQUESTED FROM THE BOARD OF TRUSTEES:

- Does the Board of Trustees have any questions of Staff?
- Does the Board of Trustees agree with staff's recommendation to opt out of the FAMLI program?
- Does the Board of Trustees concur with staff's recommendation to bring this forward at the next regular meeting for adoption?

RESOLUTION NO. _____

A RESOLUTION DECLARING THE TOWN OF WIGGINS' DECISION TO OPT-OUT OF THE COLORADO PAID FAMILY MEDICAL LEAVE INSURANCE PROGRAM (FAMLI)

WHEREAS, in November 2020, Colorado voters approved Proposition 118, which paved the way for creation of a state-run Paid Family Medical Leave Insurance (FAMLI) program; and

WHEREAS, 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; and

WHEREAS, the Town of Wiggins currently provides its employees paid leave in the form of sick leave and vacation time; and

WHEREAS, a local government may decline all participation in the FAMLI program by a vote of its governing body pursuant to C.R.S. § 8-13.3-522, and interested employees may still elect to participate individually pursuant to C.R.S. § 8-13.3-514; and

WHEREAS, notice was provided to Town employees of the opportunity to submit comments to the Board of Trustees regarding the FAMLI program; and

WHEREAS, the Board of Trustees has determined to decline all participation in the FAMLI program.

BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF WIGGINS, COLORADO:

Section 1. The Town of Wiggins hereby declines all participation in the Colorado Paid Family Medical Leave Insurance (FAMLI) program pursuant to C.R.S. § 8-13.3-522.

Section 2. The Mayor and Town staff are hereby granted the authority to take all actions necessary to implement the provisions of Section 1 above including providing formal notice to the Colorado Department of Labor and Employment, Division of Family and Medical Leave Insurance regarding the City's decision to decline all participation in the FAMLI program.

PASSED AND ADOPTED this ____ day of _____, 2022.

**INTRODUCED, ADOPTED AND RESOLVED THIS _____ DAY OF
_____ 2022.**

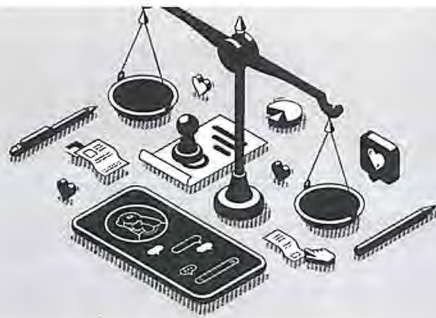
TOWN OF WIGGINS, COLORADO

Christopher Franzen, Mayor

ATTEST:

Deborah Lee, Town Clerk

CML LEGAL CORNER



What municipalities need to know about FAMLI

By Megan Decker, CML law clerk

In November 2020, Colorado voters approved Proposition 118, which paved the way for a state-run Paid Family Medical Leave Insurance (FAMLI) program. Although the program is not effective until January 2023, now is the time to start making decisions regarding your municipality and FAMLI participation and compliance. Local decisions can impact budgets, employee compensation, and human resources issues.

Overview of FAMLI

FAMLI provides workers 12 weeks of paid leave to take care of themselves or a family member during life events like injury, serious illness, or pregnancy. Participating employers and employees will contribute to premiums for FAMLI. Employers start collecting and remitting premiums Jan. 1, 2023, and benefits will be available starting Jan. 1, 2024.

Premiums are calculated under new administrative rules. A participating municipality must contribute 50% of the premium and the employee contributes the remainder. If a municipality does not participate, the employee is responsible for 50% of the premium and the municipality can, but need not, deduct the employee portion from payroll and remit it to the state. A municipality that miscalculates premiums is responsible for the difference and cannot collect that amount from the employee.

Opting out

All municipalities are included in FAMLI by default, but a municipality may opt out and avoid the employer portion of premiums by a vote of a governing body. The municipality must give prior notice of the vote in the same manner it notices other public business, must provide special notice to employees, and must take testimony before voting. Declination takes effect in 180 days so employees can

individually opt in to the FAMLI program at their own cost. Within 30 days of the vote, a municipality must provide various notices that include:

- An explanation of differences between the FAMLI plan and any municipal private plan
- Employee eligibility for job protection under the federal Family and Medical Leave Act
- Information on opt in to FAMLI
- Contact information

All notices, whether for opting out or back in, must be posted in conspicuous and accessible places where employees work. If the municipality does not maintain a physical workspace or has employees who telecommute, the notice must be posted in a conspicuous place through a web-based or app-based platform. Notices must be posted in English and any language representing the first language spoken by at least five percent of the local government's workforce.

Administrative rules require that a municipality renew its decision to opt out of FAMLI every eight years. Otherwise, the local government will, by default, be opted back into the FAMLI program. **A vote to opt out starting in 2023 should occur by July 1, 2022, to ensure compliance with the timing requirements.**

Opting back in

A municipality that previously opted out of FAMLI may opt back in if the governing body elects FAMLI program coverage at the beginning of the annual local budgeting cycle. After the vote, the municipality must register as an employer with the FAMLI Division before collecting employer premiums. Coverage would begin no later than the first quarter after the municipality's notice to the FAMLI Division of the vote and submission of at least one quarter's premium amount on

behalf of the employer and its employees. Municipalities who opt into FAMLI must stay in the program for at least three fiscal years. The first year begins on the first day of employee coverage — not the first day a municipality collects premiums.

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 that 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.

Additional resources

The Colorado Supreme Court recently agreed to hear an immediate challenge to FAMLI premiums brought under TABOR. The Denver District Court upheld the FAMLI premium requirement in 2021. Additional Information regarding FAMLI can be found at famli.colorado.gov.

Correction: The Feb. 11 Legal Corner should have been attributed to Rachel Bender, CML associate counsel.

This column is not intended and should not be taken as legal advice. Municipal officials are always encouraged to consult with their own attorney.



COLORADO
MUNICIPAL
LEAGUE

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
1144 Sherman St. • Denver, CO • 80203
303 831 6411 / 866 578 0936
www.cml.org



Empowered cities and towns, united for a strong Colorado

000035

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 employer 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

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.



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