

Effective Governance & Risk Management

Presented by Sam Light, CIRSA General Counsel, 12.1.22



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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.



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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)



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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.



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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!



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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.



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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.



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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.



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Six: Commit to Transparency

- Honor the “openness” requirement of the Open Meetings Law.
- Using email? See this CIRSA article: <https://www.cirsa.org/news/how-the-colorado-open-meetings-law-applies-to-elected-officials-email/>.
- Using social media as an elected official? See this CIRSA article: <https://www.cirsa.org/wp-content/uploads/2019/06/Social-Media-Use-by-Elected-Officials.pdf>.
- Be aware of other transparency-related risks—e.g., texting, “serial” meetings, etc.



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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.



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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.”



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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.
- For more on quasi-judicial "rules of engagement", see: <https://www.cirsa.org/wp-content/uploads/2020/05/Quasi-Judicial-Proceedings.mp4> and https://www.cml.org/docs/default-source/uploadedfiles/events/annual-conference/cml-2022-conference---qj-decision-making.pdf?sfvrsn=b0a4e3a3_0.



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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.



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Conclusion

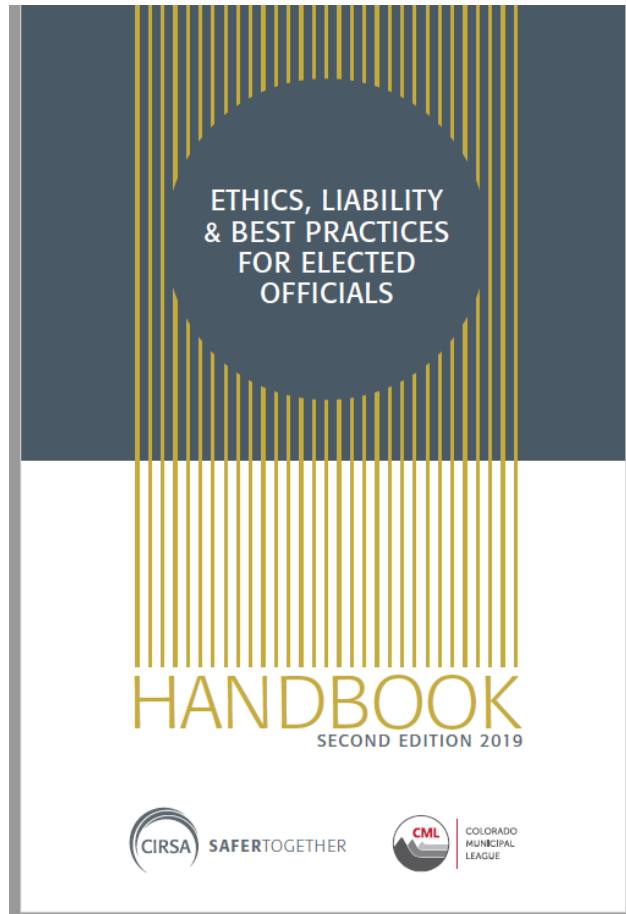
Thank you for your public service!

And for the opportunity to present.



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Resources



CIRSA Elected Officials Handbook:

<https://www.cirsa.org/wp-content/uploads/2019/06/EthicsLiabilityBestPracticesHandbookForElectedOfficials.pdf>

CIRSA Executive Director Tami Tanoue's Webinar on Ethics, Liability, & Best Practices for Elected Officials:

<https://www.cirsa.org/wp-content/uploads/2020/05/Ethics-Liability-and-Best-Practices-Webinar-2020.mp4>

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.



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