



COLORADO
MUNICIPAL
LEAGUE

CML Special Conference

September -22-24, 2021 • Westminster, CO

Seven Key Commitments for Success in Public Office

Contents of this presentation reflects the view of the presenter, not of CML.



Introduction

Presentation Overview

- Key commitments that will enhance your effectiveness as a municipal official—and in turn reduce risk for the city/town and you individually. Topics we will touch on include:
 - The role of public official
 - Transparency
 - Some thoughts re: meetings
 - Ethical obligations
 - Organizational structure and liability
 - Due process “rules of engagement”
- This presentation is a training resource only and is not intended to address or provide legal advice on any specific, pending issues.

One: Commit to the Role of Public Official

- Being a local government official means your role has changed:
 - Citizen → government official (24/7!)
 - Outsider → insider
 - Critic/proponent → representative
- The role requires an understanding that in the eyes of the community, you are always a public official.

One: Commit to the Role of Public Official

- When you became an elected or appointed official, you agreed to uphold and follow applicable laws, including your municipality's charter, ordinances, etc. What does that commitment embody?
 - A commitment to respect your role/responsibility in the city/town structure.
 - A commitment to lawful conduct, including following applicable rules, procedures and criteria in making decisions.
 - A commitment to ethical conduct.
 - A commitment to professional courtesy and respect for one another's divergent viewpoints and styles?

One: Commit to the Role of Public Official

- Whatever your role may have been to your municipal government previously, you are now all leaders – guardians – stewards – fiduciaries –of your city or town.
- The protection of the city/town’s interests and assets is perhaps your most critical function now.
- The guiding principle in decision making should always be, “what is the right thing for the city/town?”

One: Commit to the Role of Public Official

- As local government officials, part of your role is delivering good governance which, at root, is based both practically and legally on a few core concepts:
 - **Openness & Transparency** (open meetings/records laws);
 - **Fundamental Fairness** (due process);
 - **Predictability & Evenhandedness** (equal protection; certiorari claims, etc.); and
 - **Mutuality of Respect**

Two: Commit to Transparency

- Transparency is a basic expectation for public entities.
- Citizens take interest in the goings-on of their local government, how/when those goings-on are discussed, and the opportunities afforded to them to listen in on/participate in the discussion.
- A lack of transparency can cause massive trust and credibility issues, and potential claims/disputes over compliance.

Two: Commit to Transparency

- The Colorado Open Meetings Law (OML) applies to all meetings of the governing body and other local public bodies (boards, commissions, etc.)
- Applies to 3 or more or a quorum, whichever is less.
- Requires discussion/action on public business to take place at a meeting open to the public (the “openness requirement”).
- And, if action will be taken or a quorum will be present, there must be timely notice—agenda posted at least 24 hours in advance.

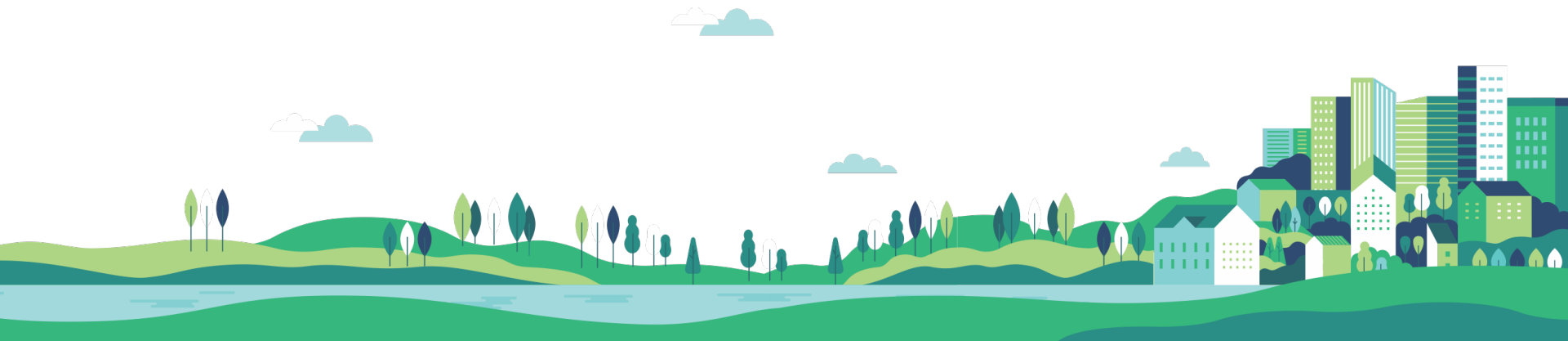
Two: Commit to Transparency

- A “meeting” includes any gathering to discuss public business, in person, by phone, or electronically.
 - House Bill 21-1025 will bring some clarity regarding application of the OML to emails; see: <https://www.cirsa.org/news/how-the-colorado-open-meetings-law-applies-to-elected-officials-email/>
- The OML permits executive sessions only for limited and specified purposes and following specified procedures. Use an executive session script and follow any local rules.
 - Make sure your announcement and motion for executive session is consistent with OML requirements; see: https://www.cirsa.org/wp-content/uploads/2020/07/Liability-Alert_Executive-Sessions.pdf

Two and 1/2: Protect Confidences

A Scenario

In executive session the City Council develops a strategy for negotiating the purchase of a vacant lot. The confidential appraisal states a value range of \$275,000-325,000, and the Council's instruction is that the Mayor and Manager should meet with the landowner and negotiate for a contract up to \$300,000. Councilmember Jones sees the landowner at the coffee shop the next day and, eager to get the deal moving, tells her the City is willing to pay \$300,000 and may go higher as the appraiser thinks the property is worth up to \$325,000. Problem?



Three: Commit to Running Good Meetings

- Plan for...and lay the groundwork for...orderly & productive public meetings! Great meetings don't usually happen by happenstance.
- Give the packet and agenda the time and attention they deserves.
- Use and expect civility in your meetings. Remember, a culture of civility flows from the top down – if members practice incivility towards one another or towards staff/citizens, then....
- Maintain a degree of formality at meetings – use titles, insist speakers be recognized, use podium, etc.
- Develop processes / guidelines for running meetings. Use procedural rules to facilitate—rather than debilitate or complicate—your meetings.

Three: Commit to Running Good Meetings

- Find time for self-examination if meetings aren't going well:
 - Are our “public comment” periods turning into “public inquisition” periods or “public argument” periods?
 - Do we “suffer” from lack of focus or excessive informality?
 - Are we undermining fruitful discussions via preemptive strikes, “proxy” talk, partisan rhetoric, and/or hidden agendas?
 - What are the dynamics that are allowing this to happen?

Four: Commit to Ethical Conduct

- In Colorado, ethics scandals are rare – but happen from time to time.
- Ethical misjudgments greatly undermine public confidence in public bodies, and appearances of impropriety can be just as damaging as actual conflicts.
- Ethical transgressions can result in personal criminal and civil liability.
- There is often a “personal benefit” exclusion from public officials liability insurance coverage.

Four: Commit to Ethical Conduct

- The theme that runs through codes of ethics is: It is not permissible to gain a personal benefit by virtue of holding public office. Develop a working familiarity with your applicable code of ethics.
- **Conflicts of Interest:** Disclose, recuse, don't vote, and don't influence other members. See this CIRSA video: <https://www.cirsa.org/wp-content/uploads/2020/06/How-To-Deal-With-Conflicts-Of-Interest-Final.mp4>
- **Contracts:** Don't have a financial interest in contracts or purchases with your city/town; if you will have such interest follow all rules.
- Don't disclose or use any confidential information for personal benefit.
- Decline gifts that seem connected to your service (and abide by gift rules).

Five: Commit to Supporting the City/Town Structure

- Everyone and every body within the organization has a “job description”—it is important that you honor your “job description,” both to help ensure the organization functions at a high level, and to avoid risks of liability, including the risk of personal liability!
 - You have protection from personal liability if you are “within the scope of employment” and not acting “willfully and wantonly.”
 - Means everyone needs to know and respect their “job description.”
 - Conduct that is “outside the scope” or “willful and wanton” can result in a loss of governmental immunity and create liability, including the potential of personal liability for you. Can also result in potential loss of insurance coverage.

Five: Commit to Supporting the City/Town Structure

- Tips to support structure and avoid concerns around “role discipline”:
 - Respect the delegations of power and authority that are in place.
 - Recognize the collective nature of your power. Each individual has a fraction of the power of the body, but it can’t be exercised alone. Under law, the power and authority belongs to the body itself.
 - Recognize that elected and appointed officials act primarily as a BODY, and exercise responsibilities mainly by VOTING in a PUBLIC MEETING.
 - Therefore, think “We” ... not “I”! If you find yourself about to act in terms of “I” rather than “we” ...that’s a red flag!

Five: Commit to Supporting the City/Town Structure

- Another warning sign: He/she/they did what?!
- Role discipline (and its corresponding positive impacts) sometimes requires:
 - Setting aside a personal interest or agenda when there is lack of support.
 - Accepting that “the council/board has spoken” though one may have preferred a different outcome.
 - Acknowledging—and sometimes reminding others—that individual members cannot “assure outcomes.”
 - A commitment to “norms of conduct” regarding individual activities of members.

Five: Commit to Supporting the City/Town Structure

- Adherence to the organizational structure is important in the area of employee relations:
 - Except for the governing body's direct reports, elected and appointed officials are not employee supervisors. Thus:
 - Don't get individually and improperly involved in personnel issues.
 - Don't engage in or facilitate activities that bypass your organization's "chain of command".
 - Focus appropriate attention on supervision of direct reports.

Five: Commit to Supporting the City/Town Structure

- Recognize that while your council/board or other body is made up of individuals, each with different goals and priorities; it is a single body.
- Therefore, resolve to speak with one voice to your support staff, and follow established channels. “Deliberate with many voices, speak with one voice.”
- The body as a whole is responsible for sorting out and reconciling the views and priorities of its members, so that it can speak with one voice. This is how the body achieves clarity, credibility and accountability to its voice.

Six: Commit to Providing Due Process

- Governing bodies most commonly are acting as “legislators”—making policy and general rules that apply generally—or as “administrators,” handling business matters that are at the governing body level.
- But sometimes you make decisions affecting a specific person’s or applicant’s property rights. For these “quasi-judicial” matters—e.g., certain licensing decisions and many land use matters—you are essentially acting as judges.
- In this role you have heightened responsibilities to provide “due process” and a failure to provide due process exposes you and the city/town to liability.

Six: Commit to Providing Due Process

- A quasi-judicial decision is one that:
 - Determines the rights of a specific person/entity for a specific property (or protected property interest).
 - Is based on facts developed at a hearing to resolve the particular interests in question. In this process, you are called upon to apply existing legal standards to a specific case.
 - The key characteristics of a quasi-judicial process are notice, a hearing, and a decision based on the record and set criteria, by a fair and impartial decision-maker—that's you!
- Familiarize yourself with the quasi-judicial rules of engagement! These rules have a familiar source: “No person shall be...deprived of life, liberty, or property, without due process of law.”

Six: Due Process – Tips for Quasi-Judges

- Limit your involvement to your participation at your body's public hearing.
- Remain neutral; don't make up your mind before the hearing and don't make prejudicial pre-hearing statements.
- Don't make your decision on the basis of irrelevant or non-existent standards. Base your decision only on the applicable criteria.
- Don't engage with one side or the other, or with your fellow quasi-judges, before or outside the hearing (ex parte contacts).

Six: Due Process – Tips for Quasi-Judges

- A critical duty of the quasi-judge is to avoid “ex-parte” contacts, meaning any “outside the hearing” discussion with an interested party about the subject matter of the hearing.
- A proceeding loaded with “ex-parte” contacts is a path to having your decision challenged and the integrity of your process eroded.
- When we advise against ex-parte contacts, we are protecting your ability to participate, and your ultimate decision. So, don’t engage in pre-hearing “buzz”—remember, you get to make the decision but with that power goes the obligation to remain fair and unbiased.
- One way to look at it—If it were your application and your property interests at stake, would ex parte communications seem fair?

Six: Due Process – Tips for Quasi-Judges

- Deliberations Matter – When you are in “quasi-judicial” mode, your group deliberation is particularly important. Your discussions are where:
 - Your group formulates the bases of its impending decision.
 - The applicant, the public, and others obtain an understanding of your position.
 - A reviewing judge will look at to understand why you decided the matter as you did (and whether you followed your own rules).
- Have the applicable decision criteria “at the ready” and use them to guide deliberations.
- Focus on the relevant facts and criteria and use Sam’s “Rule of Why.”

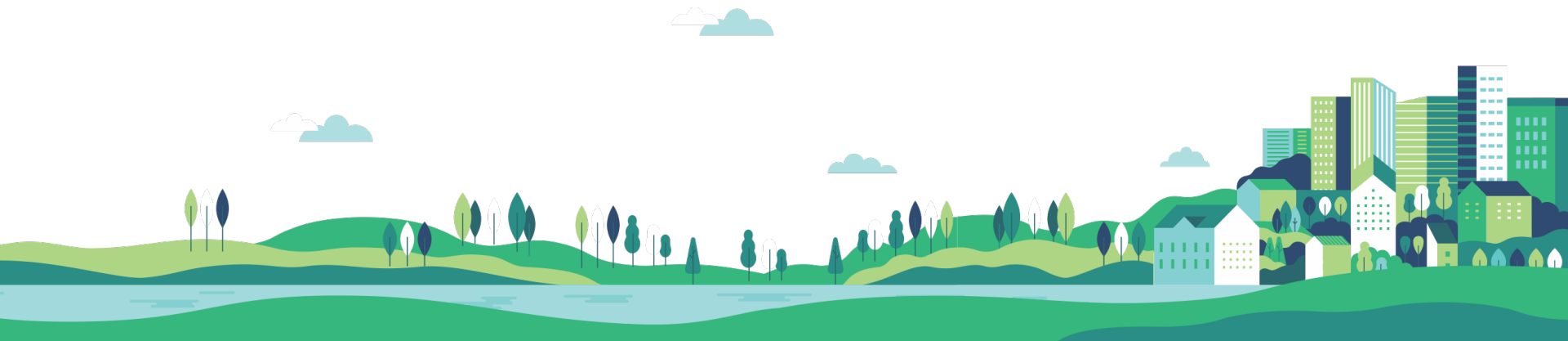
Seven Embrace Wise Leadership

- As a body, commit to a “no surprises” approach while dealing with one another and staff. Avoid “staff bashing” and “gotcha” moments.
- 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. And folks can disagree without being disagreeable.
- Recognize that certain liability risks—in particular civil rights claims—can be exacerbated by “bad facts” that suggest (or are perceived to be based upon) retaliatory or reactive conduct. Use courtesy, tact, and diplomacy in interactions, especially in public settings.

Seven Embrace Wise Leadership

- Recognize that you are perceived as holding the most powerful positions in your local government. As they should, your words and actions have impact.
- You set the tone for the whole organization in terms of treatment of citizens, staff, and others.
- Commit to act as “we” and not as “I,” to build strong relationships within your body, and among the body and staff.
- Always keep in mind that you are the stewards of your municipality’s best interests and assets.

Thank you for your public service!
And for the opportunity to present.



Resources

CIRSA Elected Officials Handbook:

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

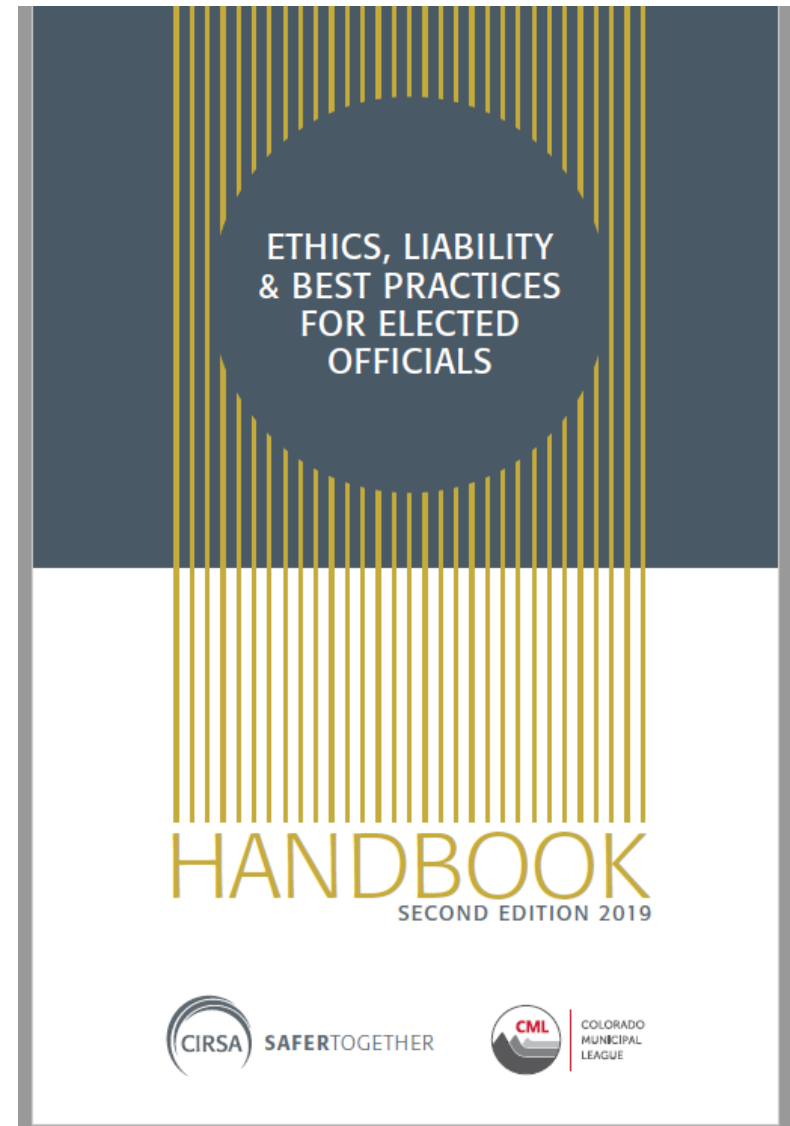
CIRSA Executive Director Tami Tanoue's Webinar on Ethics, Liability, and Best Practices for Elected Officials:

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

CIRSA Webinar on Quasi-Judicial Proceedings

Basic Training & Best Practices:

<https://www.cirsa.org/wp-content/uploads/2020/05/Quasi-Judicial-Proceedings.mp4>



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 282 member municipalities & affiliated entities:
 - 278 are members of the PC pool
 - 139 are members of WC pool
- CIRSA views proactive approaches to risk management as critical member services – is a win-win.
- More information at www.cirsa.org; CIRSA elected and appointed officials' resources: <https://www.cirsa.org/safety-training/elected-officials/>.



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