

NEBRASKA MUNICIPAL REVIEW

■ Here to stay & here to expand:
Google confirms new data center

■ NE Accountability and Disclosure
Commission under new leadership

■ Just a dash of color: Mural project
brightens up downtown McCook

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Old West Balloon Fest near Mitchell in Scotts Bluff County. Annual hot air balloon event launching from the Mitchell Airfield. Photo taken from the "Teal Octopus," a balloon owned by Douglas Gary Maguire of Allenspark, Colorado. Haag, Aug. 15, 2020. Photo provided by Nebraskaland Magazine, Nebraska Game and Parks Commission.

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CALENDAR

ICMA Annual Conference.....	Oct. 1-4, 2023, Austin/Travis County, Texas
NLC City Summit.....	Nov. 15-18, 2023, Atlanta, Georgia

Municipal Legal Calendar

(All statute citations to Revised Statutes of Nebraska)

NOVEMBER 2023 CITIES OF THE FIRST CLASS

First day.....	Class C liquor license year begins. (53-124)
Within 15 days of Passage.....	Clerk publishes ordinances passed. (16-405)
Within 10 days from meeting or before next meeting (whichever is sooner).....	Clerk to have minutes available for public inspection. (84-1413)
Within 30 days from Council meeting.....	Clerk publishes official proceedings of meetings including claims. (19-1102)
Within 20 days after end of month.	Treasurer files monthly financial report. (16-318)
* *	Clerk must prepare agenda prior to next Council meeting. (84-1411)
On or before December 1.....	TIF report due to Property Tax Administrator (18-2117.01)

CITIES OF THE SECOND CLASS AND VILLAGES

First day.....	Class C liquor license year begins. (53-124)
Within 15 days of Passage.....	Clerk publishes ordinances passed. (17-613)
Within 10 days from meeting or before next meeting (whichever is sooner).....	Clerk to have minutes available for public inspection. (84-1413)
Within 30 days from Council or Board meeting.....	Clerk publishes official proceedings of meetings including claims. (19-1102)
Within 20 days after end of month.	Treasurer files monthly financial report. (17-606)
* *	Clerk must prepare agenda prior to next Council or Board meeting. (84-1411)
On or before December 1.....	TIF report due to Property Tax Administrator (18-2117.01)



Looking for the recent Directory updates?

Good news! A list of changes can now be found
on the League website! Visit: LONM.org/news

Nebraska Municipal Review Editor and Advertising Sales: Ashley Wolfe, 402-476-2829 or ashleyw@lonm.org

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ASSEMBLE LINCOLN announces next steps in planning for Lincoln Convention Center

BY L. LYNN REX, EXECUTIVE DIRECTOR, LNM

Years of work by the Lincoln Chamber of Commerce, Downtown Lincoln Association, Rotary Club #14, and other civic leaders culminated in a press conference scheduled by **Assemble Lincoln** on Sept. 12, 2023. **Assemble Lincoln** held the press conference to outline the ongoing planning process to make a much needed downtown Lincoln convention center a reality. **The League is honored to participate as a member of Assemble Lincoln** with the following team of business leaders as well as local, state, and federal representatives:

- **Sen. Eliot Bostar, Chair**
Nebraska State Senator, District 29
- **Kenneth Zoeller, Vice Chair**
Director of Policy Research, State of Nebraska
Governor Pillen's Office
- **Sen. Beau Ballard**
Nebraska State Senator, District 21
- **Comm. Sean Flowerday**
Lancaster County Commissioner
- **Rich Herink**
Private Sector Representative, Former President of
First National Bank
- **Deb Schorr**
District Director, Congressman Mike Flood
- **Sen. Anna Wishart**
Nebraska State Senator, District 27

Sen. Eliot Bostar, Chair of **Assemble Lincoln**, lead the press conference and said, "Leaders in our city have been working for years to bring a convention center to Lincoln. Thanks to the effort and collaboration of stakeholders across our community, we are one step closer to that vision becoming a reality. This project will bring important investment to downtown Lincoln and serve as a catalyst for growth in our community."

Kenny Zoeller, Gov. Jim Pillen's Director of Policy Research,

also serves as Vice Chair of **Assemble Lincoln**. He emphasized, "Lincoln's Convention Center is an extraordinary opportunity for local, state, federal, and business leaders to collaborate on a project that will be a public benefit to Lincoln and the State of Nebraska. As a Lincolnite, I am honored to participate as Gov. Pillen's representative for this generational project."

Lincoln Mayor Leirion Gaylor Baird voiced strong support for a new state-of-the-art convention center to enhance the downtown. She stated, "A new convention center will be a welcome addition to our thriving downtown that is busting with concerts, college sports, restaurants, bars, and local shops. The convention center will infuse even more energy into our community, attracting visitors, boosting local businesses, and enhancing our residents' quality of life."

Sean Flowerday, Lancaster County Board Member, also underscored the importance of the project, "Building a downtown convention center is a strategic investment in our community's future and Lancaster County is proud to be a partner in this effort. This project will be an economic supercharger for this county, boosting tourism and creating additional revenues that will support other vital projects across the region. It's a win-win proposition that will strengthen our economy and enhance the quality of life for all our citizens."

On Sept. 18, 2023, **Assemble Lincoln** issued a **Request for Letters of Intent (LOI)** inviting interested parties to submit their qualifications by Oct. 31, 2023, for a potential partnership on a site and development of a downtown convention center. Responses to the LOI will enable **Assemble Lincoln** to assess interest and may be helpful in developing the RFP. Ultimately, the RFP will be based on the results of Phase I and Phase II of the **Feasibility Analysis for a New Convention Center**. The Lincoln Chamber, Downtown Lincoln Association, and Rotary Club #14 engaged **CSL International** as the consulting firm to conduct the feasibility



Downtown Lincoln skyline. Photo shared courtesy of Downtown Lincoln Association.

study to identify the potential market, size, scope, and estimated costs for the proposed convention center.

Phase I and Phase II of the feasibility study in 2021 and 2022 identified five recommended sites in downtown Lincoln for the transformational convention center. **Jason Ball**, President of the Lincoln Chamber of Commerce, did not speak at the press conference but recently stated in a press release, “This type of destination development would not be possible without the work of the city, county, and state working together to move it forward, and building upon the success of Pinnacle Bank Arena, the recent groundbreaking of the Sandhills Global Youth Complex, and similar structures that contribute to our evolving tourism skyline. The Chamber is greatly appreciative of the state’s support for this project, helping us grow our community.”

Lancaster County will be applying for state turnback tax to help finance the convention center pursuant to the provisions of the **Convention Center Facility Financing Assistance Act** (Sections 13-2601 to 13-2603 of the Nebraska Revised Statutes).

On Sept. 26, 2023, the Lancaster County Board approved Bylaws establishing the **Assemble Lincoln Standing Committee** (ALSC) to provide recommendations to the Board regarding the development and operation of a convention center in the City of Lincoln, including site selection and acquisition, and financing, construction, operation, and maintenance of, the convention center and any related enterprises. In addition, the Bylaws provide that the ALSC will “assist the Board in soliciting, selections, and managing contractors for purposes of developing and operating the Convention Center and any related enterprises, including providing written recommendations regarding the selection and performance of such contractors.”

As provided in Section 13-2603(2), in order to receive state turnback tax, the project must be approved by the Board consisting of the Governor, State Treasurer, Chair of the Nebraska Investment Council, Chair of the Nebraska State Board of Public Accountancy and a professor of economics on the faculty of a state postsecondary educational institution appointed to a two-year term on the Board by the Coordinating Commission for Postsecondary Education.

If approved, 70 percent of the state turnback tax is used to pay back bonds issued to acquire, construct, improve, repair, replace or equip the convention center. Pursuant to Section 13-2610(6), “**the remaining 30 percent of state sales tax revenue** collected by retailers and operators doing business at such facilities on sales at such facilities, state sales tax revenue collected on primary and secondary box office sales of admissions to such facilities, and state sales tax revenue collected by associated hotels and nearby retailers, **shall be appropriated by the Legislature to the Civic and Community Center Financing Fund.**”

During the press conference, the League emphasized cities and villages throughout Nebraska benefit greatly from the Civic and Community Center Financing Fund (CCCCF), funded by 30 percent of the state turnback tax currently generated by the convention centers/arenas in Omaha, Lincoln, and Ralston. A new convention center in Lincoln receiving state turnback tax would enable Lincoln to compete for larger state, regional, and national events significantly boosting Lincoln’s economy as well as promoting more economic opportunity in other municipalities across Nebraska through the CCCCFF grants. ■



Mayor Leirion Gaylor Baird
Lincoln



Sen. Eliot Bostar
District 29



Sean Flowerday
Lancaster County
Commissioner - District 1



Kenny Zoeller
Director of Policy
Research for Governor

Remembering the fallen

Nebraskans pay
tribute and remember
9/11 on Patriot Day



An American flag was suspended between two Lincoln Fire & Rescue fire engines at the Patriot Day ceremony.



An American flag is raised in front of the Nebraska State Capitol during the Patriot Day ceremony. League photos



Above: The Honor Guard carries the flag during the Patriot Day ceremony, Sept. 11, 2023, at the Nebraska State Capitol. Left: Lincoln Mayor, Leirion Gaylor Baird addresses attendees at the ceremony.

Legislative Committees meet, kick-off annual planning

On August 21, members of the Larger and Smaller Cities Legislative Committees met in Lincoln to discuss the upcoming legislative session.

Topics on the agenda included an overview of the 2023 session, review and discussion of bills introduced and supported by the League in the 2023 session that did not pass and requests for legislative action.

The League Legislative Committees will hold their second meeting on Wednesday, September 27, which coincides with the first day of the League Annual Conference to be held at the Cornhusker Marriott Hotel in Lincoln. ■



League Legislative Committee members received a recap of the 2023 legislative session and heard from Lynn Rex, Lash Chaffin and Christy Abramam on priorities in the upcoming session and what they are hearing are the needs from cities and villages across the state. League photo.

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“ HERE TO STAY & HERE TO EXPAND ”



Top image: Left to right: Speaker John Arch, La Vista; Allie Hopkins, Google Data Center Area Lead for Nebraska and Iowa, Senator Deb Fisher; Representative Mike Flood; Lincoln Mayor Leirion Gaylor Baird; Papillion Mayor David Black; Nebraska Department of Economic Development Director K.C. Belitz and Dan Harbeck, Google Public Policy and Government Affairs Manager. **Above:** Lincoln Mayor Leirion Gaylor Baird said the selection of Lincoln as the state’s third major Google data center site reinforces the area’s brand as “a hub on the Silicon Prairie. Photos provided by Mayor David Black.

Google confirms Lincoln’s \$600M data center, touts this year’s \$1.2B spend on state infrastructure

BY CINDY GONZALEZ
NEBRASKA EXAMINER

For years in Nebraska’s capital city, it was known by code name Agate. On August 22, the gem officially was out of the bag — as Google officials confirmed publicly that it is behind the \$600 million Lincoln data center poised to rise on roughly 580 acres near Interstate 80 and North 56th Street.

The project continues Google’s sprawl in Nebraska, adding to the tech giant’s other data campuses in Papillion and Omaha.

This year alone, Google officials announced the company is investing \$1.2 billion in Nebraska infrastructure, including at existing sites. That builds on \$2.2 billion that has been invested to date.

“We’re here. We’re here to stay, and we’re here to expand,” Allie Hopkins, Google’s head of data centers in Nebraska and Iowa, said during a media event at the company’s growing Papillion site.

While some of the Lincoln center’s cost is within that 2023 total, Hopkins said that further investment in the multi-phased project will spill into future years.

Construction work has already started, with ground preparation.

Continued on page 9

When complete, Google representatives said, the Lincoln center should create at least 30 full-time jobs.

“That’s all to support these digital services that everyone is so used to using every day,” Hopkins said, citing Google Cloud, Gmail, Docs, Search, Maps, and more.

“But it’s also to increase advancement of AI (artificial intelligence) — that’s really, really important, not just for the State of Nebraska, but across the world we have people and businesses that rely on these services,” she said.

Lincoln Mayor Leirion Gaylor Baird, who spoke along with members of Nebraska’s congressional delegation, joked about how her team can now dispense with the winks, codes and what-rhymes-with-Google games.

“For the past four years, since I walked into the doors of city hall as mayor, we’ve been having to call this project Agate, like a polished rock,” said Gaylor Baird. She said it seemed an underwhelming identifier compared to the investment. “It’s behind the curtain no longer.”

She said the selection of Lincoln as the state’s third major Google data center site reinforces the area’s brand as “a hub on the Silicon Prairie.”

Google officials declined to reveal more than basic details of a project.

Public planning records offer more about the Lincoln center, including that it is to cover as much as 2 million square feet of floor area. The site is bounded by North 40th Street, Highway 77, I-80, and Bluff Road.

The project, under applicant names other than Google, already has gone through city zoning and other approval processes.

Developers also have applied for state tax incentives related to the Lincoln project.

Data centers come with an immense need for power.

Eric Williams, board chair of the Omaha Public Power District, was at the event in Papillion, and noted in an interview that growth in the region’s industrial and data center business is among factors leading to record demand for power from the public utility.

“We’re seeing unprecedented growth in demand for energy,” he said.

Much comes from Sarpy County’s Highway 50 corridor, the home of several data centers including Google’s Papillion site

and a campus of tech titan Meta, which owns Facebook, Instagram and WhatsApp.

In mid-August, the OPPD Board approved a plan to add more electrical generation to meet surging demand. That means an estimated capital investment of \$2 billion to \$2.2 billion by 2030, nearly doubling the district’s capacity, OPPD officials said.

Customer rates could increase an estimated 2.5% to 3% per year from 2027 to 2030 to pay for the projects and rising electricity demand, the utility said.

U.S. Sen. Deb Fischer, R-Neb., another speaker, thanked Google

and said she was glad to see the recognition of Nebraska’s workforce and a university system that prepares graduates with forward-thinking skills.

“A lot of people think it’s the middle of the country. Some think it’s the middle of nowhere,” she said of Nebraska, adding that she prefers to call it the center of the Cosmos.

“We have the resources, the land, the water resources that are needed to support these data centers and I think it’s essential we continue to use these resources in a responsible way.”

U.S. Rep. Mike Flood, R-Neb., said he sees the local data centers generating jobs that “connect Nebraskans to the rest of the world.”

“This investment underscores how our central location, competitive electric rates, and tax climate have attracted significant investments in a growing hub of data centers,” said Flood.

Papillion Mayor David Black said he welcomed Google around 2019, when it broke ground on the Papillion center and created onsite jobs such as computer technicians, engineers, food service, maintenance and security roles.

Since then, the company has expanded in Papillion and grew to about 120 jobs. It added the soon-to-be-operational data center in northwest Omaha, near State Street and Blair High Road.

Google recently announced a \$350 million investment in its existing Council Bluffs data center campus. ■

Source - *The Nebraska Examiner*. Read more from the Examiner at nebraskaexaminer.com.

“This investment underscores how our central location, competitive electric rates and tax climate have attracted significant investments in a growing hub of data centers.”

- Representative Mike Flood



From left to right: Commissioner G. Roderic Anderson, Omaha; Secretary of State Robert Evnen; Commissioner Jeffery Davis, Beatrice; Commission Chairperson Kate Sullivan, Cedar Rapids; Frank Daley, Executive Director; Commissioner Andrew Reuss, Elkhorn; Commissioner Janet Chung, Lincoln; and Commissioner Marty Callahan, Greeley. League photo.

Changing of the guard

Nebraska Accountability and Disclosure Commission names new executive director

BY ANDREW WEGLEY
LINCOLN JOURNAL STAR

The state agency charged with enforcing Nebraska’s campaign finance disclosure and lobbying laws named its next executive director after commissioners mulled the choice for nearly an hour Friday.

Members of Nebraska’s Accountability and Disclosure Commission ultimately voted 7-0 Friday to promote David Hunter, who has worked for the agency for 23 years, to head the commission.

Hunter, the agency’s deputy director, will succeed his longtime boss Frank Daley Jr., who will retire in September after serving for more than two decades as the agency’s executive director, a job he’s held since 1999.

At an open meeting at the Capitol, the commission interviewed Hunter and two other finalists: Tag Herbek, a senior attorney at the state Department of Banking and Finance, and Jamie Karl, the managing director of communication services at the Ohio Manufacturers’ Association.

Karl previously worked for Nebraska Chamber of Commerce, the state Department of Agriculture and two Republican representatives in the state’s congressional delegation.

Hunter and the two other finalists were among 77 applicants who vied for the executive director job, which pays \$105,000 - \$110,000 annually. His exact salary will be negotiated in the coming weeks.

Continued on page 11



Nebraska Accountability and Disclosure Commission Chairperson Kate Sullivan presented Frank Daley with a clock to commemorate his many years of service and dedication to the state. League photo.

In his interview with the commission, Hunter, who started at the agency in 2000, touted his decades of direct experience on the commission and said he plans to work there until he retires.

“Without our office, the opportunities for corruption ... could be unlimited,” Hunter said after Secretary of State Bob Evnen asked him what he viewed as the primary purpose of the commission’s existence.

Hunter, who told commissioners he planned to model his leadership in part off of Daley, who he was worked under for his entire career at the agency, also faced questions over what he might do differently than his predecessor.

“Frank Daley is an extremely impressive person,” Hunter responded. “He does the job of multiple people. I think I would try to build up some more staff, perhaps.”

Hunter noted that the agency has had a vacant auditor position for more than a year, and he said he would seek funding for an additional staffer. The longtime deputy director suggested he might allow employees to work from home in a hybrid model to help recruit staff in what he described as a difficult labor market, particularly in the public sector.

“The bottom line for the majority of applicants, I think, is pay. At least that is what’s, I think, preventing the auditor position from being filled,” he said of the job that pays \$21.45 an hour.

He suggested that he would consider adding duties to the auditor position to in turn raise the pay scale in an effort to attract qualified candidates.

After interviews with all three candidates, the commission entered closed session for approximately 50 minutes to select the finalist that will



Nebraska Accountability and Disclosure staff gather for a photo at the final Commission meeting under Frank Daley. Left to right: David Hunter, Serena Dunn, Frank Daley & Neil Danberg. League photo.

lead the agency, ultimately settling on Hunter.

Though the board publicly voted unanimously to appoint the longtime deputy to the director position, it’s unclear if there was consensus from the start of the commission’s closed-door discussion.

Marty Callahan, who has served on the commission since 2018, said outside the meeting room that commissioners held “general discussion (of) the candidates” amid the closed session.

“I mean that’s nothing we’ll go into detail on,” he said. “I think it was just a review of the candidates. Nothing spectacular, and the vote came out at, I think, 7-0.”

When the meeting reopened to the public, Daley summoned a beaming Hunter from elsewhere in the Capitol building to reappear before the commission.

“Well, Mr. David Hunter, congratulations. You are soon to be our new executive director,” said



Secretary of State Bob Evnen commemorates Frank Daley for more than 20 years of leadership at the Nebraska Accountability and Disclosure Commission. The current deputy director of the agency, David Hunter has been selected to replace Daley in September. League photo.

Kate Sullivan, the commission’s chair. “Have any thoughts?”

“I’m ready to work,” he said. ■

Reprinted with permission.

End of an era in Lexington

Barb Hodges retires from City after nearly 40 years

On Sept. 1, Barb Hodges closed out a career of nearly 40 years with the City of Lexington.

Barb first joined the City as a Data Entry Operator in October 1978. Back then she was Barb Mills; the City Manager was Jack Heaton. Barb left in 1980 to care for her growing family. She eased back to the City part-time in 1984, as a Data Processing Operator, and ramped up to full-time in 1985.

Always ambitious, Barb learned the duties at all the desks in the business office. Then in 1992 she left the City to start college. She returned in 1995, working some part-time and some full-time hours.



*Barb Hodges
Lexington*

After several title changes and additional job responsibilities, in 1997 she was appointed Interim Finance Director. Barb graduated from University of Nebraska at Kearney in 1999 with a Bachelor of Science degree in Business and Accounting. Shortly after she became the Finance Director. In April 2000, she was appointed City Treasurer by City Manager, Joe Peplitsch. Also in 2000, Barb took over operations of the Lexington Utilities System business office.

Barb has been a member of the Government Finance Officer Association for many years. She also served on the Municipal Accounting and Finance Committee for the League for 5 years and was a conference presenter several times. ■

Source – City of Lexington

NDOT funds available for transportation needs

The Nebraska Department of Transportation announced funds are now available to private non-profit organizations and governmental entities for transportation needs of elderly persons and persons with disabilities for whom mass transportation services are unavailable, insufficient or inappropriate. Eligible applicants include private non-profit organizations incorporated within Nebraska and governmental entities. Governmental entities must certify that there are no non-profit agencies in the service area readily able to provide the service. Applications will only be accepted for the rural and small urban areas and Lincoln. Applicants in the Omaha area should contact Metropolitan Area Planning Agency (MAPA) for information about applications.

The Federal Transit Administration's Section 5310 program is a Federal Grant program that is managed by the Nebraska Department of Transportation. The purpose of the program is to enhance the mobility of seniors and individuals with disabilities. Applications are restricted to capital projects that may include the acquisition of transportation vehicles, technology, and/or purchase of services.

Applications are due by Oct. 31, 2023. Additional information and applications can be obtained at nebraskatransit.com or by contacting Lucinda Dowding, Federal Aid Administrator III, at lucinda.dowding@nebraska.gov or 402-479-3127. ■

Source – NE Department of Transportation



McCook residents shared their experiences about their hometown to provide feedback artists could use to design their community mural project. Photo shared courtesy of Joann Falkenburg

Just a dash of color

Mural project brightens up downtown McCook

The community of McCook recently held a community celebration to unveil a 2,000 square foot wall mural to beautify its downtown.

Local residents provided input on the design through workshop sessions of the year-long project, which is nearly a half-block long. Residents were encouraged to share their ideas and stories about what they find important about the community and why they choose to make McCook their home. A group of professional and local artists then took the feedback and designed the final composition.

The project, which cost approximately \$30,000, was fully funded through donations from various groups and many community members. ■

Source - NMPP Energy



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*Snow plow drivers worked hard clear roads in Neligh last year.
Photo provided by LARM.*

WORK SCENE AWARENESS



BY JAMES KELLEY,
LOSS CONTROL
SPECIALIST, LARM

Continuous assessment of your surroundings is necessary for doing a job safely. This can especially hold true while you are at a scene of an emergency or operating heavy equipment at a location that is ever changing.

As a former police officer, I recall several instances upon my arrival to an emergency scene when I parked my patrol car in an area with very little obstacles or hazards; only to find that the environment where I parked had completely changed when I was ready to leave. As other personnel, emergency vehicles, and equipment arrive

to an emergency scene or a worksite, this creates congestion, obstacles and other potential hazards that may not have been there initially. There have been countless accidents reported at worksites where an operator of large heavy equipment was so focused on the task at hand, they were not aware of other equipment or workers that had entered the work area. Workers in the area may not be aware of the movement of heavy equipment near them. If you add any adverse weather, loud noises, or poor lighting conditions, it increases the hazard.

Here are a few tips to help make your ever-changing work environment safer:

- Make sure all audible warning devices are working properly before using equipment.
- Walk around your emergency vehicle or heavy equipment before moving it to identify any hazards or obstructions that may be in the way.
- Use a spotter when you are moving or operating large equipment or vehicles, especially near workers or in confined spaces.
- Cordon off work areas or emergency scenes with barriers to keep others from accidentally getting near moving equipment or active work areas.
- Wear high visibility clothing in work areas, at accident scenes or while directing traffic so that others can easily see you.
- When in active working areas, make eye contact with the operators of heavy machinery before approaching or walking near large equipment or vehicles.
- Avoid being in blind spots of large vehicles or equipment and never assume the operator or driver sees you.
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Tara A. Stingley



Sydney M. Huss

Time or money: Providing compensatory time off in lieu of overtime pay

BY TARA A. STINGLEY & SYDNEY M. HUSS, *
CLINE WILLIAMS WRIGHT JOHNSON & OLDFATHER, L.L.P. □

The Fair Labor Standards Act (FLSA) requires that covered, nonexempt employees receive not less than one and one-half times their regular rates of pay for all hours worked over forty in a workweek.ⁱ However, in certain circumstances, an exception allows state and local government agencies to provide compensatory time off (often referred to as “comp time”) in lieu of these required overtime wages.ⁱⁱ

The rules regarding comp time under the FLSA are detailed and fairly complex. This article briefly discusses the general legal principles regarding comp time, which employers can provide it, which employees are eligible for it, and the requirements for and limitations of this benefit.

A. Which Employers Can Provide Compensatory Time Off?

Only public agencies can provide compensatory time off to nonexempt employees. For purposes of the FLSA’s compensatory time exemption, a public agency is a State, a political subdivision of a State, or an interstate governmental agency.^{iv}

B. How Do Public Agencies Provide Compensatory Time Off?

The FLSA requires that an agreement or understanding regarding the use of compensatory time off in lieu of overtime be reached prior to the performance of work.^v In the case of

employees who have a representative (such as through a labor union), this agreement or understanding must be between the representative and the public agency either through a collective bargaining agreement, a memorandum of understanding, or another type of oral or written agreement.^{vi} In the case of unrepresented employees, this agreement or understanding must be between the public agency and the individual employee.^{vii}

The agreement or understanding concerning compensatory time off for individual employees need not be in writing, but a record of its existence must be kept.^{viii} Having said that, a clear, written agreement or employment policy acknowledged and accepted by the employee is advisable.

Compensatory time offered in lieu of overtime wages must be provided at a rate of at least one and one-half hours of time for each overtime hour worked.^{ix} Qualified employers may freely substitute cash, in whole or in part, for compensatory time off.^x An employer’s decision to provide monetary overtime compensation does not affect the employer’s ability to grant compensatory time off in future work periods.^{xi}

From a documentation standpoint, records must be kept of the following: (1) the compensatory time agreement, (2) the number of hours of compensatory time earned each workweek by each

employee, (3) the number of hours of such compensatory time used each workweek by each employee, and (4) the number of hours of compensatory time compensated in cash, the total amount paid, and the date of such payment.^{xii}

C. How Much Compensatory Time Can Eligible Employers Provide?

Employees engaged in a public safety, emergency response, or seasonal activities may accrue up to 480 hours of comp time (or 320 hours of actual overtime worked).^{xiii} Employees who do not engage in work of this kind may accrue up to 240 hours of comp time (or 160 hours of actual overtime worked).^{xiv}

The work performed is controlling in determining which accrual cap a specific employee is subject to.^{xv} Only employees whose work regularly involves the activities included in the 480-hour limit will be covered by that limit.^{xvi} For example:

- Public safety activities include both law enforcement and fire protection activities.^{xvii}

In general, employees engaged in law enforcement activities include police officers, sheriffs and deputy sheriffs, court marshals or deputy marshals, constables and deputy constables, border control agents, state troopers, and highway patrol officers.^{xviii}

Employees engaged in fire protection activities generally include firefighters, paramedics, emergency medical technicians, rescue workers, ambulance personnel, and hazardous material workers who: (1) are trained in fire suppression, have the legal authority and responsibility to engage in fire suppression, and are employed by a fire department of a municipality, county, fire district or state; and (2) are engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment are at risk.^{xix}

- Emergency response activities include dispatching of emergency vehicles and personnel, rescue work, and ambulance services.^{xx}
- Seasonal activities include work during periods of significantly increased demand, which are of a regular and reoccurring nature. Examples of those involved in seasonal activities include employees of parks and recreation facilities that have a seasonal peak demand; employees of municipal auditoriums, theaters, and sports facilities that are only open for specific, limited seasons; and snowplow operators who work during a significant period of peak

demand, such as snow plowing season.^{xxi}

D. My Employees Have Accrued Compensatory Time – Now What?

Employees must be permitted to use accrued compensatory time within a “reasonable period” after requesting to use such time, so long as the request does not “unduly disrupt” the operations of the public agency.^{xxii} Because compensatory time cannot be used to avoid paying overtime wages, an employer cannot coerce an employee to accept more compensatory time than an employer can realistically and in good faith expect to be able to grant within a reasonable period of the employee’s request for use of such time.^{xxiii}

What constitutes a “reasonable period” depends on the circumstances of the customary work practices, such as the normal schedule of work, the anticipated peak workloads, emergency requirements for staff and services, and the availability of qualified substitute staff. However, if the agreement outlining the compensatory time policy defines a reasonable period, this definition governs.^{xxv}

A request to use compensatory time off “unduly disrupts” the agency’s operations when it imposes an unreasonable burden on the agency’s ability to provide services of acceptable quality and quantity for the public during the time requested without the

use of the employee’s services. Mere inconvenience to the employer is an insufficient basis for denying a request to use comp time.^{xxvii}

Upon termination, an employee who has accrued/unused compensatory time must be paid for such unused time at a rate that is at least the higher of: the average regular rate received by the employee during the last three years of the employee’s employment, or the employee’s final regular rate.^{xxviii}

E. Conclusion

Above all, it is important for employers offering compensatory time off to ensure they are doing so within the parameters set forth by the FLSA. Accordingly, employers offering compensatory time off should review their policies and procedures to confirm compliance with the FLSA requirements.

** Special thanks to Lindsey O. Muraskin for her assistance in the research and preparation of this article.*

Editor’s Note: This article is not intended to provide legal advice to its readers. Rather, this article is intended to alert readers to new and developing issues. Readers are urged to consult their own legal counsel or the author of this article if they wish to obtain a specific legal opinion regarding their particular circumstances. The authors of this article, Tara A. Stingley and Sydney M. Huss, can be contacted at Cline Williams Wright Johnson & Oldfather, L.L.P., 12910 Pierce Street, Suite 200, Omaha, NE 68144, (402) 397-1700, tstingley@clinewilliams.com, shuss@clinewilliams.com, or www.clinewilliams.com.

References:

ⁱ 29 U.S.C. § 207(a)(1).

ⁱⁱ 29 U.S.C. § 207(o).

ⁱⁱⁱ See 29 U.S.C. § 207(o) (stating that “[e]mployees of a public agency . . . may receive . . . compensatory time off at a rate of not less than one and one-half hours for each hour of employment for which overtime compensation required by this section.” (emphasis added)).

^{iv} 29 U.S.C. § 207(o).

^v 29 C.F.R. § 553.23(a)(1).

^{vi} 29 C.F.R. § 553.23(b)(1).

^{vii} 29 C.F.R. § 553.23(c)(1).

^{viii} *Id.*

^{ix} 29 U.S.C. § 207(o)(1). This requirement of the FLSA, as well as the following limitations on accrued compensatory time, does not apply to “other” compensatory time. “Other” compensatory time is earned and accrued by an employee for overtime employment in excess of a non-FLSA requirement. For example, a Statelocal law or collective bargaining agreement may provide that compensatory time is to be granted to employees for working over eight hours in a day. Because the FLSA does not require compensatory time in this situation, this would be considered “other” compensatory time and would not be subject to the requirements of the FLSA. See 29 C.F.R. § 553.28.

^x 29 C.F.R. § 553.26(a).

^{xi} *Id.*

^{xii} 29 C.F.R. § 553.50.

^{xiii} 29 U.S.C. § 207(o)(3)(A); 29 C.F.R. § 553.24(a).

^{xiv} *Id.*

^{xv} 29 C.F.R. § 553.24(a).

^{xvi} *Id.*

^{xvii} 29 C.F.R. § 553.24(c).

^{xviii} 29 C.F.R. § 553.221(a).

^{xix} 29 C.F.R. § 553.210.

^{xx} 29 C.F.R. § 553.24(d).

^{xxi} 29 C.F.R. § 553.24(e).

^{xxii} 29 C.F.R. § 553.25(a).

^{xxiii} 29 C.F.R. § 553.25(b).

^{xxiv} 29 C.F.R. § 553.25(c)(1).

^{xxv} 29 C.F.R. § 553.25(c)(2).

^{xxvi} 29 C.F.R. § 553.25(d).

^{xxvii} *Id.*

^{xxviii} 29 C.F.R. § 553.27(b).

Space for connection

What municipalities can learn from the Surgeon General's Mental Health Advisory

BY AN PHAM
CITY OF OPPORTUNITIES INTERN,
NATIONAL LEAGUE OF CITIES



Adobe Stock Photo

From experiencing the COVID-19 pandemic to the opioid epidemic, Americans are struggling with mental health, and local governments are working on ways to help. The U.S. Surgeon General's new report, "Our Epidemic of Loneliness and Isolation," is a valuable resource for municipalities to bolster mental health in their communities.

The report highlights how loneliness and isolation drive negative health outcomes. Loneliness is an internal state of feeling like one's social needs aren't met. Social isolation is an external state of having few relationships, roles, and interactions with other people. Both harm our mental and physical health. According to the report, **social isolation increases one's risk of premature death as much as smoking up to 15 cigarettes a day.**

Social isolation makes it difficult to access help, from personal support to professional healthcare. Economic and racial disparities exacerbate the problem when Americans who are Black, Hispanic, low-income, unhoused, or elderly already lack access to social infrastructure. Awareness and change are sorely needed because, while self-reports of social isolation rise every year, less than 20% of American adults recognize it as a major problem.

So, what can municipalities do? A major part of the solution is improving our social connections. Municipalities in particular can focus on the following policy areas.

Invest in Social Infrastructure and the Built Environment

Municipalities can invest in community infrastructure, partnerships, and the built environment to bring people together. This encourages both "strong" connections, where

people build relationships with one another, and "weak" connections, where people have casual passing interactions. Municipalities can therefore support a wide range of social infrastructure to meet a wide range of needs.

Social infrastructure can look like:

- Libraries and playgrounds for youth to form strong connections with their peers.
- Quieter green spaces and religious centers preferred by the elderly.
- Benches and walkable streets that encourage more organic connections among people who are new to one another.
- Afterschool programs and community events that connect generations.

Another report, "Tackling Loneliness through the Built Environment," highlights more specific ways to encourage social connections through design.

In addition to the built environment, community organizations ranging from arts groups to restaurants often hold events that bring people together. Municipalities can support them while calling for nonprofit partners to help address community mental health.

Social infrastructure should be equitably accessible, especially for groups with the highest risk of social isolation. For example, strict loitering laws and unfair enforcement could discourage youth from connecting with friends if they lack sufficient public spaces. "Hostile architecture" that makes sitting and resting uncomfortable, often with the goal of displacing unhoused residents, can prevent residents from enjoying their time in public.

Embed Social Connection and Health into All Policies

The report highlights how public health is inseparable from other policy choices. **Every department can impact public health, so every department should consider its ability to promote social connection.**

Municipalities can embed social connection in policy and evaluate how existing policies may contribute to social isolation. For example:

- A zoning practice might isolate a community from green spaces.
- Healthcare partnerships can increase access to much-needed therapy.
- Funding arts and culture can provide more opportunities for connection and lift up diverse community groups.

Paid leave can give city employees more time to connect with their communities while improving public transit can make the city more accessible to youth and low-income residents. Through communication campaigns, municipalities can raise awareness of the importance of social connection and combat the stigma around mental health.

Ideas from public health can help here, such as trauma-informed social policy, which outlines how municipalities can reduce the risk of retraumatizing and stigmatizing residents. For example, an unhoused drug user might benefit from a “housing first” approach that provides the stability they need to recover. Some police calls can

be diverted to mental health and community-response teams, who are trained to create safer outcomes in mental health emergencies. When community health workers and community members advocate for what they need, their on-the-ground knowledge can lead public health strategies.

Next Steps

The Surgeon General’s report highlights important steps municipalities can take to address social isolation. Some steps include:

- Exploring the report’s recommended actions for municipalities.
- Reviewing policies and partnerships through the lens of social connection.

- Connecting with the National League of Cities for resources, support, and potential initiatives.

The urgent “Epidemic of Loneliness and Isolation” comes from a mix of underinvestment in healthcare, stigma around mental health, existing inequalities, and historic uncertainty for many Americans. Good policies can minimize the harm from disconnection and create more chances for a sense of trust and community to grow.

Every patient is also a resident, after all, embedded in a community and built environment that can help them thrive. ■

Source – National League of Cities



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Aerial view of Yanney Park. Photo shared courtesy of the Nebraska Department of Economic Development.

Shovel-ready grant helps botanical gardens bloom at Yanney Park in Kearney

The idea to create Yanney Heritage Park in Kearney was hatched 25 years ago during a meeting between city park officials and local philanthropist Michael B. Yanney. Since then, generous donors have supported the transformation of an 80-acre cornfield into a beautiful city park that's freely accessible to families.

Over the years, the Yanney Heritage Park Foundation and its supporters have energetically added attractions to the park, enhancing its appeal to residents and drawing visitors to Kearney. The park now includes a man-made lake, an 80-foot-tall observation tower, amphitheater, splash pads, playgrounds, walking path, marina, and flower gardens.

In 2019, the Foundation launched its latest initiative—the Gardens at Yanney Park—in partnership with the City of Kearney. The bold vision is to create seven botanical gardens, including a dozen sculptures, a pavilion for events and classes, and green space for performances and other amenities.

Shortly after the project began in 2019, summer flooding

shifted the community's fundraising focus. There was urgency to meet "immediate needs with food, shelter, and getting people back to work," said Judi Sickler, president and CEO of the Kearney Area Community Foundation. "[The floods] really devastated our hospitality district near the Interstate ... so we met immediate needs as a community first. We were just ramping back up in 2020 and the pandemic happened in March. So we've had some stops and starts because of those two major events."

With the costs of the Gardens expected to exceed \$10 million, the community of Kearney has once again displayed its spirit of generosity to move the project forward. Three gardens have already been completed. Four more are underway, scheduled for completion in May 2024. A pavilion and parking area also are under construction to provide space for wedding receptions and community gatherings.

In addition to private donations, the Gardens at Yanney Park received \$4,287,500 from the State of Nebraska's Shovel-Ready

Capital Recovery and Investment Act program (2022), administered by the Department of Economic Development. That program was funded by \$100 million from the federal American Rescue Plan Act and \$15 million from the state's general fund.

"People attraction is a top priority for Nebraska's communities," said DED Director K.C. Belitz. "The Gardens at Yanney Park are an incredible quality-of-life addition to Kearney. Their completion, the expansion of the Museum of Nebraska Art, and construction of the SportsPlex along I-80 will give Kearney three tremendous new selling points. DED is grateful to support Kearney's impressive initiative to draw in new residents."

The Gardens, designed by Steinbrinks Landscaping, and pavilion, designed by Wilkins Architecture Design Planning, will enhance an already popular venue that draws people from throughout the region, Sickler said. The additions are expected to have an economic impact of more than \$1.36 million a year. Sickler said that the state's financial assistance has been critical to avoid long project delays. "The costs have already gone up from when we originally looked at them. I think the project would be even more expensive, and maybe would not be able to be accomplished, without [the State's] timely and generous grant. This grant will make a huge impact." ■

Source – Nebraska Department of Economic Development

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Nebraska Department of Economic Development Director of Field Operations Sheryl Hiatt (holding plaque at right) recognizes the City of Atkinson for attaining requalification as a Leadership Certified Community. Photo courtesy of Nebraska Department of Economic Development.

Ongoing business and housing investments in Atkinson generate growth, state recognition

City honored for continued leadership in Nebraska's Leadership Certified Community program

The City of Atkinson (pop. 1,298) has earned state recognition for leading partnerships to grow businesses, build housing and invest in downtown infrastructure. The Department of Economic Development (DED) recently announced the City's requalification for membership in Nebraska's Leadership Certified Community (LCC) program. DED's Field Operations Director Sheryl Hiatt recognized local leaders during Atkinson's city council meeting in July. Atkinson is one of 31 Nebraska communities to qualify for the statewide LCC program. DED created the program in 2011 to help local leaders adapt to ongoing changes and opportunities in economic development. Qualifying communities must demonstrate preparedness in strategic and community planning, display readiness in technological development and invest in new and existing businesses. Certified communities earn designation in the program for five years and are required to update and maintain their websites.

Local developers in Atkinson continue to capitalize on state and local programs and partnerships to encourage economic growth. Over the past five years, the city's LB840

program has invested nearly \$1 million in business loans and more than \$340,000 in reimbursement grants. Atkinson voters enacted the LB840 program, also known as Nebraska's Local

Option Municipal Economic Development Act, to collect sales tax dollars specifically dedicated to economic development. Since its inception, the program has contributed to more than 150 projects in Atkinson.

In 2021, Atkinson Economic Development added a Property Improvement Program to assist businesses with signage and façade updates. The program also contributes to structural investments, such as sidewalk development or building demolitions.

"Nebraska's LCC program encourages leaders to create incentives that are unique to each community's needs," said LCC Program Coordinator Kelly Gewecke. "Atkinson's Property Improvement Program not only complements the work businesses are already doing to grow, but also helps build relationships between business owners and city officials who are so important in economic development."

Atkinson leaders continue to focus on growing relationships with DED and Central Nebraska Economic Development District (CNEDD) to improve housing opportunities. The city utilized funding from DED's Affordable Housing Trust Fund (NAHTF) to convert a dilapidated residential lot into

"The City of Atkinson prides itself on being a very progressive community and has always managed to complete whatever it endeavors to do. Atkinson certainly lives up to its motto 'Atkinson, Getting Things Done'."

- Mayor Josh Erickson

two duplexes. The community received \$295,000 in NAHTF assistance, as well as \$111,000 in LB840 and municipal funding for a total project cost of \$406,000.

City leaders partnered with the U.S. Department of Agriculture (USDA) on an \$88,950 project to install 15 solar lights in critical areas throughout the community. The USDA invested \$29,000 in the project from its Community Facility Grant program, which included solar light installation for Atkinson's maintenance shop, wastewater treatment plant, city well house and fire & rescue hall. Lights also were installed at West Holt Memorial Hospital, the Elkhorn Meadows housing development, Atkinson Mill Race Park & Campground, and the Atkinson Community Center.

The solar project was completed in 2022, which will improve public safety and accessibility during electrical power outages.

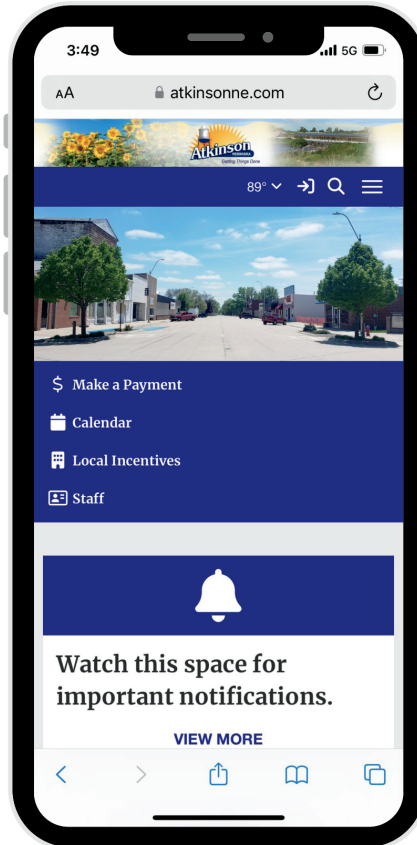
"In today's world, especially in rural areas, it is imperative for communities to demonstrate proactive leadership," said Mayor Josh Erickson. "The citizens of our community must feel secure in the fact that their hometown is doing everything possible to remain viable and sustainable."

The City of Atkinson utilized federal Community Development Block Grant (CDBG) funding, which was awarded by DED and administered by CNEDD, to update downtown sidewalks. The \$287,000 project installed sidewalks that are now compliant with the Americans with Disabilities Act (ADA) to allow for wheelchair accessibility. The new sidewalks are located in front of vital businesses in Atkinson, including the grocery store, hair salon, lumber yard, fitness center, community thrift store, and city offices.

City leaders launched a new website and apps for Apple and Android smartphones in the spring of 2022, with assistance from the Entrepreneurial Community Activation Process (ECAP). The process, led by Nebraska Extension, created an opportunity for Atkinson residents to share their own community priorities through an online survey and a series of community conversations. The ECAP survey results showed that citizens wanted to be more connected with the City of Atkinson, which led to the updated website and new apps.

"The City of Atkinson prides itself on being a very progressive community and has always managed to complete whatever it endeavors to do," Mayor Erickson said. "Atkinson certainly lives up to its motto 'Atkinson, Getting Things Done'." ■

Source – Nebraska Department of Economic Development



Atkinson officials launched a new website and apps for Apple and Android smartphones in the spring of 2022, with assistance from the Entrepreneurial Community Activation Process.

More info

For information about the Leadership Certified Community Program, contact Kelly Gewecke at kelly.gewecke@nebraska.gov or 308-627-3151, or visit <https://opportunity.nebraska.gov/programs/community/lcc>.

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Addressing a crisis

How municipal leaders can effectively manage crises

BY ERIN FRIEDLANDER
KESSLER PR GROUP

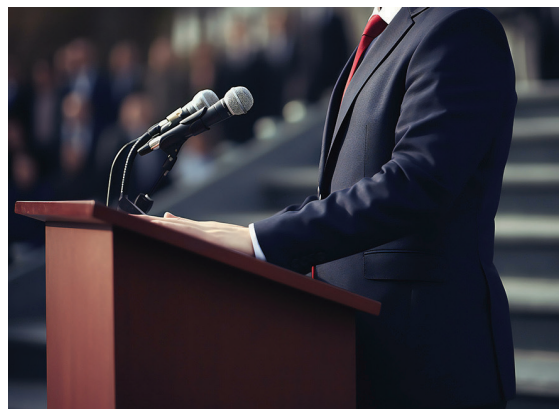
Nebraskans like nothing more than when public officials stub their toes in public – and tend to be ultra-critical of how our public officials handle highly charged politicized issues, professional missteps, or personal gaffes. Such stories very often make their way to a public forum, social media, political blog, hyperlocal news sites, or mainstream news outlet.

Reputational threats and crises come in all shapes and forms, and they often hit at the most unexpected and inconvenient times. While there is no “one size fits all” approach to addressing a crisis that hits close to home, there are some tried-and-true tactics that will help municipal leaders and their designated spokespersons avoid mistakes and make it through a challenging time with their reputation intact.

1. Recognize the Signs
Often, there are “red flags” leading up to a crisis. Ignoring or dismissing these warnings is often later recognized as a missed opportunity.

2. Be Prepared
Have a crisis communications plan at the ready. Developing a thoughtful strategy and putting proper protocols in place in advance will help you to successfully handle the first critical moments of an actual or potential crisis. Also, have legal and crisis communications consultants lined up ahead of time. Their contact information should already be plugged into your cell phone.

3. Prioritize Internal Messaging
Those closest to the organization typically are your best supporters and advocates. Municipal employees and community members of your district, for instance, need to hear from you first to be assured that they are getting accurate, up-to-date information from a reliable source. Provide updates, as appropriate.



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4. Consider All External Stakeholders
Take time to identify all external audiences you should communicate with, such as community partners, vendors, regulatory agencies, public officials, and media. Make a list in advance and come up with a plan for outreach.

5. Be Appropriately Cautious
Avoid saying too much too soon. Take time to gather facts, consult with appropriate parties, and consider the long-term effects of your words and actions.

6. Own a Mistake
Take the blinders off. If you know that a misstep has occurred, be accountable. Apologize, if appropriate.

7. Be Honest
To survive reputational fallout, honesty truly is the best policy. Be as transparent and forthright about what occurred as possible as you develop an effective response strategy.

8. Be Patient
While you may be eager to put the matter behind you and quickly move on, the issue at hand may not be resolved in a day, a week, or a month. It may take a year or longer to rebuild trust, which requires a tremendous amount of patience.

This article originally ran in NJ Municipalities Magazine, the publication of the New Jersey State League of Municipalities (NJLM.org).

Erin Friedlander develops and executes customized communication strategies for clients of Kessler PR Group, a leading public relations firm specializing in crisis communications, reputation management, litigation support and media relations. She has represented many high-profile individuals and organizations during her career and has extensive experience in working with leaders of education, healthcare, not-for-profit, and religious organizations. To learn more, please visit <https://kesslerpr.com>, call (888) 825-0892, or email info@kesslerpr.com.

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