



**BACKGROUND PAPER FOR PROPOSED
ORDINANCE**

COUNCIL MEETING DATE: September 12, 2022

TO: President Heather M. Graham and Members of City Council

CC: Mayor Nicholas A. Gradisar

VIA: Marisa Stoller, City Clerk

FROM: Marisa Pacheco, Human Resources Director
Deputy City Attorney, Bob Jagger

SUBJECT: AN ORDINANCE DECLINING EMPLOYER PARTICIPATION IN THE PAID FAMILY AND MEDICAL LEAVE INSURANCE (FAMLI) PROGRAM AND ACT CREATED AND CODIFIED AT PART 5, ARTICLE 13.3, TITLE 8 OF THE COLORADO REVISED STATUTES

SUMMARY:

Pursuant to §8-13.3-522, C.R.S., and Colorado Constitution Article. 20, §6, certain employers, to include local governments have the ability to decline employer participation in a new paid leave social insurance program known as the Family Medical Leave Insurance (FAMLI) program. City Council approval is requested for the City of Pueblo to opt out of employer participation in the program.

PREVIOUS COUNCIL ACTION:

None.

BACKGROUND:

In November of 2020, Colorado voters passed Proposition 118 which establishes a new state leave program which will provide paid leave for employees who have a need to take leave for specific reasons to include; caring for a new child during the first year after birth or adoption, or for foster care of a new child; caring for their own serious health condition; caring for a family member with a serious health condition; relating to activities of family member who is on active duty-military service or is called for active-duty military service; and when the individual or the individual's family member is a victim of domestic violence, stalking or sexual assault of abuse.

The Colorado FAMLI insurance program will provide up to 12 weeks of paid leave. Employees will receive no more than 90% of their base pay under the program for the period of leave and no more than \$1,100 per week in benefit.

The majority of employers and employees in Colorado will be required to participate in this program. The pay continuation benefit associated with FAMLI will be funded by the employer and the employee through mandatory remission of quarterly premiums beginning in 2023. The amount of premium is based on Medicare taxable payroll earnings in the amount of .9% of payroll with the cost shared equally between employers and employees with the employer

contributing .45% and the employee paying .45%. No plan benefits will be paid to employees under the program until 2024. For 2023 and 2024, the premium contribution is set at .9% of payroll however is subject to increases beyond that as determined by the Colorado Division of Family and Medical Leave Insurance.

In order to avoid prohibitions with respect to unfunded mandates and for other policy reasons, local governments were authorized to decline participation in FAMLII, or "opt out," subject to the regulation and process promulgated by the Colorado Division of Family and Medical Leave Insurance. This exception was limited to a city, city and county, city, town, whether home rule or statutory, school district, special district authority or any political subdivision of the state. If a local government does not take specific action (governing body vote) to opt out of the program before December 1, 2022, participation in the program will be mandatory.

It is City Administration's recommendation to opt out of the FAMLII program. While this relieves the City of paying premiums, this ordinance if approved, will preserve an individual employee's decision to participate in the program. The City will agree to assist City employees who want to individually participate in FAMLII by facilitating voluntary payroll deductions, remitting the employee share of the premium and submitting wage data reports as required to the Colorado Division of Family and Medical Leave Insurance.

FINANCIAL IMPLICATIONS:

If the City of Pueblo does not opt out, using the full year of 2021 payroll as an example, the City would be required to pay approximately \$236,031 in annual premiums beginning in 2023. If this ordinance is approved, this cost can be avoided by the City.

BOARD/COMMISSION RECOMMENDATION:

Not Applicable.

STAKEHOLDER PROCESS:

At the City Council Work Session on May 16, 2022, City Council requested that staff gather feedback from the affected City labor unions with respect to the City's recommendation to opt out of FAMLII. The presidents of the International Association of Firefighters Local #3, International Brotherhood of Police Officers #537 and the Pueblo Association of Government Employees were provided information about the program. All three bargaining units agreed with the City's recommendation to opt out of the program as long as their individual members' rights to voluntarily participate in the program are retained, which this ordinance accomplishes.

ALTERNATIVES:

If the opt out is not approved, then the City will remain enrolled in the FAMLII program and premiums must be paid by both the employer and the employees beginning first quarter 2023.

RECOMMENDATION:

Approval of the Ordinance.

ORDINANCE NO. _____

AN ORDINANCE DECLINING EMPLOYER PARTICIPATION IN THE PAID FAMILY AND MEDICAL LEAVE INSURANCE (FAMLI) PROGRAM AND ACT CREATED AND CODIFIED AT PART 5, ARTICLE 13.3, TITLE 8 OF THE COLORADO REVISED STATUTES

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

Pursuant to §8-13.3-522, C.R.S., and Colo. Const. Art. 20, §6, City Council hereby approves and authorizes the City to decline and votes to decline employer participation in the Paid Family and Medical Leave Insurance Program and Act created and codified at Part 5, Article 13.3, Title 8 of the Colorado Revised Statutes.

SECTION 2.

City Council further authorizes the City to assist City employees who want to individually participate in the Paid Family and Medical Leave Insurance Program including but not limited to facilitating voluntary payroll deductions, remitting the employee share of the premium and submitting wage data once a quarter to the Colorado Division of Family and Medical Leave Insurance.

SECTION 3.

The officers and staff of the City are authorized to perform any and all acts consistent with the intent of this Ordinance to implement the policies and procedures described herein. The Mayor is specifically authorized to perform all acts required to implement this vote to decline employer participation including but not limited to execution and submission of notification of such vote to the Division of Family and Medical Insurance of the State of Colorado.

SECTION 4.

This Ordinance shall become effective on the date of final action by the Mayor and City Council.

Action by City Council:

Introduced and initial adoption of Ordinance by City Council on _____.

Final adoption of Ordinance by City Council on _____.

President of City Council

Action by the Mayor:

Approved on _____.

Disapproved on _____ based on the following objections:

Mayor

Action by City Council After Disapproval by the Mayor:

Council did not act to override the Mayor's veto.

Ordinance re-adopted on a vote of _____, on _____.

Council action on _____ failed to override the Mayor's veto.

President of City Council

ATTEST

City Clerk

