Effective Governance & Risk Management

Presented by Sam Light, CIRSA General Counsel, 12.1.22
Introduction

• This presentation is organized as suggestions for managing risks related to: the role of elected official, open meetings, executive sessions, ethics, governing body conduct, and other topics.

• Focus is on suggested “best practices” that will enhance your effectiveness and in turn reduce risks for your city or town and for you individually.

• Presentation is a training resource only; is not intended to address or provide legal advice on any specific, pending issues.
One: Commit to the Role of Elected Official

• Being an elected official means your role has changed: Citizen → government official (24/7!); representative, ambassador & fiduciary.

• Recognize a key role and responsibility is delivering good governance, which at root is based practically (and from a risk management viewpoint) on a few core concepts:
  
  • **Openness & Transparency** (open meetings/records laws)
  • **Fundamental Fairness** (due process)
  • **Predictability & Evenhandedness** (equal protection and certiorari claims)
Two: Commit to Role Discipline

- Everyone within your municipal organization has a “job description”—honoring the “job description” is key to proper functioning of government at all levels, and to avoiding risks of liability, including the risk of personal liability!

- You have protection from personal liability for acts/omissions as an elected official if you are “within the scope of employment” and not acting “willfully and wantonly.”

- Conversely, conduct that is “outside the scope” or “willful and wanton” can result in a loss of governmental immunity, give rise to liability, and impact your public officials’ liability insurance coverage.
Two: Commit to Role Discipline

• Tips to support your city/town structure and avoid concerns & risks re: “role discipline”:

  • Governing body members hold a fraction of the body’s power, but that power can’t be exercised individually. Rather, it is exercised by the voice of the governing body.

  • Thus, think “We” ... not “I”. Acting in terms of “I” rather than “we”...that’s a red flag.

  • Commit to your chosen form of government (council-manager, board-administrator). Use your manager/administrator as a resource.

  • Recognize the allocations of authority within your organization have legal effect and are there to “serve and protect”—assuming everyone is committed to them!
Three: Support the Institution of the Governing Body

• Commit individually and collectively to your Council/Board as an Institution.

• This commitment sometimes requires:
  
  • Setting aside a personal agenda when there is lack of support.
  
  • Accepting “the council/board has spoken” though one preferred a different outcome.
  
  • Similar conduct in support of the Council as an institution.
Four: Commit to Ethical Conduct

• Become familiar with the ethics laws that govern your conduct as an elected official. Make them your “best friend” in resolving ethics issues. Some key areas:

  • Conflicts of Interest: Disclose, recuse, don’t vote, and don’t influence others.
  
  • Don’t disclose or use any confidential information for personal benefit.
  
  • Decline any gifts seemingly connected to your service and abide by gift rules.
  
  • Avoid situations that may create an appearance of impropriety.
Five: Commit to High Levels of Personal Conduct

• Beyond concepts of role discipline & ethics, commit yourselves to high levels of personal conduct. Inappropriate personal conduct can be destructive to a public body, its reputation and its effectiveness. Some problem areas we’ve seen:

  • “Outlier syndrome” and elected officials “going it alone”.

  • Accusations of lack of respect, lack of good faith, hidden agendas, undue partisanship, incivility, or other concerns creating a sense of distrust.

  • An “imbalance” of information and/or participation on the body, or bodies constantly lining up with the same split vote on every issue.
Six: Commit to Transparency

- Honor the “openness” requirement of the Open Meetings Law.


- Be aware of other transparency-related risks—e.g., texting, “serial” meetings, etc.
Seven: Protect the City’s/Town’s Confidences

• While most governing body discussions must occur in open session, the OML permits executive sessions for discussion of a limited number of topics.

• Make sure your executive session practices are set up to comply with open meetings laws. A procedural or substantive misstep—e.g., an improper motion or going off topic—can have significant consequences. See this CIRSA article: https://www.cirsa.org/member_resource/colorado-court-of-appeals-weighs-in-on-the-calling-of-executive-sessions-youll-want-to-read-this/.

• Make sure your procedures are also set up to protect confidential information.
Eight: Commit to Providing Due Process

• A large part of the elected officials’ job is acting as “legislators”—making policy and general rules that apply generally.

• But other times you make decisions affecting a specific applicant’s property rights—most commonly, these include land use and licensing decisions. For these “quasi-judicial” matters you are essentially acting as judges and have heightened duties to provide due process.

• Therefore, get acquainted with the due process “rules of engagement.” They have a familiar source: “No person shall be...deprived of life, liberty, or property, without due process of law.”
Eight: Due Process Rules of Engagement

• Remain fair, neutral and impartial. Don’t get involved or make up your mind before your governing body hearing, and don’t make prejudicial pre-hearing statements.

• Avoid “ex parte” (outside the hearing) discussions.

• Make sure your deliberations are focused on, and your decision is based upon, the relevant, existing criteria and not other factors.

Nine: Commit to Wise Leadership

• Commit to a “no surprises” approach while dealing with one another and staff. Avoid meetings free of “gotcha” moments and “staff-bashing.”

• Deal effectively with discord. Every public body has disagreements but discord should not drive meetings, your agenda, or how you interact with the community, each other, or staff.

• Commit always to civility & “mutuality of respect,” no matter how difficult the circumstances.

• Always keep in mind you are the stewards of your entity’s best interests and assets.
Conclusion

Thank you for your public service!

And for the opportunity to present.
Resources

CIRSA Elected Officials Handbook:


Other CIRSA elected and appointed officials’ resources: https://www.cirsa.org/safety-training/elected-officials/.
About CIRSA

Colorado Intergovernmental Risk Sharing Agency

• Not a commercial insurance company; CIRSA is a Colorado public entity self-insurance pool for property, liability, and workers’ compensation coverages.

• Formed in 1982 by an intergovernmental agreement of 18 municipalities pursuant to CML study committee recommendations.

• Total membership today stands at 283 member municipalities & affiliated entities:
  • 282 are members of the PC pool
  • 139 are members of WC pool

• CIRSA views proactive approaches to risk management as critical member services.

• More information at www.cirsa.org.