

# **SPECIAL STUDY SESSION AGENDA**

CITY COUNCIL  
CITY OF WHEAT RIDGE, COLORADO  
7500 W. 29th Ave. Wheat Ridge CO  
June 27, 2022

To commence at the conclusion of the Regular City Council Meeting

**This meeting will be conducted as a virtual meeting, and in person,  
at 7500 West 29<sup>th</sup> Avenue, Municipal Building,  
if allowed to meet on that date per COVID-19 restrictions.**

**Some members of the City Council or City staff will be physically present at the  
Municipal building for this meeting. The public may participate in these ways:**

1. Provide comment in advance at [www.wheatridgespeaks.org](http://www.wheatridgespeaks.org) (comment by noon on June 27, 2022).
2. Virtually attend and participate in the meeting through a device or phone:
  - [Click here to join and provide public comment](#)
  - Or call +1-669-900-6833 with Access Code: **878 2434 3021**
  - **Passcode: 651529**
3. View the meeting live or later at [www.wheatridgespeaks.org](http://www.wheatridgespeaks.org), Channel 8, or YouTube Live at <https://www.ci.wheatridge.co.us/view>

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*Individuals with disabilities are encouraged to participate in all public meetings sponsored by the City of Wheat Ridge. Contact the Public Information Officer at 303-235-2877 or [wrpio@ci.wheatridge.co.us](mailto:wrpio@ci.wheatridge.co.us) with as much notice as possible if you are interested in participating in a meeting and need inclusion assistance.*

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## Public Comment on Agenda Items

1. Paid Family and Medical Leave Program
2. Removal of Race-Based Real Estate Covenants
3. Staff Report(s)
4. Elected Officials' Report(s)

## **ADJOURNMENT**

# Memorandum

**TO:** Mayor and City Council

**THROUGH:** Patrick Goff, City Manager 

**FROM:** Allison Scheck, Administrative Services Director  
Michael Clasen, Human Resources Manager  
Melissa Long, Human Resources Business Partner

**DATE:** June 17, 2022 (for June 27 special study session)

**SUBJECT:** Paid Family and Medical Leave Program

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**ISSUE:**

The Colorado Paid Family and Medical Leave Insurance Act was placed on the ballot as Proposition 118 and passed by voters at the November 2020 election. The new law requires all employers to provide paid family and medical leave to its employees through a state managed program which is funded by employer and employee paycheck withholdings. Local governments have the option to decline participation in the program. Staff requests Council direction on whether to participate in the program.

**PRIOR ACTION:**

None.

**BACKGROUND:**

The Colorado Paid Family and Medical Leave Insurance Act (FAMLI) was passed by 57% of voters in November of 2020. The Colorado Department of Labor and Employment will administer this program through a newly created Division of Family and Medical Leave Insurance (“Division”).

The program allows for a Colorado employee to take up to 12 weeks of paid leave (an additional 4 weeks in the case of pregnancy/childbirth complications) for any of the following reasons:

- To care for a new child due to birth, adoption or foster care placement;
- To care for a family member with a serious health condition;
- For the employee’s own serious health condition;
- For any qualifying exigency leave (military);
- For a need for safe leave (domestic violence)

This leave is designed to be taken concurrently with unpaid FMLA (Family and Medical Leave Act) leave.

The program is funded by premiums that are assessed against an employee’s wages and paid equally by the employer and employee in a 50-50% split. The premiums are deducted every two

weeks but submitted to the Division quarterly.

For the years 2023 and 2024, the premium rate is set at 0.9% of an employee’s wages. Beginning in 2025, this rate is expected to change: by statute, the Division can adjust premiums so that the total amount of contributions equals 135% of the previous year’s claims and meets 100% of the administration costs. The increase is capped at 1.2% of employee’s wages.<sup>1</sup>

Premiums are used to “replace” employees’ wages during approved periods away from work as follows: that portion of the employee’s average weekly wage<sup>2</sup> that is equal to or less than 50% of the state average weekly wage shall be replaced at a rate of 90%. That portion of the employee’s average weekly wage that is more than 50% of the state average weekly wage shall be replaced at a rate of 50%. The maximum weekly benefit is 90% of the state average weekly wage, but for 2024, is capped at \$1,100 per week.

Example of Weekly Benefits:

Annual Salary	Weekly Salary	FAMLI Weekly Benefit	Annual Employer Premium	Annual Employee Premium
\$28,700	\$552	\$496.73 (90%)	\$128.96	\$128.96
\$45,700	\$879	\$666.03 (76%)	\$205.40	\$205.40
\$81,200	\$1,562	\$1,007.37 (65%)	\$365.56	\$365.56
\$103,500	\$2,070	\$1,100 (53%)	\$465.92	\$465.92
\$140,000	\$2,800	\$1,100 (39%)	\$630.24	\$630.24

Premium deductions begin in January of 2023; however, paid leave cannot be taken by an employee until January of 2024 and only after an employee has made at least \$2,500 in wages. When an employer chooses to participate, all employees of that employer must participate in the program. An employer cannot participate in the program “partially” (i.e., requiring only certain levels of employees to participate). An employer could decide to contribute a greater portion of the employee’s contribution (for example, the employer could choose to pay 60% of the premium, leaving the employee with responsibility for only 40%).

FAMLI provides job protection for employees of participating employers who have been employed with their employer for at least 180 days prior to taking the leave. This leave cannot be counted as an “absence” that would lead to discipline, discharge, demotion, or suspension. Employers are required to maintain healthcare benefits during the leave, but the employee would need to continue paying their portion of the benefit cost while out on leave. No seniority or other benefits are accrued while on FAMLI leave.

All Colorado employers are required to participate in the FAMLI program with the following exceptions: 1) a local government may opt out but individual employees may still participate; 2) an employer with 9 or fewer employees is only required to remit the employee portion of premiums; and 3) a private employer who submits a plan of paid leave that is approved by the

<sup>1</sup> See C.R.S. Section 8-13.3-507.

<sup>2</sup> “Average weekly wage” means 1/13<sup>th</sup> of the wages paid during the quarter of the employee’s base period (as defined in C.R.S. Section 8-70-103(2), or Section 8-70-103 (1.5)), in which the total wages were highest. For purposes of calculating average weekly wage, wages include, but are not limited to, salary, wages, tips, commissions, and other compensation.

Division can opt out of the FAMLI program.

Employers are responsible for the administrative and legal costs of compliance with the program. The employer is solely responsible for any errors made in calculating, deducting and remitting premiums. FAMLI provides an avenue for employees to file civil actions against employers who they feel have violated the statutory provisions of FAMLI. Additionally, the Division will promulgate rules that establish a fine structure for employers who violate the FAMLI provisions.

Currently, Wheat Ridge employees experiencing a serious health condition or other qualifying event use a combination of paid time off (PTO), extended sick leave (ESL) and short-term disability insurance (if qualified) in order to replace their wages. PTO accrual depends on longevity and ranges from 6.25 hours per paycheck for employees with less than five years of service to 9.25 hours per paycheck for employees with more than 16 years of service. Employees also accrue 1.54 hours of ESL per paycheck with a maximum accrual of 480 hours (12 weeks). As a last resort, employees can access a city-wide bank of donated leave if they have exhausted their existing leave accruals.

### **FISCAL IMPACT:**

Based on 2021 audited payroll, it is estimated that participating in this program would cost the City \$90,000 per year to cover the 50% mandatory employer premium. Additionally, staff estimates another .25-.50 FTE will be required to administer the program for the City to ensure that premiums are correctly tracked, withheld and remitted, and that leaves are appropriately coordinated with the Division.

### **DISCUSSION**

Staff has analyzed the advantages and disadvantages of declining participation in the state's FAMLI program.

#### **Advantages to the FAMLI Program:**

- Allowing employee access to paid leave for family and medical reasons will help the City remain competitive as an employer and may retain employees.
- Allowing employees to participate on their own in the program if their local government employer has opted out is a great advantage.

#### **Disadvantages to the FAMLI Program:**

- Inequity of benefit amount: the benefit maxes out at a certain income level, so those employees making more than 50% of the state average weekly wage will pay higher premiums but get less benefit.
- All employees are forced to pay but may not use: many employees will never use this leave but will be required to pay for it. Initial projections noted that only 3% of employees would likely access this type of leave for the full 12 weeks per year.
- More money taken out of paychecks during challenging economy: the City may look less attractive for providing this leave due to the employee paycheck deductions.
- Unknown future premium amounts: the premium amount has not been set by the Division after 2024.

- Increased payroll costs: Based on 2022 wages, this program will cost the City a minimum of \$90,000 plus additional staff time
- Employer liability: there are many ways for an employer to be liable in this program. The employer is solely responsible for any errors made in calculating, deducting and remitting premiums, including the employee portion. The employer can also be held responsible for violating any of the provisions relating to job protection. The law allows employees to bring actions in civil court for any perceived violation.
- Opting in now means the City is committed to the program for the next 3 years. Premium contributions will occur beginning January 2023, but employees will not have access to leave benefits until January 2024.

Colorado Municipal League is gathering data on the actions and sentiments of local governments with regards to this program. The majority of municipalities have either opted out or are leaning towards opting out depending on the final direction from their respective councils. In order to opt out, notice must be given to the Division by January 1, 2023.

#### **OPTIONS FOR CONSIDERATION:**

There are three options Council can consider with regards to paid family leave.

1. The City can participate in the FAML I program. This option requires no action on the City's part with regard to notifying the Division. All local governments are presumed to be participating in the program unless the government actively declines participation by registering a vote of its governing body with the Division. Program costs and staffing will be addressed in the 2023 budget and payroll staff will begin to develop processes for premium withholdings.
2. The City declines participation in the program. It is not required that a non-participating local government institute a comparable leave program. The City could determine its current benefit package is sufficient. Even if the City declines participation, its employees can participate on their own and information about participation will be given to all current and future employees.
3. The City declines participation in the program and implements a similar paid medical leave program administered internally and without the additional out of pocket costs (see Recommendation for more details.)

#### **RECOMMENDATION:**

Staff recommends the City decline participation in the FAML I program at this time and instead implement a Wheat Ridge specific Paid Family and Medical Leave (PFML) program in 2023 similar to the following:

- All employees are eligible for PFML after working for the City for six months
- Employees are eligible for PFML for the same reasons as FAML I program
- Employees use accrued paid time off for the first two weeks of leave
- Employees are then eligible for 100% wage replacement (prorated for part time and variable employees) for the remaining 10 weeks

- PFML can be used for multiple, unrelated events within a 12-month period but shall not exceed 10 weeks or 400 hours (prorated for part-time and variable employees)

By following this recommendation, Wheat Ridge remains a competitive employer by granting appropriate paid leave for serious health conditions of either the employee or family member without the hard costs and administrative burden of joining the state's program.

**NEXT STEPS:**

If Council indicates by consensus that the City will likely be declining participation in FAMILI, a resolution will be brought for consideration at a future regular business meeting. Per the new law, Wheat Ridge employees will be notified of the scheduled vote so that they may testify at the public meeting. Furthermore, if Council consents to the development of an internal PFML program, staff will work through the details of the program in time for 2023 implementation.



## MEMORANDUM

To: Mayor and City Council  
From: Gerald Dahl, City Attorney  
Date: June 22, 2022  
Re: Removal of race-based real estate covenants

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### **Background**

The City of Wheat Ridge was incorporated in 1969. At that time, it included a number of subdivisions which had been platted in the county beginning around the 1920's. Some of these subdivisions contain private covenants precluding sales based on race. Councilmember Urban, during his recent term on the Council, raised the question of these raced-based covenants and how the City Council could approach their removal. Our office has researched techniques available to remove these covenants or expunge such language.

Based on our research, the following options are available, either for direct action by the City or via the City encouraging private property owners to act:

- removal of race-based covenants on City-owned property
- removal of race-based language from covenants affecting privately owned property as a condition of future land use approvals
- Council resolution expressing support for the removal of race-based covenants on private property

### **Race Based Covenants are Invalid**

In Shelley v. Kraemer, the Supreme Court of the United States struck down race-based covenants as illegal and judicially unenforceable. 334 U.S. 1 (1948). The Supreme Court of Colorado, relying on Shelley v. Kraemer, likewise ruled that restrictive covenants based on race were unenforceable holding that "the United States Supreme Court has extracted any teeth which such a covenant was supposed to have, no rights, duties or obligations can be based thereon." Capitol Fed. Sav. & Loan Ass'n v. Smith, 136 Colo. 265, 271 (1957). The Colorado State Legislature, with these rulings in mind, enacted C.R.S. § 38-30-169, equipping private citizens with a mechanism to remove race-based covenants from their communities.

## **Statutory Removal of Race-Based Covenants**

Any property owner may use Colorado Revised Statute § 38-30-169 for the “removal of void and unrestrictive covenants which are based upon race or religion.” In relevant part the statute states that as a part of the transfer or sale of property:

Any attorney, title insurance company, or title insurance agent authorized to do business in this state may remove by recording a new instrument any restrictive covenants which are based upon race or religion, or reference thereto, which are contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property and which:

- (a) Are held to be void and unenforceable by final determination of the supreme court of the state of Colorado or the Supreme Court of the United States.

## **Removing covenants from City-owned property**

As a property owner, the City may act with respect to its own property under the statute to file a document removing any race-based covenants on such property. At the present time, staff is not aware that the City owns any property subject to such a covenant. If in the future the City comes into ownership of such property (since the City does periodically obtain property rights for various purposes), the City may act directly to remove any race-based covenants on such property.

## **Land Use Code requirement**

The City could adopt an amendment to the land use code, Chapter 26 of the Code of Laws, requiring a plat note on new subdivisions and resubdivisions advising that the US and Colorado Supreme Courts, and the Colorado statutes, have declared race based covenants illegal and unenforceable. The City can also, either separately or in connection with a plat note requirement provide the appropriate forms or language for that purpose, similar to the declaration language the City provides for standard reservations of easements, etc.

## **Council resolution**

The City Council has the authority to adopt a resolution declaring race-based covenants invalid and unenforceable in the City, similar to such declarations contained in the federal and state case law and the statute, described above.

## **Conclusion**

Race-based covenants are illegal and unenforceable in Colorado, both as a function of federal and state case law, and state statute. The City has a number of options available to it to further the goals of these cases and statutes in the manner described in this memorandum.