



CML
COLORADO MUNICIPAL LEAGUE

CML 96th Annual Conference

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Vail

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Effective Governance

Tues, June 19, 2:30-4:30

Sam Mamet, Executive Director, CML
Tami Tanoue, General Counsel/ Deputy Executive Director, CIRSA
Dianne Criswell, Legislative Counsel, CML
Karen Goldman, Municipal Clerk Advisor


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Session Agenda

- Overview and introductions
- Liability and governance/quasi-judicial/staff-elected relations
- Open meetings
- Parliamentary procedures
- Your Clerk as a resource
- Ethics/conflict of interest
- Q&A

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Public Policy: An Overview

Presented by Sam Mamet

The primary job of the governing body:
Set public policy

It's a challenging task requiring a good understanding of what municipal government can accomplish and an understanding of the best interests of the public.

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Professionalism


The public expects an efficient government:

- Rational, analytical decision making required
- For best results - utilize staff expertise
- Programs and policies should achieve intended outcomes

The goal is finding the proper balance to:

- Being responsive to public expectations
- While being good stewards of public resources


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Accountability

- Once elected – councilmembers/trustees represent the entire community
- All citizens have a right to be heard
- Viewpoints expressed by citizens should be accepted and acknowledged
- Public involvement is essential for the legitimacy of governing processes

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Governance Roles Big Picture Thinker

- Making decisions that will have significant impact on municipality – both short and long term
- Focus on the future impacts – what actions will make a difference
- Think beyond present data and constraints
- See possible connections and relationships

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Governance Roles Stewardship

- Listen to and respect citizen views
- Represent all citizens – and those of the future
- Some decisions will be uncomfortable as they will run counter to the wishes of some citizens
- Decisions should be made for the greater good

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Governance Roles Representative/Advocate

- Acting in role of “customer service representative”
- Elected official acts as a conduit between citizens and city services
- Citizens see council/board members as most responsive to their concerns

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Governance Roles Community Builder

- Provide leadership in relationship and consensus building
- Foster relationships that help people work through differences
- Provide a forum for all aspects of an issue to be heard and considered

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Governance Roles Decision Making

- Decision making role can be similar to acting as a judge
- Decisions based on information presented – then voted up or down
- Often not an easy role – but vital to municipal government

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Governance Roles Oversight

- Hires manager in council-manager system
- Hires town clerk and other staff in mayor-council system
- Holds staff accountable
- Careful to respect proper roles of governing body versus roles of staff members

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Ethics

- Never use confidential information for personal gain
- Do not accept gifts above the Amendment 41 limits (\$59 a year from non-family individuals)
- Do not participate in any decision that directly benefits you personally or your business
- Do not hold an interest in any contract entered into by the governing body

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High Standard of Conduct

In summary the public expects:

- Honesty
- Decisions that put the community first
- Open and fair decision making process
- Respect for individuals and the community
- Accountability
- Decorum and professionalism
- Personal character and lawful behavior

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Governance vs. Management

Presented by Tami Tanoue

- Is the governing body's focus on governance rather than management or administration?
 - Management is not the same thing as governance! Being a “super-manager” is still not governing.
 - Governance is policy-setting, big picture, and forward-looking, rather than making reactive, case-by-case decisions as issues arise, or after-the-fact after a problem surfaces
 - Boards should develop “a taste for the grand expanse of the big picture,” says John Carver (“Boards That Make a Difference”)

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Where are you focusing your efforts?

Ownership

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Governance

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Management

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Supervision|

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Front Line Employment

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Where are you focusing your efforts?

- **Time Horizons:** Yours should be the furthest out!
- **Dealings within Chain of Command:** Don't jump more than one level!
- **No Redundancy:** Unlike other levels in the organization, there is no one else who can step in and do *your* job!

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Governance characteristics

- Does the governing body speak with one voice?
 - “Deliberate in many voices, but speak with one”
 - Recognize that, while there may be dissension or disagreement, the CEO (e.g. the City/Town Manager/Administrator and/or other direct report) is accountable only for directions *given by the body as a whole*
 - Is the voice directed at the CEO, the governing body's primary employee?

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Honoring the Governance-Management Distinction

- Why is this a liability issue?
 - Public officials have protection from liability when they are within the “scope of employment” – term used in Colorado Governmental Immunity Act
 - “Scope of employment” means everyone must respect the parameters of your job description
 - So to the extent you have organizational parameters that include an allocation of responsibilities, those parameters are part of your job description; honoring those parameters will help keep you within the “scope of employment”
 - Liability coverages also hinge on your being within the scope of your authorized duties
 - If you are going outside the parameters, you could be outside the scope of your job description...and outside the scope of your liability protections!
 - If you’re doing management/administration, then who’s doing the governance? And what about those who are supposed to be doing the management/administration? What are they doing?

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Legislative v. Quasi-Judicial

Presented by Tammi Tanoue

- The actions you take as a governing body can generally be “pigeonholed” into the following categories: legislative, quasi-judicial, and “other”
- By correctly “pigeonholing” the nature of the action, you can observe the differing rules that apply to each type of action
- Quasi-judicial actions require the greatest care and caution from a procedural perspective, because the property rights of individuals can be affected, triggering constitutional “due process” requirements
- The essence of “due process” is notice and a hearing before a neutral decision-maker, with a decision that is based upon the evidence gained at a hearing and the application of the proper legal criteria

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A Legislative Decision

- Reflects public policy relating to matters of a permanent or general character
- Not normally restricted to particular individual or entity
- Affects the legal rights of specific individuals only in the abstract
- Prospective in nature
- Not subject to appeal under C.R.C.P. Rule 106(a)(4)
- **Think: “State Legislator -- State Capitol”!**

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A Quasi-Judicial Action

- Determines rights, duties or obligations of a specific individual or entity
- Based on facts developed at a hearing to resolve the particular interests in question
- Applies presently existing legal standards (like ordinances) to the facts
- Usually subject to appeal under C.R.C.P. 106(a)(4)
- **Think: “Judge -- Courtroom”!**

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Remedies for disagreement with a quasi-judicial decision:

- IF hearing has been carried out properly, and decision has been issued based on facts in the record and application of proper legal criteria:
 - Decision will be upheld; and
 - Other recourse (such as a claim of a constitutional violation) will likely be unavailable or unsuccessful
- But IF there are procedural flaws in the hearing or the decision, a claimant may seek redress for a constitutional violation!
- In quasi-judicial matters, the PROCEDURE by which you arrived at a decision can be more important, from a legal and liability standpoint, than the SUBSTANCE of your decision!

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Due Process Duties – Types of Acts

Legislative Acts

- ❖ Adoption of a master plan
- ❖ Consideration of general amendments to the subdivision or zoning ordinance
- ❖ Adoption of development regulations
- ❖ Adoption of an annexation ordinance

Quasi-Judicial Acts

- ❖ Rezoning request
- ❖ Action on a special review use
- ❖ Approve a PUD zoning classification or plat for a piece of property
- ❖ Action of a variance request
- ❖ Landmarking a historic structure

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Avoiding Trouble as a Quasi-Judge

- ❖ Don't sign any "pro" or "con" petitions.
- ❖ Don't make up your mind before the hearing.
- ❖ Don't speak with one side or the other before a hearing (ex parte contacts – more later).
- ❖ Don't participate if you have a financial or other personal interest in the matter (code of ethics).
- ❖ Don't make your decision on the basis of irrelevant criteria.

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Avoiding Trouble as a Quasi-Judge

- ❖ Don't participate if you know you can't be fair and unbiased.
- ❖ Don't participate in decision if you weren't there for the entire hearing (or didn't at least listen to the rest on tape).
- ❖ Don't make your decision based on things you "know" but did not "learn" at the hearing – For example:
 - ❖ Don't get on Google and offer your own evidence.
 - ❖ Don't offer evidence of your own experiences as the basis for your decision.
- ❖ Do ask for legal advice (executive session if necessary) on legal criteria, or on application of facts to criteria.

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Avoiding Trouble as a Quasi-Judge

- ❖ A critical duty of the quasi-judge is to avoid "ex-parte" contacts, which means 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 clear path to having your decision overturned and, as important, having the integrity of your process eroded.
- ❖ When your municipal attorney advises against ex-parte contacts, he/she is protecting you, your ability to participate in the decision-making, and your ultimate decision.
- ❖ An ex-parte contact can be problematic whether with the applicant, citizens, or in some instances, staff.

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Dealing with ex parte contacts

- ❖ **Arm yourself (and staff, arm your quasi-judges) with the knowledge you need to deal with citizens who want to talk to you about a pending quasi-judicial issue – keep your "talking points" ready:**
 - ❖ "As a board, we've committed to equal access to and sharing of information. It would really be best if you attended the hearing so that ALL of us can hear the information you want to share."
 - ❖ "I'd love to hear your views, but my Town Attorney advises that the only evidence we can consider as board members is what we actually hear at the hearing. Please plan to attend the hearing on _____ so that I can hear and understand your viewpoint."
 - ❖ "My Town Attorney advises that when I talk to one side or another at any time or place other than at the hearing itself, it really compromises my ability to maintain the reality and appearance of fairness. Whatever your view, I'm sure you would not want me speaking to the "other side" of this issue outside of the hearing."

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Conduct in Quasi-Judicial Matters

- Why is this a liability issue?
- Some of the most expensive cases we've dealt with involved allegations of due process violations in quasi-judicial matters
 - Procedural errors, even if inadvertent, can prove to be costly
 - With constitutional claims brought under 42 U.S.C. Section 1983, both damages AND attorneys' fees awards are possible
 - Quasi-judicial matters typically involve property rights, so the stakes are extremely high

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Governing Body-Staff Relations

Presented by Tami Tanoue

- A municipality's personnel are a critical resource
- They can help you to meet your goals as elected officials
- But inappropriate use of this resource can be costly, wasteful, and lead to liability issues

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“Chain of Command”

- Only a handful of personnel should report directly to the governing body – e.g., Administrator, Attorney.
 - In a “pure” administrator form of government, everyone else reports to the Administrator through the appropriate supervisor.
 - Can have variations that are less “pure” but are still workable
- A clear chain of command enhances accountability and efficiency
- Even if you have a small staff, look for ways to streamline the chain of command

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“Chain of Command”

- Inappropriate involvement in administrative matters by elected officials, collectively or individually, can:
 - Undermine the chosen form of government
 - Waste the resources you’ve committed to the form of government
 - Be a backwards step in local government evolution
 - Increase the risk of liability for yourself

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Focus on the “Big Picture” in Personnel Matters

- The legislative-administrative distinction is particularly important in personnel matters.
- A governing body’s most appropriate role is to stick to the “big picture” issues:
 - Personnel rules, including selection procedures performance evaluations, disciplinary actions
 - Entity-wide pay plan
 - Selection of your “direct reports”
 - Budget
 - Overall entity-wide and departmental goals and priorities
- Governing bodies must do their work in public – but some aspects of personnel management should not be done in public!

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Focus on “Big Picture”

- Other than your “direct reports,” if you are looking at issues involving a single employee rather than the group as a whole, that is likely an administrative issue that should be entrusted to a Manager/Administrator
 - A chain of command is a critical part of an effectively functioning organization
 - Don’t reach below the level of your “direct reports” on personnel matters, and don’t be pressured to bypass the chain of command to deal with a specific employee – if you do it with one employee, how can you **ever** return to the proper chain of command?

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Focus on “Big Picture”

- Are you getting into hiring/firing/supervision decisions concerning positions that are not direct reports to you? If so, why?
 - Shouldn’t the supervisor be the one to make hiring and firing decisions?
 - Shouldn’t the supervisor be able to make supervisory decisions without being second-guessed or end-runned?
 - If you are involved in the hiring decisions, are you setting up the conditions for a dysfunctional relationship between the employee and the supervisor?

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Use your Manager/Administrator as a Resource

- Use your Manager/Administrator as a resource to help you do well, and look good while doing it!
 - Commit to a “no surprises” approach
 - Avoid “gotcha” or “deer in the headlights” moments by giving an appropriate “heads up”
 - Don’t play “stump the staff”!
 - Blindsiding is counterproductive and hurtful, and doesn’t benefit anyone
 - Nothing wrong with asking for advance assistance in the best time, manner, and approach to raising an issue, and giving staff some research/prep time

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Use your Manager/Administrator as a Resource

- Keep in mind that the Manager/Administrator/ staff's work is a reflection of YOUR policy directions.
 - Important to keep this in mind, especially if you are new to the governing body and have questions/concerns about prior policy directions
 - Resist reflexive urge to “clean house” because you are newly elected and want to change policy directions

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Why is this a Liability Issue?

- Your BEST immunities as elected officials are in the legislative and quasi-judicial arena.
 - Courts recognize legislative and quasi-judicial immunities
- Venture into administration, and you're venturing into areas where immunities may not apply!
- Misuse or abuse your staff, and you will be inviting turmoil and claims!

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Open Meetings

Presented by Dianne Criswell

- Who is covered?
- What is a “meeting”?
- What notice is required?
- When are “emergency meetings” permitted?
- When are “executive sessions” permitted?
- What are the penalties for violations?

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Statutory Law

- Article 6 of Title 24 (Colorado Sunshine Act)
- Local Charters and ordinances
 - Always know these!

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To whom do these rules apply?

- Local public bodies, including any board, committee, commission or other policymaking, rulemaking, advisory or formally constituted body of a political subdivision of the state, such as municipalities.
- Any public or private entity that has been delegated a governmental decision-making function.

C.R.S. 24-6-402

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Meetings are defined as:

Any kind of:

- gathering, convened to discuss public business.

Which is conducted:

- in person,
- by telephone,
- electronically, or
- by other means of communication.

C.R.S. 24-6-402(1)(b)

Whenever 3 or more members (or a quorum, if less than 3) where business is discussed or formal action may be taken, the gathering is considered a meeting subject to these laws

C.R.S. 24-6-402(2)(b)

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What is not a meeting?

- Chance meetings or social gatherings at which discussion of public business is not the central purpose. C.R.S. 24-6-402(2)(e)
- Electronic mail communication among elected officials that does not relate to pending legislation or other public business shall not be considered a “meeting” within the meaning of this section. C.R.S. 24-6-402(2)(d)(III)

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Full and Timely Notice:

OML “meetings” must have full and timely notice to the public.

- In addition to any other means, of full and timely is deemed when notice of the meeting is posted in a designated public place within the boundaries of the local public body no less than 24 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.

C.R.S. 24-6-402(2)(c)

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Any cure for notice failures?

- The OML does not expressly address whether subsequent action by a public body can “cure” past OML violations.
- The Court of Appeals has held that a state or local public body can cure a prior OML violation by holding a subsequent meeting that fully complies with the OML and does not involve the mere “rubber stamping” of earlier decisions made in violation of the OML.

Colorado Off-Highway Vehicle Coalition v. Colorado Bd. of Parks and Outdoor Recreation, 292 P.3d 1132 (Colo. App. 2012)

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Direct Notice?

- The Open Meetings Law contains a provision requiring the clerk to maintain a list of persons who have requested, within the previous two years, direct notification of meetings.
- The person requesting direct notification can designate all meetings or can limit the request to meetings at which specified policies will be discussed.
- The clerk is required to provide these persons with “reasonable advance notice” of such meetings.
- The statutes specify neither what type of notice nor what time frame will be considered “reasonable;” however, it is provided that unintentional failure to give this direct notification will not invalidate actions taken at an otherwise properly noticed meeting.

C.R.S. 24-6-402(7)

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Minutes of meetings

- The clerk, or other official in the clerk’s absence, must take the minutes of any meeting of the local body “at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or could occur.
- The possibility of some sort of formal action is necessary to trigger the minutes requirement.
- If an executive session is called, the minutes must reveal the topic of discussion in the executive session.
- After the meeting, the minutes must be recorded promptly and are considered a public record open to inspection.

C.R.S. 24-6-402(7)

Note: Many clerks utilize recording devices from which the actual “minutes” are transcribed at a later date. If an electronic recording serves as the actual minutes of the jurisdiction, the OML requires that the electronic recording practice must continue. C.R.S. 24-6-402(2)(d.5)(II)(A).

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Are emergency meetings allowed?

The OML does not expressly address whether emergency meetings are allowable.

• However, the Colorado Court of Appeals has recognized the need for municipalities to hold emergency meetings on occasion, and has upheld an ordinance providing for such meetings without prior public notice, where action taken would be ratified at a subsequent public meeting for which full and timely notice is provided.

• The court defined an emergency as “an unforeseen combination of circumstances or the resulting state that calls for immediate action,” and acknowledged that the notice requirement may be affected by the type of meeting involved.

Note: *this exception should be on the margin – very unusual.*

Lewis v. Town of Nederland, 934 P.2d 848 (Colo. App. 1996).

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When are “executive sessions” permitted?

Executive sessions are private meetings of the public body from which the general public is excluded, permitted to consider the following:

- Property transactions
- Attorney conferences
- Confidential matters under state or federal law
- Security arrangements or investigations
- Negotiations
- Personnel matters
- Documents protected under Open Records Act

C.R.S. 24-6-402(4)(a)-(g)

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Calling an executive session

When?:

- May only be called at a regular or special meeting.
- The OML is silent on any particular notice of intent to hold an executive session as part of a regular or special meeting. C.R.S. 24-6-402(4)

How?: C.R.S. 24-6-402(4)

- **Announce** the topic of discussion, including the specific citation to the OML (C.R.S. 24-6-402(4)) which authorizes consideration of the announced topic in executive session
- **Identify** particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized.
- The body must then **vote** on whether to hold the session for discussion of the topic(s) announced. **Two-thirds of the quorum present** must vote affirmatively before the governing body can close the meeting to the public.

Other requirements?:

The minutes of the regular or special meeting must reflect the topic of discussion at the executive session.

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What are the consequences?

Unlike ethics violations, no potential personal sanctions for noncompliance.

- Any action taken at a noncompliant meeting is **void**. C.R.S. 24-6-402(8)
- Courts may compel executive sessions to be opened if the discussion does not stay within scope. C.R.S. 24-72-204(5.5)
- Prevailing challengers may be awarded legal costs and fees. C.R.S. 24-72-204(5.5)

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Parliamentary Procedure

Presented by Karen Goldman

- What is it?
- A system of rules that are designed to protect the rights of those people attending and running a meeting
- Procedurally, the object of rules of order (parliamentary procedure) is to facilitate the smooth functioning of the assembly and to provide a firm basis for resolving questions of procedure that may arise
- The procedural standards established by rules of order allow an assembly to focus on the specific issues to which it is charged.

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Parliamentary Procedure: History

- 1801 -Thomas Jefferson published the first book on parliamentary law, Manual of Parliamentary Practice
- In 1844 Luther Cushing, clerk of the Massachusetts House of Representatives, published the *Manual of Parliamentary Practice: Rules of Proceeding and Debate in Deliberative Assemblies*. The manual soon was known as "Cushing's Manual." It was the first sourcebook on parliamentary law that spoke to the procedural needs of the many growing voluntary societies in the United States.
- Eventually parliamentary law was being used at all levels of government, yet the rules for deliberative assemblies had not yet been modified for use by smaller organizations.
- Henry Martyn Robert, an army engineer, took about the task of making such a modification. Though originally conceiving of a work of less than twenty pages, General Robert's "manual" eventually encompassed over two hundred pages and was published as Robert's Rules of Order in 1876.
- By 1915 more than one half a million copies of the guide were in print and soon Robert's manual would become a standard for deliberative assemblies everywhere.

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Mason's Manual: An Unknown Resource

- Mason's Manual of Legislative Procedure, commonly referred to as Mason's Manual, is the official parliamentary authority of most state legislatures in the United States. This 700+ page book is to legislatures what Robert's Rules of Order is to club groups.

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Questions to consider re: Motions

- Ranking: which motions have precedence over others?
- Situations: what motion applies to a specific situation?
- Timing: when can a particular motion be put forth?
- Seconding: which motions require a second?
- Debatable: which motions can be debated, which cannot?
- Amendable: which motions can be amended, which cannot?
- Votes: how many votes are needed for a motion to pass?
- Reconsideration: can a motion be reconsidered?

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Types of Motions

- Main Motions have for their object the bringing of questions or propositions before the governing body for consideration. Only one main motion can be considered at a given time.
- Subsidiary Motions have for their object the modification or disposition of the main motion being considered. It is in order to propose them while a main motion is still before the governing body and to vote upon them before voting upon the main motion.
- Privileged Motions have no connection whatsoever with the main motion before the governing body, but are motions of such importance that they are entitled to immediate consideration. The main business before the house may be temporarily set aside to address a privileged motion.
- Incidental Motions arise "incidentally" out of the business of the governing body and have very common characteristics.

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Main Motions

- The main motion, the most common of motion in parliamentary procedure, introduces a new item of business.
- All other motions take precedence, i.e., have a higher ranking than the main motion and are considered first.
- It is the first motion made and the last motion to be voted on.
- It requires a second and is debatable.
- It requires a majority vote and can be reconsidered.

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Subsidiary Motions

- A subsidiary motion is one applied to other motions to help members dispose of main motions. It is important to note that they never stand alone. The most common subsidiary motions include:
- Amend: (needs 2nd, majority, debatable) allows a motion to become more specific when it is unclear or broad. This is the most common of subsidiary motions. An amendment must be germane, that is, it must have bearing on the subject of the motion being amended.
- Postpone to a certain Time: (needs 2nd, majority, debatable) ("continue to a date certain") allows the assembly to postpone consideration of a question to a future time or date. It can be amended to change the date and/or the time.
- Postpone Indefinitely: (needs 2nd, majority, debatable) is used if the governing body declines to take a position on the main question. Its adoption kills the main motion.
- Lay on the Table: (needs 2nd, majority, not debatable) is used when members wish to set aside a motion without specifying a time to resume debate on the issue
- Commonly the motion to lay on the table is used when another matter of pressing importance has arisen.

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Subsidiary Motions, Con't.

- It is often ruled out of order if its intent is to "kill" debate, is often confused with "postpone indefinitely" and "postpone to a certain time" and is also mistakenly known as a motion "to table".
- A question that has been laid on the table may be removed from the table with a motion to take from the table through a majority vote.
- Previous Question: (needs 2nd, 2/3, not debatable) is used when members wish to bring a motion to halt discussion and call for an immediate vote. The motion is also known as "call for the question".
- Commit or Refer: (needs 2nd, majority, debatable) allows the motion to be sent to a committee for further study or redrafting.

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Privileged Motions

- Privileged motions do not deal with any business on the floor, rather they have to do with special matters of pressing importance. They take precedence over all other motions, hence their name. They can interrupt any business without discussion or debate. They include:
- Fixing the Time to which to Adjourn: (needs 2nd, majority vote, not debatable)
- Adjourning: (needs 2nd, majority vote, not debatable)
- Recess: (needs 2nd, majority vote, not debatable) allows for a short intermission. Acts as a privileged motion only if a main motion is pending. If no motion is pending, this motion is actually a main motion to recess.

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Privileged Motions, Con't.

- Raise a Question of Privilege to Make an Urgent Request about a Person's Rights: (no 2nd, no vote, not debatable) allows a request or main motion to be brought up immediately because of its urgency, while doing so would typically be called out of order. There is no debate and no vote as the chair rules on the matter of privilege or not.
- Call for the Orders of the Day: (no 2nd, no vote*, not debatable) if the agenda is not being followed, a member may call for the orders of the day. Must be enforced immediately unless the assembly, by 2/3 vote, votes to set aside the orders of the day.

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Incidental Motions

- Incidental motions always come from another motion on the floor. These motions take precedence over all other motions except privileged ones. They must be made at the correct point in the debate. The key here is "timing."
 - Examples include:
 - Point of Order: (no 2nd, no vote, not debatable): when a member thinks the rules have been violated, the member may make a point of order, thereby calling for the chair's ruling to restore order.
 - Appeal: (needs 2nd, majority, debatable) used to appeal the chair's ruling on an issue. A majority or tie sustains the chair's ruling and generally, the chair can vote.
 - Suspending the Rules: (needs 2nd, 2/3, not debatable) a motion that is used when the governing body wants to discuss an issue in a way that violates standing rules or rules of order. This motion may not interfere with the organizational bylaws and may not be made when a question is pending.

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Restorative Motions

- Restorative motions are ones that allow the governing body to change its mind on a matter. These allow the assembly to bring up a question again. They include:
 - Rescind: (needs 2nd, majority vote and previous notice or 2/3 vote, debatable) is used to quash or nullify a previously adopted resolution, motion, bylaw, section or paragraph that has been adopted at some previous time. There is an explicit right of any member to make the motion, without time limit, unlike the case in take from the table.
 - Take from the Table: (needs 2nd, majority vote, not debatable) the motion must be made at the appropriate time in the order of business.
 - Reconsider: (needs 2nd, majority vote, debatable) allows a group to reconsider the vote on a motion. The effect of the motion is to suspend the action the original motion would have required.
 - It may only be made by someone who voted on the prevailing (winning) side of the motion.
 - There is a time limit on any motion to reconsider, generally during the same or next meeting.
 - If the motion to reconsider is successful, then a vote on the original motion is taken as if it is the first time the motion was considered.
 - The motion cannot be amended nor can the motion to reconsider be itself reconsidered.

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Your Clerk = A Wealth of Information

Presented by Karen Goldman

- Elections
- Records management
- Open records requests
- Council/board support
- Administrative support
- Liquor licensing
- Agenda preparation
- Customer service
- Research
- Financial transactions
- Utility billing
- Licensing and permits
- Legal notices
- Board and commission support

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Ethics/Conflict of Interest

Presented by Dianne Criswell and Tami Tanoue

Ethics:

- Statutory Law
 - Article 18 of Title 24 (code of ethics)
 - C.R.S. 31-4-404 (conflicts)
 - C.R.S. 18-8-308 (disclosure)
- Constitutional Law: Amendment 41
 - Article 29 (ethics in government), gift ban and Ethics Commission
- Local Charters and ordinances
 - Always know these!

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Ethical principles

These should guide conduct:

- **Avoid** having an interest in a business where your official actions may have a direct or substantial impact
- **Avoid** making official decisions in a competitor's business matters
- **Avoid** taking a new job within 6 months where your official position will directly advantage you above others
- **Avoid** helping friends or family from getting jobs, gifts or benefits in ways related to your official capacity

C.R.S. 24-16-105

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What are my duties?

- **Fiduciary duty:** *entrusted with the care and management of money or property*
- **Public trust:** *entrusted with serving/preserving the public interest*

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What is an official act?

Defined as any “*vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.*”

C.R.S. 24-18-102(7)

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What types of substantial, personal financial interests?

- Ownership of a business
- Creditor interest in a failing business
- Employment or prospective employment (under negotiation)
- Ownership in property (real & personal)
- Loan or debtor interest
- Directorship/officership in a business

C.R.S. 24-18-102(4)

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Contexts in which prohibited substantial benefits arise

Gift Ban: What is covered?

- You cannot accept a
- gift of substantial value or
- substantial economic benefit
- Note: “gift of substantial benefit” is not defined

C.R.S. 24-18-104(1)(b)

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Substantial economic benefits

An economic benefit that is “tantamount” to a gift of substantial value includes:

- no interest loans or interest charged well below commercial rates
- compensation for services in excess of fair market

C.R.S. 24-18-104(2)

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Use of Confidential Information

You cannot

- use or
- disclose

confidential information acquired through official means to substantially further your personal financial interests

C.R.S. 24-18-104(1)(a)

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Gifts or economic benefits that are not substantial

- Unsolicited gifts of trivial value
- Gifts valued less than \$53 (and not given by a lobbyist)
- Gifts from relatives and friends for special occasions
- Expense reimbursements
- Campaign contributions
- Honoraria for public speaking engagements

C.R.S. 24-18-104(3)

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Gift Ban:

What circumstances are problematic?

The accepted gift or benefit:

- has a tendency to improperly influence a *reasonable person* not to faithfully and impartially discharge duties, OR
- the person knows or a *reasonable person* should know are primarily to reward for the official action taken.

Note: a gift or benefit may not have actually influenced you, rather the statutes apply the "reasonable person" standard.

C.R.S. 24-18-104(1)(b)

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Supervisees or regulated individuals

- Do not engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties.

C.R.S. 24-18-109(2)(b)

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Your Business

Do not take an official action that directly and substantially benefits:

- your business, or
- other undertaking in which you either:
 - have a substantial financial interest, or
 - are engaged as counsel, consultant, representative or agent

C.R.S. 24-18-109(2)(b)

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Contracts(Ks) or Purchasers

You should not have an interest in any contract made in official capacity.

C.R.S. 24-18-201

Public officers and local government officials shall not be purchasers at any sale or vendors at any purchase made by them in their official capacity.

C.R.S. 24-18-202

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No revolving door

Former employees may not, within six months following employment, contract or be employed by an employer who contracts with a state agency or any local government involving matters with which he was directly involved during his employment.

C.R.S. 24-18-201

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Consequences for K violations?

Every contract made in violation of any of these provisions is voidable at the instance of any party to the contract except the officer interested therein.

C.R.S. 24-18-203

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Any exceptions for contracts?

These are not prohibited contract interests:

- Contracts awarded to the lowest responsible bidder based on competitive bidding procedures;
- Merchandise sold to the highest bidder at public auctions;
- Investments or deposits in financial institutions which are in the business of loaning or receiving moneys;
- A contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract; or
- A contract when the person has disclosed a personal interest and has not voted thereon.

Any such disclosure shall be made to the governing body (for local government officials and employees)

C.R.S. 24-18-201(1)(b)

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Defense – disclosure/abstention

- Defense: Disclosure
- Voluntary disclosure of the nature of the person's private interest must be made prior to acting in a manner that may impinge upon fiduciary duty and the public trust.
- Proper disclosure is an affirmative defense to any civil or criminal action or any other sanction.

C.R.S. 24-18-110

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Proper Disclosure

- Must be made in writing to the Secretary of State.
- Disclosure may be accomplished online; go to the Secretary of State website, www.sos.state.co.us; click on "Elections" and the "Conflict of Interest."

C.R.S. 24-18-110

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What is disclosed?

- Amount of financial interest (if any),
- Purpose and duration of services rendered (if any),
- Compensation received for services, or
- Such other information as necessary to describe the interest

If the act is then performed, the official or employee shall state for the record the fact and nature of the interest involved.

C.R.S. 24-18-110

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Muni Disclosure and Abstention

For members of governing body of any city or town who have a personal or private interest:

- disclose such interest to the governing body,
- abstain from voting thereon, and
- refrain from attempting to influence the decisions of the other members of the governing body in voting on the matter.

Notwithstanding, may if vote if:

- participation is necessary to obtain a quorum or otherwise enable the body to act, and
- if voluntarily disclosed per C.R.S. 24-18-110.

C.R.S. 31-4-404(2), (3)

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Criminal Code – Disclosure 1

Colorado Criminal Code contains additional disclosure requirements affecting local government officials and employees.

Must give notice to the Secretary of State and to the governing body that is:

- actual
- advance
- written

Notice is required 72 hours before any action is taken.

C.R.S. 18-6-308

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Criminal Code – Disclosure 2

When is disclosure under the Criminal Code required?

If you exercise any substantial discretionary function in connection with a government contract, purchase, payment, or other pecuniary transaction

Who may have a conflict?

A "potential conflicting interest" exists when the public servant is a director, president, general manager, or similar executive officer or owns or controls directly or indirectly a substantial interest in any nongovernmental entity participating in the transaction.

Consequence: failing to disclose a conflict of interest is a class 2 misdemeanor.

C.R.S. 18-6-308

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Q & A

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