COML, CORA, & CCJRA

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Three Topics

- Open Meetings Law ("COML").
  - Executive Session Best Practices.
  - C.R.S. § 24-6-401, *et seq*.
- Open Records Act ("CORA").
  - C.R.S. § 24-72-200, *et seq*.
- Colorado Criminal Justice Records Act ("CCJRA").
  - C.R.S. § 24-72-301, *et seq*.

Colorado's Sunshine Act

300 days of sunshine a year, and 365 days of Sunshine Act compliance.

C.R.S. § 24-6-402(2)(c)

- Any meetings at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public.
- In addition to any other means of full and timely notice, a local public body shall be deemed to have given full and timely notice if the notice of the meeting is posted in a designated public place within the boundaries of the local public body no less than twenty-four hours prior to the holding of the meeting.
- The public place or places for posting such notice shall be designated annually at the local public body's first regular meeting of each calendar year. The posting shall include specific agenda information where possible.

OML COMPLIANCE (EASY!)

1. Notice meetings of a quorum or 3 or more members of board;
2. 24 hours + notice in public body's approved posting place; and
3. Specific agenda information, "where possible."

Open Meetings Law Generally

- All meetings of a quorum *or* three or more members (whichever is fewer) at which public business is discussed or formal action taken may only be held after at least 24 hours notice and must be open to public.
- "Meeting" is any gathering convened to discuss business in person, by telephone, electronically, or by other means of communication.
- Recent case law (a footnote in *Bjornsen v. Board of County Comm. of Boulder Cnty*, 487 P.3d 1015 (Colo. App. 2018) has suggested that there is no emergency exception in COML that would allow a meeting to be convened without proper notice to the public.

“Meetings”

- Includes electronic communications too!
  - Phone calls, text messages, emails, message chats, super super top secret and totally encrypted signal chats, etc.
- Be wary of daisy chains.
- Exception for correspondence between 3 or more members to schedule meetings/discuss availability for meetings.

Noticing Meetings

- What types of meetings need to be noticed?
- *Bd. of Cnty. Comm'rs v. Costilla Cnty. Conservancy Dist.*, 88 P.3d 1188 (Colo. 2004) – Notice required for any "meeting" at which there is "… a demonstrated link between the meeting and the policy-making powers of the government entity holding or attending the meeting."
- Why ask for forgiveness?

Open Meetings Law Generally

- **Posting/Agendas**
  - *Town of Marble v. Darien*, 181 P.3d 1148 (Colo. 2008) and C.R.S. § 24-6-402(2)(c).
  - "The posting shall include specific information where possible."
  - What is the meaning of full or specific information?

Agenda Item Descriptions

- No “precise agenda requirement” because it would “unduly interfere with the legislative process.”
- “Flexible standard aimed at providing fair notice to the public.”
- Allows bodies to consider items not specifically listed on the agenda but “reasonably related” to a listed item.
- Must apply objective standard assessing the notice from the perspective of an “ordinary member of the community to whom it is directed.”

Town of Marble v. Darien, 181 P.3d 1148 (Colo. 2008)

O’Connell v. Woodland Park School District

- “Board Housekeeping.”
  - “From a purely legal perspective,…it’s not an absolute necessity to provide granularity to the public” or “to tell the public in advance about every single thing that’s being issued.”
- “Other Business.”

Agenda Ex.

7. APPROVAL OF THE CONSENT AGENDA

The Consent Agenda contains items that can be approved without discussion. Any Board Member may request removal of any item they do not want to consider without discussion or wish to vote no on, without jeopardizing the approval of other items on the Consent Agenda. Items removed from Consent will be placed under Action Items in the order they appear on the agenda. (This should be done prior to the motion to approve the agenda.)

A. October 21, 2025 Meeting Minutes
B. October Paid Bills and Financials

8. PRESENTATIONS AND DISCUSSIONS

Tim Maroney IBC Update Presentation

9. ACTION ITEMS

A. Ordinance 25-848 IBC 2024 Update (Public Hearing 1st Reading)

B. Resolution 2025-11 Salvation Army Donation for Meals.

C. Resolution 2025-12 Wreaths Across America Donation

D. Resolution 2025-13 Special Assessments for Delinquent Payments

E. History Colorado Welcome Center Lease Agreement

CML COLORADO MUNICIPAL LEAGUE

Executive Sessions: C.R.S. § 24-9-402(4)

- Exception to the general rule that meetings must be open to the public.
- Must announce the topic for discussion in the executive session in as much detail as possible without compromising the purpose for which the executive session is authorized.
- Must be entered into by 2/3 vote of the quorum present after the announcement.
- Must specifically cite to the subsection under which you are entering the executive session.
- Must record the session except for matters entered into with attorney for legal advice.

Authorization to Hold an Executive Session

- Seven separate bases for a municipality to hold an executive session.
  1. Matters related to the purchase, acquisition, lease, transfer or sale of property, pursuant to C.R.S. § 24-6-402(4)(a);
  2. Matters subject to the attorney-client privilege, pursuant to C.R.S. § 24-6-402(4)(b);
  3. To consider matters required to be kept confidential by federal or state law or rules and regulations, pursuant to C.R.S. § 24-6-402(4)(c);

Authorization to Hold an Executive Session

4. To discuss specialized details of security arrangements or investigations, pursuant to C.R.S. § 24-6-402(4)(d);
5. To determine positions relative to matters that may be subject to negotiations, pursuant to C.R.S. § 24-6-402(4)(e);
6. To consider personnel matters, pursuant to C.R.S. § 24-6-402(4)(f); and
7. To consider documents protected from disclosure by the Colorado Open Records Act, pursuant to C.R.S. § 24-6-402(4)(g).

Executive Sessions, Cont.

- NO FORMAL ACTION OR ADOPTION OF POLICY, POSITION, RESOLUTION, RULE, OR REGULATION MAY BE TAKEN IN EXECUTIVE SESSION.
- But, the body can give direction to legal counsel on how to handle legal issue or direction to negotiators on how to proceed with negotiation.
- JUST … don’t call it a roll-call vote.

Remedy for OML violation/record inspection denial

- C.R.S. § 24-72-204(5)(a) provides a records requester who has been denied access to a record the right to apply to a district court for an order directing the custodian to show cause why the inspection should not be permitted.
- Subsection 5(a) further entitles the requesting party to recover court costs and reasonable attorney fees if the record requester is deemed to be a "prevailing applicant": unless the court finds the denial of the right of inspection was proper, it shall order the custodian to permit such inspection and shall award court costs and reasonable attorney fees to the prevailing applicant in an amount to be determined by the court.
- C.R.S. § 24-6-402(9) in any action in which the court finds a violation of this section, the court shall award the citizen prevailing in such action costs and reasonable attorney fees.

But wait…the CURE doctrine.

- *O'Connell v. Woodland Park School District, et al.*, 2025 WL 2717522 (September 15, 2025):
  - C.R.S. § 24-6-402(8): "No resolution, rule, regulation, ordinance, or formal action of a state or public body shall be valid unless taken or made at a meeting that meets the requirements of subsection (2) of this section;" and
  - Cure doctrine is a court-created doctrine that provides that a public body may "cure" a violation of the Open Meetings Law by holding a subsequent meeting that does not merely rubberstamp the previous decision.

The CURE, cont.

- No distinction between intentional and unintentional violations – "COML is concerned with the fact of the violation, not with whether an alleged violation was intentional or unintentional."
- Timing of the cure matters for purposes of attorney fees.
- Prevailing party only if cure occurs after the filing of the lawsuit alleging the COML violation.

The Sentinel Colorado v. Kadee Rodriguez, **577 P.3d 48 (Colo. 2025)**

This case
HAS
EVERYTHING!!!

Trial Court Issues:

1. Executive session lacked a topic and agenda for the session simply stated:

   Legal Advice 87
   C.R.S. 24-6-402(4)(b)
   Estimated time: 1 hour

   Neither did Council announce topic of executive session on the record.

2. Executive session discussion was regarding whether Council would pursue or resolve censure charges against Council Member Jurinsky. Jurinsky was present in the executive session. Potential waiver issue.

Trial Court Issues (cont.):

3. Notwithstanding C.R.S. § 24-6-402(2)(d.5)(II)(B), which allows the body to not record executive sessions entered into for attorney-client discussions, the City recorded the executive session.
4. Second potential waiver issue: Agenda packet at the next meeting discussed direction Council gave to attorney: on March 14, 2022, the City Council directed and instructed special legal counsel to end the investigation prior to any public hearing and enter into a stipulation with Council Member Jurinsky to dismiss the charges brought against her.

REMEDIES UNDER COML

r/Denver • 2y ago
DoctFaustus

Aurora refuses to release recording of unannounced, secret meeting by council committee

CORA C.R.S. § 24-72-200, *et seq.*

- CORA imposes strict compliance on local governments, and as such, it can easily be a source of liability and litigation for a local government.

CORA

- Custodian of records, typically City or Town Clerk, responsible for responding to requests.
- Custodian is authorized to adopt rules regarding records requests and to prevent the unnecessary interference of the discharge of custodian's duties. C.R.S. § 24-72-203(1)(a).
- Having a policy on handling records requests ensures uniformity in responses and minimizes liability.

Responding to CORA Requests

- Any record request received after 5:00 p.m., or any day the Town is officially closed, will be considered received on the next business day.
- Please allow up to three (3) days to process requests, and in extenuating circumstances up to seven (7) additional working days may be necessary to respond to a request.
- When processing record requests, the first hour is free.
- There will be a fee associated with paper copies of documents (0.25 per page) and maps ($5.00 per page).
- For requests exceeding the first free hour, a fee of $41.37 per hour will be charged for any research, review and redaction. A 50% deposit is required to begin work, and a final balance must be paid before records can be released.

Responding to CORA Requests, cont.

- All requests for records must be specific as to the records sought and the relevant dates. Requests for correspondence must identify the parties to the correspondence. For any request that is vague or broadly stated the custodian may require the requestor to provide a more specific request. Response times as delineated below will not be considered to have begun until a sufficiently specific request has been received, and the requestor has paid the deposit required by this policy.

Responding to CORA Requests, cont.

- C.R.S. § 24-72-204(4): If the custodian denies access to any public record, the applicant may request a written statement of the grounds for the denial, which statement shall cite the law or regulation under which access is denied and shall be furnished forthwith to the applicant.
- Although not required, consider automatically providing basis for denial in writing, with statutory citation to reason why request is being denied.

CORA: Greatest Hits

1. The [Town/City/County/District] is only required to provide existing records within its possession and is not required to create a record in response to a CORA request. *See* C.R.S. § 24-72-202(6)(a) and 202(7) (defining a "public record" and "writings").
2. Certain personal email addresses, telephone numbers or home addresses have been redacted pursuant to C.R.S. § 24-72-204(2)(a)(VII).
3. The City invokes its right under C.R.S. § 24-72-203 to take an additional seven (7) business days to respond to this CORA request.

CCJRA: C.R.S. § 24-72-301, *et seq.*

- Under the CCJRA, the custodian has significantly more discretion about the release of certain records governed by the CCJRA.
- Two categories of requests:
  1. Records of official action. CCJRA defines an official action as "an arrest; indictment; charging by information; disposition; pretrial or post-trial release from custody; judicial determination of mental or physical condition; decision to grant, order, or terminate probation, parole, or participation in correctional or rehabilitative programs; and any decision to formally discipline, reclassify, or relocate any person under criminal sentence." Section 24-72-302(7), C.R.S. The records of official action must be open for inspection.

CCJRA: C.R.S. § 24-72-301, *et seq.*

2. Except for records of official actions, which must be available for inspection, all other criminal justice records may be open for inspection subject to the discretion of the official custodian. Section 24-72-304(1), C.R.S.

- Records in active use or in storage, and therefore not available for inspection, and in the custody and control of the requested person, the person shall notify the applicant in writing, if requested by the applicant.
- If requested, the person/custodian shall set a date and time within three (3) working days when the record will be available for inspection. C.R.S. § 24-72-303(3).

CCJRA: C.R.S. § 24-72-301, *et seq.*

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- If requested, the person/custodian shall set a date and time within three (3) working days when the record will be available for inspection. C.R.S. § 24-72-303(3).

CCJRA: Internal Investigations C.R.S. § 24-72-303(4) and (5)

- Completed internal investigations including any appeals process that examines the in-uniform or on-duty conduct of a peace officer, as described under C.R.S. § 16-2.5-101, related to an incident of alleged misconduct involving a member of the public is open for inspection.
- Custodian may first provide requester with a summary of the investigation file.

Thank you!

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