BOULDER PUBLIC LIBRARY DISTRICT
-SPECIAL MEETING-
Tuesday, September 12, 2023
Boulder Public Library, Canyon Meeting Room
1001 Arapahoe Avenue
Boulder, CO
and
Via Zoom
6:00 p.m.
Join Zoom Meeting
https://tinyurl.com/yckjjw7v

AGENDA

1. Call to Order
2. Declaration of Quorum
3. Public Comment
4. Consider Approval of Minutes of September 5, 2023
5. Consider FAMLI Opt-Out Position and Schedule Hearing
6. Library District Director Updates (David Farnan)
7. Subcommittee Updates
8. Trustee Matters
9. Legal Counsel Status Report (Legal Counsel)
10. Possible Executive Session:

    Upon Motion Made and carried by a 2/3 vote the Board may enter executive session as allowed by Section 24-6-402 (4), CRS for a conference with the attorney on specific legal matters and to determine matters that are subject to negotiations concerning the Intergovernmental Agreement with the City and County as allowed by subsections (4) (b) and (e).

11. Adjournment

NEXT REGULAR MEETING: Tuesday, September 19, 2023 at 6:00 p.m.

Boulder Public Library, Boulder Creek Meeting Room, 1001 Arapahoe Avenue

{00685508}

RECORD OF PROCEEDINGS

MINUTES OF THE SPECIAL MEETING OF THE BOARD OF TRUSTEES

OF THE

BOULDER PUBLIC LIBRARY DISTRICT

Held: Tuesday, September 5, 2023, at 6:00 p.m. at Boulder Public Library, 1001 Arapahoe Avenue, Boulder, Colorado.

Attendance	The special meeting of the Board of Trustees of the Boulder Public Library District was called and held as shown above in accordance with the statutes of the State of Colorado. The following Trustees, having confirmed their qualifications to serve on the Board, were in attendance: Katharine (Joni) Teter Benita Duran Sam Fuqua Jennifer Yee Doug Hamilton Sylvia Wirba Trustees Absent: Cara O'Brien (absence excused) Also present were Kim J. Seter, Esq. and Marissa M. Peck, Esq. (via Zoom), Seter & Vander Wall, P.C.; David Farnan, Director of the Boulder Public Library; Jennifer Phares, Deputy Director of the Boulder Public Library; Chris Barge, Executive Director of the Boulder Library Foundation; and, Kelly Hansen, Legal Assistant at Seter & Vander Wall, P.C.
Call to Order	Trustee Teter called the meeting to order at 6:02 p.m. noting that a sufficient number of appointed trustees were present to create a quorum authorized to act on behalf of the District.
Public Comment	None.
Consider Approval of Minutes of August 29, 2023	Following discussion, and upon motion by Trustee Teter and seconded by Trustee Fuqua, the August 29, 2023 minutes were unanimously approved.
Review Employee Handbook	Mr. David Farnan presented the Draft Employee Handbook ("**Handbook**"). The Handbook is a heavily modified version of

{00685146 2}

the Employee Council's ("**Council**") template. It incorporates staff feedback and survey results to better match the District's needs. The Handbook still needs to be reviewed by the Council's legal team, which will likely result in a few minor modifications.

Mr. Farnan requested feedback on the Handbook from the Board in advance of presenting it to the staff at the September 12th meeting. He anticipates that most of the staff feedback and questions will be focused on benefits and paid time off ("**PTO**").

Trustee Teter found the Handbook complex and bureaucratic, and suggested revising the language to make it more approachable. Mr. Farnan noted that this suggestion may be hard to implement given the difficulty of fitting several different policies into the document.

The Board indicated that it would like to see information in the Handbook regarding the difference between the City benefits the staff was receiving, and the District benefits it will receive once the transition is complete. Mr. Farnan indicated that the greatest differences between the policies are PTO accrual and sick leave. Notably, the Handbook responds to and satisfies all requirements under FAMLI and other federal leave benefits, which have greatly expanded the definition of eligible leave.

Trustee Yee suggested changes to the table presented showing breakdowns between short-term and long-term disability leave. Trustee Teter pointed out several grammatical and spelling errors to be corrected.

Next, the Board discussed the most effective policy approach to achieve the living wage standards required by the City of Boulder and the District's goals. The conversation began with a discussion of benefits such as bonuses and raises.

Mr. Farnan began with an explanation of the difference between the City's structure and the proposed District structure. First, the City has the advantage of time as it develops its budgets for the following budget year. The value of all bonuses, raises, and benefits offered by the City are calculated far in advance of the new budget year, and are bolstered by historical data from years past. The District does not have the ability to set its budget so far in advance, nor does it have the same historical perspective that the City does. Second, the City uses performance based metrics to award its bonuses. For example, a City staff member may get a 3% bonus for a "good" job, and a 3.2% bonus for an "outstanding" job. The monetary difference between achieving these performance categories or levels is negligible, and thus the bonus structure fails to incentivize staff to do their job well. The District's plan distributes a 5% bonus among all staff equally, and serves as a mechanism to move lower-level staff closer to a livable wage. Following this explanation, Trustee Teter requested that this difference be communicated in a simple manner. She also requested that compensation be represented in the table summarizing bonus benefits, as it is currently not included.

Next, the Board's discussion turned to a conversation about wage increases. The City utilizes the same performance-based bonus structure to determine the percentage wage increase each staff member will get. The District plan awards the same amount of money to every staff member, regardless of pay rate. This will be another mechanism to rapidly redress the low median and average wage of staff, bringing staff closer to a livable wage. Across all pay tranches, the Library staff strongly supports this plan. Mr. Farnan did flag the potential challenge of wage compression and employee retention, but the Board did not take any action on the matter.

The Board then entered into a conversation about the prudence of Board members attending the Employee Handbook presentation staff meeting on September 12th. On one hand, Board participation may deter staff from speaking candidly about their self-interests in relation to these matters. On the other hand, staff tend to appreciate the Board's visibility and participation. Upon motion made by Trustee Teter, seconded by Trustee Fuqua, the Board voted to unanimously permit two Board members to attend the September 12th meeting, and for the meeting to be recorded for the rest of the Board to review.

Mr. Farnan then finished his review of the employee handbook and answered questions from the Board.

Review 2024 Revenue Report from County Treasurer & 2024 Budget

Mr. Farnan received estimated total assessed property tax values from the Assessor's office, and feels positive about the numbers, especially given the 30% increase in total assessed property tax values from 2023. He outlined trends and the ways in which those trends impact budget planning.

Trustee Teter provided a further breakdown of the taxable property, which is composed of 50% commercial properties, many of which are owned by out-of-state companies/operators.

Mr. Farnan emphasized that presenting the budget highlights in a digestible format is his top priority, and requested feedback on the infographic from the Board. The Board suggested various aesthetic and grammatical changes.

Mr. Chris Barge from the Boulder Public Library Foundation ("**Foundation**") indicated the Foundation's desire to assist and collaborate with the District in the transition process.

Director Update	None.
Review/Approve Rules for Public Participation in Board Meetings	Trustee Teter gave an overview of the participation rules as adopted by the Library Commission, and requested feedback from the Board on the rules as presented. Trustee Duran requested that a second, streamlined document be developed with these rules, for use by the general public. Trustee Wirba, however, emphasized the need to reduce complexity and bureaucracy, which is better achieved with just one document. The Board determined that it would produce a singular document. The Board reviewed the Rules of Meeting Procedure Document, and upon motion by Trustee Yee and seconded by Trustee Wirba, adopted the policy with the following modifications discussed.
Subcommittee Updates	None.
Trustee Matters	None.
Legal Counsel Status Report	Mr. Seter did not have any updates on the Legal Status Report. He relayed his recent conversation with the City attorney regarding Library volunteers. The City will give notice to volunteers that they are no longer city volunteers, but does not have a date at which this will happen. At this point, the District will need to develop a process for establishing these individuals as District volunteers. The Board hopes to run the volunteer program jointly with the

	City in order to preserve the unified management of volunteers. Discussion ensued regarding the best way to manage this transition, with a Board emphasis on successfully supporting the volunteer force.
Executive Session	At approximately 7:55 p.m. Trustee Hamilton moved the Board of Trustees to enter into executive session as allowed by Section 24-6-402 (4), CRS for a conference with the attorney on specific legal matters and to determine matters that are subject to negotiations concerning the Intergovernmental Agreement with the City and County as allowed by subsections (4) (b) and (e). Upon second by Trustee Wirba and unanimous vote, the Board entered executive session for the above-stated purposes. The Board did not take formal action nor did it adopt any policy, rule, or regulation while in executive session.
Adjournment	There being no further business to come before the Board, and upon motion duly made, seconded and unanimously carried, the meeting was adjourned at approximately 9:00 p.m.

Secretary for the Meeting

Seter & Vander Wall, P.C.
ATTORNEYS AT LAW

KIM J. SETER
BARBARA T. VANDER WALL
COLIN B. MIELKE
ELIZABETH A. DAUER
RUSSELL NEWTON
JOEL T. DREW
MARISSA M. PECK

MEMORANDUM

TO: Boulder Public Library District

FROM: Seter & Vander Wall, P.C.; Kim J. Seter, Esq.

DATE: September 8, 2023

RE: Legal Status Report for September 12, 2023

This is our legal status report for the September 12, 2023 Board of Trustees meeting.

Minutes-Action Item

Task: Prepare meeting minutes.

Status: The September 5 minutes are ready for approval.

Action: **Consider approval of the minutes.**

FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM OPT OUT (Action Item)

Task: Consider FAMLI participation.

Status: FAMLI became law in 2022. Employers are automatically enrolled. FAMLI requires deductions from employees' pay as well as a contribution from the employer. A summary of payments and coverage is in the attached DRAFT NOTICE TO EMPLOYEES that we utilized in 2022.

The Library District has the right to "opt-out" of the program but must first give notices and hold a hearing. We want to have this process completed before the end of December to avoid automatic enrollment.

I have attached a Fact Sheet and a Local Government Options discussion promulgated by the FAMLI Administrator.

Action: **Consider whether to opt-out entirely, allow employees to pay in or opt in. Schedule Hearing.**

{00685943}

Negotiation of Intergovernmental Agreements-Report (No Change)

Task: Draft, negotiate and finalize Intergovernmental Agreement among the City, County and Library District required by § 24-90-107(2)(e), C.R.S.

Status: The City Attorney's office has returned a redline draft of the City/District IGA that we proposed. They specifically note that City Council has not seen or commented on their proposed changes and that several City staff are still reviewing its contents.

The City Attorneys will update the draft after obtaining comments from the Council on 9/14. Because of the extensive agenda for September 5 and the additional changes that are likely, we have not included a draft with this Report.

Action: No action necessary.

Library Tax Receipts-Report (No Change)

Task: Move tax receipts held by the County Treasurer to the District. This will require an agreement and some sureties pursuant to the Library Law.

Status: Resolution 2023-8-1 requesting funds from the County Treasurer was approved. It will be forwarded to the Treasurer as soon as an account is opened and wire information is provided by the bank.

Action: **None required.**

District Bank Account-Report (No Change)

Task: Assist in opening District bank account.

Status: All documents have been submitted but one page was missing. That has been provided.

Action: None required.

{00685943}

Proposition HH and Related District Revenue Reduction Legislation SB 23-303 and SB 23-108-Report (No change)

Task: Provide an analysis of HH and its effects on library revenue.

Status: Bill Summary

If approved in the November elections, HH will lower taxpayer payments. That translates to lower tax revenue for the Library District.

Property taxes are paid by the owner on a portion of a property's Market Value. The Taxable Value is determined by:

Market Value x Assessment Ratio = Taxable Value
Taxable Value x 3.5 mills = Library Tax Revenue

The Library District mill levy is imposed on the Taxable Value. The Mill Levy is 3.5 mills. 1 mill is 1/1000th of a dollar.
The current Assessment Ratio for residential property is 6.795%, most other property types are assessed at 29%.

Proposition HH proposes to reduce Actual Values, the Assessment Ratios and to limit tax revenue increases.

If approved by the voters, HH will lower library tax revenue by:

1. Reducing actual Market Value by a set amount before applying the Assessment Ratio; and

2. Lowering the Taxable Value by reducing the Assessment Ratio; and

3. Reimbursing some revenue losses to some local governments including the Library District; and

4. Creating a new limit on the growth of property tax revenue.

This is a very complicated statute and, we will discuss its implications further during the budget process.

Consideration

Starting with property tax year 2023, the bill restricts property tax revenue by allowing an increase of "no more than inflation over the revenue from the previous property tax year."

Accordingly, the Library District would be allowed 2023 tax receipts + inflation; regardless of the increase in property values, growth within the district boundaries, etc. A temporary mill levy reduction is authorized or required to stay below this limit.

The Library District MAY be able to exceed the limit by:

a. Notifying the public of its intentions and holding a hearing; or

b. May have already waived the limit in its 2022 election. We are trying to determine what the related language in HH means in this regard.

I was asked to include an email exchange between CAL Legislative Committee Chair and me regarding this matter which is attached.

Action: None.

Notice of Violation of 5.5 % Limitation-Report (No change)

Task: The Colorado Division of Local Governments in the Department of Local Affairs notified the County of its belief the District has violated the limitation of 5.5% property tax revenue increases and must refund its tax receipts.

Status: The Division often makes these errors. I do not believe the County did anything wrong in the election that approved the tax revenue in the first instance. We are addressing this matter with the Division.

Action: None required.

Property Leasing and Property Ownership Affect on District Borrowing Under TABOR-Report (No change)

Task: Advise the Board and City about the benefit of property ownership in financing.

Status: Library District's seldom finance new buildings using municipal bonds because of the cost and difficulties created by the need for a TABOR Election to authorize debt.

The Colorado Supreme Court has determined that lease/purchase financing is not "debt" and is exempt from TABOR debt requirements. Banks and other lenders are very willing to enter such transactions. The transaction is described below.

1. The lender purchases a property form the Library District.

   a. This can be an existing library building or new vacant land.

   b. The lender pays cash to the Library District to be used for new construction.

2. Simultaneously, the Library District leases the property back from the lender in exchange for semi-annual lease payments.

   a. The lease requires the Library District to build a new library or other structure that becomes part of the leased property.

   b. Lease payments have a principal and an interest component just like a loan.

   c. The leased property is automatically returned to the Library District at the end of the lease.

3. The Library District makes payments out of its general operating fund and not a debt service fund. The IRS allows lease investors to receive double tax exempt interest payments under the lease and the Library District receives very favorable lending terms.

Action: None Required.

Additional Projects Underway (All New)

a. Draft BVSD IGA regarding Student 1 - Student ID for Library Access
b. Lyngsoe Contract Amendment and Assignment to District
c. Marmot Contract Amendment and Assignment to District
d. 3M System Procurement Agreement

Additional Projects Outstanding

a. Research City and District requirements regarding employment benefits.
Completed

{00685943}

b. Resolution regarding state Family and Medical Leave Insurance Program opt-in or opt-out.
c. Insurance matters including director errors and omissions, public officials' liability coverage, trustee bonds, and workers compensation.
d. Colorado Open Records Act Resolution (CORA).
e. Colorado State Archives Records Retention Schedule and Resolution.
f. Resolution regarding disposal of data containing personally identifying information.
g. <u>IGA Sub-Projects Underway</u>

    1. Obtain and review title work on all properties to be conveyed in fee.
    2. Review library property leases regarding assignability and allowed uses etc. (completed)
    3. Obtain list of operations contracts and copies for review for assignability and conditions.
    4. Obtain list of BPL Library personnel positions. (completed)
    5. Follow up on NOBO subdivision.
    6. Prepare analysis regarding transition of employee sick and vacation leave. (Completed)
    7. Draft proposed Civic Center License Agreement. (1st Draft Completed)

COLORADO
Family and Medical Leave Insurance Program (FAMLI)
Department of Labor and Employment

2023 FAMLI Program Notice

Deductions from Employee Wages start January 1, 2023

- The employee share of FAMLI premiums is set at 0.45% of employee wages through 2024. For 2025 and beyond, the director of the FAMLI Division sets the premium rate according to a formula based on the monetary value of the fund each year. Employers with a total of ten or more employees nationwide must also contribute an additional 0.45% of wages for a total of 0.9%, but employers with nine or fewer employees are only responsible for sending the 0.45% employee share to the FAMLI Division.
- **Starting in 2023, employers may begin deducting up to 0.45% from employees' wages for FAMLI contributions.** This can be done through a simple payroll deduction, and employees will notice the deduction on their regular paychecks. Employers are responsible for collecting those deductions and sending them into the FAMLI Division on behalf of their employees once a quarter.

Benefits start January 1, 2024

- Starting in 2024, paid family and medical leave benefits are available to most Colorado employees who have a qualifying condition and who earned $2,500 over the previous year for work performed in Colorado.
- The qualifying conditions for paid family and medical leave are:
  - Caring for a new child during the first year after the birth, adoption, or foster care placement of that child.
  - Caring for a family member with a serious health condition.
  - Caring for your own serious health condition.
  - Making arrangements for a family member's military deployment.
  - Obtaining safe housing, care, and/or legal assistance in response to domestic violence, stalking, sexual assault, or sexual abuse.
- Covered employees are entitled to up to 12 weeks of paid family and medical leave per year. Individuals with serious health conditions caused by pregnancy complications or childbirth complications are entitled to up to 4 more weeks of paid family and medical leave per year for a total of 16 weeks.
- Leave may be taken continuously, intermittently, or in the form of a reduced schedule.
- Leave will be paid at a rate of up to 90% of the employee's average weekly wage, based on a sliding scale. Employees may estimate their benefits by using the benefits calculator available at famli.colorado.gov.
- You don't have to work for your employer a minimum amount of time in order to qualify for paid family and medical leave benefits.
- If FAMLI leave is used for a reason that also qualifies as leave under the federal FMLA, then the leave will also count as FMLA leave used.
- Employees may choose to use sick leave or other paid time off before using FAMLI benefits, but they are not required to do so.
- Employers and employees may mutually agree to supplement FAMLI benefits with sick leave or other paid time off in order to provide full wage replacement.

Filing Claims

- Employees will not be able to file for benefits until the last quarter of 2023. Benefits will be available starting January 2024. Instructions on how to apply for benefits will be available on famli.colorado.gov in the last quarter of 2023.
- Employees or their designated representatives apply for FAMLI benefits by submitting an application, along with required documentation, directly to the FAMLI Division. Employers cannot make employees apply for FAMLI benefits.
- Applications may be submitted in advance of the absence from work, and in some circumstances, they may be submitted after the absence has begun.
- Approved applications will be paid by the FAMLI Division within two weeks after the claim is properly filed, and every two weeks thereafter for the duration of the approved leave.
- Employees can appeal claim determinations to the FAMLI Division.
- Individuals who attempt to defraud the FAMLI program may be disqualified from receiving benefits.

Job protection and continued benefits

- Employers must maintain health care benefits for employees while they are on FAMLI leave, and both the employer and the employee remain responsible for paying for those benefits in the same amounts as before the leave began.
- An employee who has worked for the employer for at least 180 days is entitled to return to the same position, or an equivalent position, upon their return from FAMLI leave.

Retaliation, Discrimination, and Interference Prohibited

- Employers may not interfere with employees' rights under FAMLI, and may not discriminate or retaliate against them for exercising those rights.
- Employees who suffer retaliation, discrimination, or interference may file suit in court, or may file a complaint with the FAMLI Division.

Other Important Information

- An employer may offer a private plan that provides the same benefits as the state FAMLI plan, and imposes no additional costs or restrictions. Private plans must be approved by the FAMLI Division.
- Employees and employers are encouraged to report FAMLI violations to the FAMLI Division.

STATE · OF · COLORADO
NIL SINE NUMINE
1876

Preparing for FAMLI
LOCAL GOVERNMENTS

Unlike businesses, Colorado local governments have options regarding their participation in the paid Family and Medical Leave Insurance (FAMLI) program. Here are the steps local governments should take to prepare for FAMLI:

1. Make sure you're a local government entity

Start by checking to see if your entity fits the definition of a "local government" under Colorado law.

Local Government – Any county, city and county, city, or town, whether home rule or statutory, or any school district, special district, authority, or other political subdivision of the state. Charter Schools are considered Local Governments under the FAMLI Act. Any government entity with at least one employee in the State Personnel System is NOT considered a Local Government under the FAMLI Act. Any government entity for which the state prepaid premiums under 2022 law (HB22-1133) is NOT a local government. References: §29-1-304.5(3)(b) C.R.S., C.R.S. 8-13.3-518(4)(b)

2. Determine your local government's participation in FAMLI

Local governments have three options regarding participation in the FAMLI program:

- Participate in FAMLI. This option means the local government agency agrees to pay the employer share of the premium (0.45% of wages if the local government has 10 or more employees, and 0% of wages if the local government has fewer than 10 employees) and remit employees' share of the premium (0.45% of wages) along with wage data to the FAMLI Division once a quarter.
- Decline participation in FAMLI. In order to decline participation in the FAMLI program, the local government's governing body must vote to do so. The local government must then notify the FAMLI Division of their vote to decline participation. The decision to decline is good for eight years from the date of the vote to decline participation. The local government must hold another vote if it wishes to continue opting-out beyond eight years.
- Decline employer participation in FAMLI. This option allows a local government agency to decline participation as described above, while allowing the agency to assist employees who want to individually participate in the FAMLI program 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.

When can we vote to opt out of FAMLI? An initial vote to opt out can be conducted at any point on or before March 31, 2023 in order to avoid being responsible for 2023 premium payments. No vote is required if the local government plans to participate in the program.

3. Register with the FAMLI system (Fall 2022)

Every local government employer must register with FAMLI's online system, including those which choose not to participate in FAMLI. Registering with the system and uploading your documents will enable FAMLI to keep track of local government employers' current intentions for participation, the obligation to revisit a declination vote after eight years, and enable local government employers to provide an affordable benefit if they choose to remit premiums and wage data for employees who self-elect coverage.

FAMLI's online employer service system is expected to be available for registration during the Fall of 2022, during which time we will have support staff available to help employers navigate the process.

4. Notify FAMLI of your local government's decision

Local governments which vote to decline participation in the FAMLI program must conduct a vote and notify the FAMLI Division of their decision **by March 31, 2023 in order to avoid paying premiums in 2023.**

What does our local government need to send to FAMLI?

After registration, a local government that votes to opt-out of the FAMLI program must notify the FAMLI Division on letterhead and must indicate the date the vote was taken and the result of the vote. If the local government has voted to opt out, but intends to assist its employees who choose to individually participate in the FAMLI program, this information must be included in the notification as well. This notification must be received before the first premiums are due and the date of the vote must be on or before March 31, 2023.

What happens if we do not take a vote, or send a letter?

If the FAMLI Division does not receive notice from the local government by March 31, 2023, the local government will be responsible for both wage data and premium payments for Q1 2023 which are due on April 1, 2023. **You must notify the Division ahead of March 31, 2023 to avoid paying premiums.**

5. Notify your Employees of your local government's decision

Local governments must notify employees of their decision on FAMLI participation within 30 days after the deciding vote. There are two employee notification requirements that Local Governments must abide by when voting to opt out of the FAMLI program (7 CCR 1107-2). One notice must be delivered individually to employees after a declination vote, and one must be posted (with other labor notices etc). The written individual notices may be emails, or employee policies published in a handbook.

Employees of local governments who have opted out do not need to take any action to self-elect FAMLI coverage until benefits become available in 2024.

What are the timelines in the rules?

The rules have several timelines to be aware of and follow depending on the option selected by the governing body. Below is a list of the timelines. Please see 7 CCR 1107-2 for more information.

- Local governments must notify employees of their decision on FAMLI participation within 30 days after the deciding vote. This gives local governments time to communicate their decision to their employees.
- If the local government chooses to decline to fully participate in the FAMLI program, the decision must be revisited every eight years at a minimum.
- 180 days notice must be given to employees before any change regarding access to FAMLI benefits is effective. This gives workers time to make arrangements and self-select coverage if they wish to do so. Benefits do not start until 2024.
- Local governments which choose to fully participate in FAMLI after previously voting to decline participation, as well as individuals who self-elect coverage, must remain in the program and agree to pay premiums for a minimum of three years. If a local government wishes to withdraw from the program at the end of the three-year period, the Division requires a minimum of 90 days notice, so we can change systems to avoid overpayments and miscommunication.