

# Effective Governance: Public Official Liability, Ethics & Conflicts of Interest

Presented by:

Nick Cotton-Baez, CIRSA Associate General  
Counsel

Empowered cities and towns, united for a strong Colorado

Contents of this presentation reflect the views of the presenter, not of CML



COLORADO  
MUNICIPAL  
LEAGUE

# Introduction

## Training Focus:

- Learn how to develop and hone your “risk radar” so that you can identify and manage risks related to your role as an elected official and member of a municipal organization.
- Learn suggested “best practices” that will enhance your effectiveness and in turn reduce risks for your city or town, your board or council, and for you individually.

*This presentation is a training resource only and is not intended to address or provide legal advice on any specific, pending issues. Any resemblance to pending issues is coincidental.*



# The Role of Elected Official

Being an elected official means your role has changed:

- Citizen → Government Official (24/7)!
- In the eyes of the community, you are always a public official.
- Your conduct will be evaluated through that lens regardless of your location or the time of day.



Empowered cities and towns, united for a strong Colorado

Contents of this presentation reflect the views of the presenter, not of CML



COLORADO  
MUNICIPAL  
LEAGUE

# Governing Bodies Face Unique Risks



- Governing bodies face unique risks in collective decision-making, which involves public process and often implicates laws and constitutional protections.
- Risks are enhanced by the high visibility of governing body actions.
- Goal isn't to avoid tough decisions—it's to make them in a way that protects the municipal organization, the governing body, and you individually.

Empowered cities and towns, united for a strong Colorado

Contents of this presentation reflect the views of the presenter, not of CML



COLORADO  
MUNICIPAL  
LEAGUE

# Liability Risks at the Governing Body Level

- **Acting outside role/authority:** Acting solo; attempts to exercise powers not vested in the governing body or delegated to staff; ignoring local laws and rules in decision-making; public statements contradicting official action; improper participation in personnel matters.
- **Transparency-related risks:** Open Meetings Law (OML) violations; public records creation.
- **First Amendment free speech/retaliation claims:** Public comment restrictions, social media practices, enforcement following criticism.
- **Ethics violations:** Conflicts of interests; appearances of impropriety; gifts, favors, relationships; using position to influence outcomes.
- **Due Process and Equal Protection claims:** Land use and licensing hearings (quasi-judicial decision-making); employee or elected/appointed official discipline at Council level; selective enforcement without legal basis.



# Immunity Protections

- **Legislative immunity:** protection for legislative acts.
- **Quasi-judicial immunity:** protection for adjudicatory functions (e.g., land-use hearings).
- **Federal qualified immunity:** protection against federal constitutional claims (“clearly-established law/reasonable person” standard).
- **CGIA immunity:** protection against state tort claims (includes defense and indemnification).



# Preserving Immunity

- Governing bodies and their individual members are far more likely to preserve immunity protections when they:
  - Act collectively (i.e., vote in public meeting)
  - Stay in proper roles (e.g., avoid improper involvement in administrative functions/personnel matters)
  - Use formal process and follow procedures (i.e., applicable state/local laws and policies)
- Conversely, the potential for liability increases when members act individually, outside proper roles/authority, or fail to use formal process.



# Governing Body Action

- The governing body acts only as a body and through formal action (i.e., motion, resolution, or ordinance) based on consensus (e.g., majority vote).
- Individual members who hold only a fraction of the governing body's power and generally do not have authority to act individually.
- Collective action preserves immunity defenses and creates a defensible record.
- On the other hand, unauthorized individual action undermines staff authority, creates selective enforcement risk, and weakens immunity defenses.



# Division of Roles

- Municipal governments cannot function without both a governing body and staff.
- While the governing body and the staff are part of the same team, their respective roles differ.
- The Board's role is governance, which consists of policy-setting, big-picture organizational oversight, and delegation of administrative functions to staff.
- The staff's role is administration, which consists of putting Board-adopted policies into action, handling "day-to-day" operations, making decisions within adopted policies and delegated authority.
- Failure to respect this division of roles can hamper organizational efficiency and create liability, including personal liability.



# Staying Within Your Role

- Understand “job description” and stay within it. Look to your “structural documents”:
  - Charter (home rule)
  - Powers and duties provisions of your ordinances
  - Applicable state statutes
  - Other structural documents (e.g., job descriptions, purchasing policies, personnel policies)
- Your structural documents serve to clarify where authority and responsibility lies, and to protect you and your organization assuming everyone is committed to role discipline.



# Use Formal Processes & Follow Procedures

Best Practices:	Conversely:
Clear, written policies promote consistent, defensible decision-making and reduce reliance on <i>ad hoc</i> discretion, which is harder to defend.	Vague or unwritten policy invites off-the-cuff decision-making and discretionary action that is harder to defend.
Consistent enforcement of adopted policy supports fairness, credibility, and defensibility.	Inconsistent enforcement of adopted policy and making one-off exceptions raises fairness/credibility concerns and increase risk.
Policy creation within properly noticed public meetings ensures transparency, legal compliance, and clear governing body action.	Policy creation outside public meetings and through informal direction creates mistrust, confusion, and risk.
Individual actions and statements that align with and reinforce official decisions help maintain organizational integrity and reduce risk (both before and after the vote).	Individual actions/statements that undermine official action (before or after the vote) hamper organizational goals and promote mistrust and confusion.



# Ethics and Personal Conduct

- Become familiar with the ethics laws that govern your conduct as an elected official. Make them your “best friend” in resolving ethics issues.
- **Theme:** Local government officials must act in a manner that maintains the public’s trust and avoids using public office for private gain.
- Some key rules:
  - **Conflicts of Interest:** Disclose, recuse, don’t vote, and don’t influence others.
  - **Confidential Information:** Don’t disclose or use any confidential information for personal benefit.
  - **Gifts:** Decline any gifts seemingly connected to your service and abide by gift rules.
  - **Contracts:** Do not have a financial interest in a contract with your municipal organization (or if allowed, be transparent and ensure all rules are followed).



# Ethics – Public Perception

- In matters of ethics, the damage often occurs at the public perception stage.
- Government legitimacy depends on public confidence that decisions are being made for the public's benefit, not private advantage.
- If the public suspects self-serving action, trust erodes, meetings become harder to run, decisions become harder to defend, and the organization may receive disruptive complaints.
- Therefore, avoid situations that may create an appearance of impropriety.
- Even if you can legally participate, ask yourself:
  - Would a reasonable resident think I have a conflict of interest?
  - Would I have to spend a lot of time explaining why this isn't a conflict of interest?
  - Would this look different if it were my political opponent doing it?
  - Would I be comfortable if this were on the front page tomorrow?



# Concluding Thoughts

- Act as a body, not as individuals. Your authority and liability protections come from collective action.
- Stay in your role—governance, not administration.
- Follow your own rules—process is your best defense. When in doubt, slow down, use formal process, and ask for guidance.
- Have a good “risk radar” and seek support from your attorney and staff to effectively manage risk.
- Use your power wisely and humanely—you set the tone for the whole organization in terms of the treatment of employees, citizens, and the business community.



# CIRSA Resources

- CIRSA *Elected Officials Liability Handbook*: <https://www.cirsa.org/wp-content/uploads/2019/06/EthicsLiabilityBestPracticesHandbookForElectedOfficials.pdf>
- The elected officials' page on CIRSA website has some resources relevant to both elected and appointed officials: <https://www.cirsa.org/safety-training/elected-officials/>
- For training on quasi-judicial best practices and due process, see this CML/CIRSA presentation: [https://www.cml.org/docs/default-source/2024-conference-presentations/6-19-24-1045-cml-2024-qj-decision-making.pdf?sfvrsn=ee380f05\\_2](https://www.cml.org/docs/default-source/2024-conference-presentations/6-19-24-1045-cml-2024-qj-decision-making.pdf?sfvrsn=ee380f05_2) and this CIRSA video: [https://www.youtube.com/watch?v=mPz-P7A\\_qlc](https://www.youtube.com/watch?v=mPz-P7A_qlc).
- And our newest video (<https://www.youtube.com/watch?v=bfhxvn1c1lA&t=10s>), which is 17 minutes long, or select and watch sections by topic (<https://www.youtube.com/@CIRSASafety>).



# CIRSA Resources

- CIRSA *Elected Officials Liability Handbook*: <https://www.cirsa.org/wp-content/uploads/2019/06/EthicsLiabilityBestPracticesHandbookForElectedOfficials.pdf>
- The elected officials' page on CIRSA website has some resources relevant to both elected and appointed officials: <https://www.cirsa.org/safety-training/elected-officials/>
- For CIRSA training on quasi-judicial best practices and due process, see these CIRSA videos: [https://www.youtube.com/watch?v=mPz-P7A\\_qlc](https://www.youtube.com/watch?v=mPz-P7A_qlc) and <https://www.cirsa.org/wp-content/uploads/2020/05/Quasi-Judicial-Proceedings.mp4>
- And our newest video (<https://www.youtube.com/watch?v=bfhxvn1c1IA&t=10s>), which is 17 minutes long, or select and watch sections by topic here: <https://www.youtube.com/@CIRSASafety>



# About the Colorado Intergovernmental Risk Sharing Agency (CIRSA)

- Public entity self-insurance pool for property, liability, and workers' compensation coverages
- Formed by in 1982 by 18 municipalities pursuant to CML study committee recommendations
- Not an insurance company, but an entity created pursuant to Colorado statutes and intergovernmental agreement of our members
- Total membership today stands at 295 member municipalities and affiliated legal entities
- Member-owned, member-governed organization
- No profit motive – sole motive is to serve our members effectively and responsibly
- CIRSA Board made up entirely of municipal officials
- Seek to be continually responsive to the liability-related needs of our membership – coverages and associated risk management services, sample publications, training, and consultation services, as well as specialty services such as home rule charter review
- We have the largest concentration of liability-related experience and knowledge directly applicable to Colorado municipalities

Empowered cities and towns, united for a strong Colorado

Contents of this presentation reflect the views of the presenter, not of CML



COLORADO  
MUNICIPAL  
LEAGUE

# Thank You!

## Presenter Contact Information:

Nick Cotton-Baez, CIRSA Associate General Counsel

[nickc@cirsa.org](mailto:nickc@cirsa.org); 720-786-0714

CIRSA website: [www.cirsa.org](http://www.cirsa.org)

Empowered cities and towns, united for a strong Colorado

Contents of this presentation reflect the views of the presenter, not of CML



COLORADO  
MUNICIPAL  
LEAGUE