

Overview of Municipal Elected Office Webinar

Tues, Feb. 13, noon

Presented by



Agenda

- I. Who are CML and CIRSA?
- II. Your Role as an Elected Official – Sam Mamet
- III. Working with Staff – Tami Tanoue
- IV. Liability and Best Practices – Tami Tanoue
- V. Budgeting – Sam Mamet
- VI. Open Meetings – Dianne Criswell
- VII. Additional Resources – Lisa White
- VIII. Questions?



I. What is CML?

- Colorado Municipal League was established in 1923
- Nonprofit, nonpartisan membership association representing 270 out of 272 cities and towns in Colorado
- Advocacy, information, and training

**Empowered cities and towns,
united for a strong Colorado.**



What is CIRSA?

- Colorado Intergovernmental Risk Sharing Agency
- Public entity self-insurance pool for property, liability, and workers' compensation coverages
 - Formed in 1982 by 18 municipalities pursuant to CML study committee recommendations
 - Not an insurance company, but an entity created by intergovernmental agreement of our members
- Total membership stands at 273 member municipalities and affiliated legal entities
- Of the incorporated municipalities in Colorado:
 - 84% are members of our PC pool
 - 46% are members of our WC pool



- Member-owned, member-governed organization
 - No profit motive – sole motive is to serve our members effectively and responsibly
 - Have returned over \$35,000,000 in contributions to our membership
- 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



II. Your role as an elected official



Sam Mamet
Executive Director



#1: Set public policy

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



#2: Be professional

- The public expects an efficient government
- Rational, analytical decision making
- 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.



#3: Be accountable

- 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 process



#4: Be a big-picture thinker

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



#5: Be a good steward

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



#6: Be a representative/advocate

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



#7: Be a community builder

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



#8: Be a decision maker

- 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



#9: Provide 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



#10: Be ethical

- 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



Remember, 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



III. Working with staff



Tami Tanoue
General Counsel/
Deputy Executive Director



Personal Conduct

- The way you conduct yourself in relation to other members of the body, staff, and the community greatly impacts your effectiveness as a governing body member
- The incivility and divisiveness that characterize partisan politics need not be imported into nonpartisan local government!
- You are not only viewed as the City/Town's highest leaders, but also as the highest representative of the City/Town as an employer – you are setting THE example and tone for the entire organization



Personal Conduct

- As elected officials, you hold both actual and “perceived” powers
- Understand that you are the center of the organizational universe
- Your words and actions may have an unintended but huge impact on others
- There is never a moment when you can put aside your elected official persona when you are dealing with others in the organizational universe



Use your power wisely and humanely

- Whether you know if or not, you set the tone for the entire organization in terms of the treatment of citizens, the business community, staff, and one another.
- If the tone you set is negative, demeaning, distrustful, disrespectful, discriminatory, etc., you are setting yourself and the organization up for liability. . . . And guess what rolls downhill?
- If you sense that there is dysfunction within the organization, start by looking at the example you may be setting



Use your power wisely and humanely

- With respect to staff:
 - Is staff viewed as “the enemy”?
 - Is staff treated with disrespect or dismissively?
 - Do you participate in “bad-mouthing” of staff, especially in a public setting?
 - Do you allow yourself to be pulled into speculation or gossip about staff?
 - Do you choose the wrong time, place, and manner for leveling criticisms of staff?



Use your power wisely and humanely

- Treat each other with respect
 - Discussion and disagreement are a healthy part of the decision-making process, but must be done respectfully
 - No fisticuffs, physical or verbal!
 - No personal jabs
 - Say it once, say it succinctly, no filibustering!
 - Respect includes being respectful of the time of the body and other members
 - If there is a perpetual division in the governing body, look for ways out of it
 - Rules of Procedure, Rules of Conduct that reflect your agreed-upon values for meeting conduct
 - Retreat to hash out issues, perhaps with a mediator or facilitator



Use your power wisely and humanely

- Don't allow governing body meetings to be used as an opportunity to berate your staff members
 - Citizens have every right to raise concerns and to be critical about the way local government conducts business
 - Use the meeting as an opportunity to **RECEIVE** citizen feedback for appropriate follow-up
 - Do not join in the staff-bashing, if it's happening!



Speak with One Voice

- The governing body is made up of individuals, each with different goals and priorities
- How would you like to report to several different bosses?
 - Sorting out and reconciling what several different people want is impossible
- Resolve to direct your voice primarily to your own direct reports (Manager, Attorney, etc.) and speak with ONE voice to them
- This puts the burden on the governing body to sort out and reconcile the goals and priorities of several different elected officials, and to establish a singular set of goals, priorities, and directions for your direct reports



Use your Manager 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



Use your Manager as a Resource

- Keep in mind that the Manager/Attorney/ 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

- “Cleaning house” is a characteristic of partisanship



Conclusion

- Ethical behavior is not just about instances where a financial or other conflict of interest may exist
- In a larger sense, ethical issues are present in all of your dealings with one another, staff, and the community
- The ethical choices you make in those dealings will either enhance or reduce your effectiveness, and enhance or reduce your liability
- Following best practices for maximizing your effectiveness as a governing body member also maximizes your liability protections!



IV. Liability and Best Practices



State Liability Laws: the Governmental Immunity Act

- Our primary liability concern in this discussion is liability in the nature of “tort”
- The good news: Colorado Governmental Immunity Act (GIA) confers public entities immunity **except** (as pertinent to municipalities) in 6 specified circumstances (as pertinent to municipalities) where immunity is waived
 - Is an “immunity” act – a difficult concept to wrap your mind around!
- The bad news: Most of the waivers pertain directly to daily municipal operations!
- A bit more good news: Federal laws are not often implicated in routine accidents!
- A bit more bad news: some activities -- the more complex areas of municipal decision-making, such as personnel, police, land use -- frequently implicate federal constitution/civil rights laws rather than state laws
- Working knowledge of state law liability issues is helpful with respect to high-level policy decisions, budgetary priorities,, maintaining and maximizing personal liability protections etc.



6 Waiver Areas - GIA

- Operation of motor vehicle by public employee
- Dangerous condition of a public highway, road, or streets within corporate limits of municipality
- Dangerous condition of public hospital, jail, public facility in park or rec area maintained by public entity, or of public water, gas, sanitation, electrical, power, or swimming facility.
- Operation and maintenance of public water, gas, sanitation, electrical, power, or swimming facility
- Dangerous condition of public building
- Operation of public hospital, correctional facility, or jail



Waiver Areas - A Bit More Good News

- Keep in mind – in Colorado, there are caps on liability under the GIA for an injury that occurs within one of the waiver areas
 - Effective January 1, 2018, those caps are \$387,000 for an injury to one person in any single occurrence, and \$1,093,000 for an injury to two or more persons in any single occurrence
- These waivers and immunities also apply to you as “public employees” (and elected officials are defined as “public employees” under the GIA)
- But in order to be protected, you must:
 - **Be within the scope of your employment (SOE) – your authorized duties**
 - **Not be acting in a “willful and wanton” fashion**
- “Outside the scope” or “willful and wanton” conduct takes you outside any GIA protections as well as outside your liability coverage protections
 - **Such conduct also carries the risk of punitive damages, for which you are personally liable**
 - In the past few years, we have seen a couple of jury verdicts that included punitive damages awards against municipal officials – unprecedented in CIRSA’s history



Waiver Areas - A Bit More Good News

- What does “scope of employment” mean for your positions?
 - Your charter (for home rule municipalities) or the statutes (for statutory municipalities) contain your primary “job description”
 - Charters are generally very clear in the allocation of powers and responsibilities among the different players in a home rule municipality (Mayor, governing body, Manager/ Administrator); the statutes also provide varying degrees of clarity for statutory cities and towns
 - Mayor roles vary greatly depending on charter and/or statutory provisions
 - What a Mayor does in another community is not necessarily appropriate under your own legal structure
 - Governing body powers and responsibilities are given to the *collective* group – “the Council” or “the Board of Trustees” – not to individual members



Waiver Areas - A Bit More Good News

- Other protections apply when you are within the scope/not willful and wanton, such as:
 - your right, as a public employee defendant, to be defended at entity's expense,
 - notice requirements as precondition to suit
 - immunities in the same areas where your municipality has immunity
- But if your conduct can be characterized as outside the scope or willful and wanton, then all bets are off in terms of those protections!
- There are other state and federal laws that create potential liability, especially in the employment arena, but they are outside the scope of this presentation



Best Practices to Protect Yourself from Liability - Embrace Your NEW Role

- Being newly elected, or a change in the balance of power on a Council/Board, means that your role may have changed:
 - Citizen-official
 - Outsider-insider
 - Minority-majority
 - Critic-representative
 - Single-issue proponent-all issues decision-maker



Recognize that your role may have changed

- Hanging on to “outsider” mentality can be destructive – when you were elected, you became the ultimate insider!
- Misunderstanding your role can increase the risk of liability for the City/Town and for yourself.
- It can also greatly reduce your own effectiveness: being part of a collective decision-making body requires **collaboration** and **consensus-building**.



Where are you focusing your efforts?

Ownership



Governance



Management



Supervision



Front Line Employment



Operate within the areas where immunities are strongest

- Understand your “job description” and stay within it.
- Before acting, look for a charter provision, statute, ordinance, resolution, or motion that authorizes you to act.
 - Keep in mind you may need to reconcile conflicting and superseding authorities
- **If you can’t trace your action to a source of authorization, you may be outside your scope!**
- **If you know what the limits of your authority are, and you choose to ignore those limits, you may be acting willfully and wantonly!**
 - Be very cognizant of what applicable legal provisions say about your job duties, and respect what they say!
 - The legal framework you operate under likely creates a clear division between legislative and administrative responsibilities – ignoring that division may be risky



Operate within the areas where immunities are strongest

- As governing body members, you act primarily as a BODY.
- You exercise your responsibilities mainly by VOTING in a PUBLIC MEETING.
- When you find yourself doing ***anything*** other than that, it is particularly critical to make sure you are properly authorized!
- If your activities are taking you outside of the purview of the Council or Board as a whole, you could be entering risky territory



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!



Operate within the areas where immunities are strongest

- “We” ... not “I”!
 - If you find yourself thinking (or more particularly, acting) in terms of “I” rather than “we”...that’s a red flag.
 - How does this happen? Maybe you’re looking to the wrong “model”
 - Council/Board is not analogous to a body like Congress or the state legislature
 - “Constituent service” by individual councilmembers or trustees isn’t part of your model – if you follow the wrong model, you may be getting crosswise with the charter or statutes and going outside your “scope of employment”!
 - Example: citizen contacts an individual councilmember about a permit issue. Should you go to the staff and “take up the cause” on the citizen’s behalf?
 - Example: a business contacts an individual trustee about an exciting development idea. Should you take a “dealmaker” role?
 - Example: an employee contacts an individual councilmember to say that they are having issues with their supervisor. Should you “run interference” on the issue for the employee?



Operate within the areas where immunities are strongest

- How does this happen, cont'd
 - Being “goaded” into outside-the-SOE conduct by political or citizen pressure?
 - “We want you to get rid of So-and-So.”
 - Are those citizens going to defend you if you’re sued?
 - Improper personal motives?
 - Acting on the basis of such personal motives is likely to be outside your scope!
 - May also be willful and wanton
 - If a motivation can be described in any of these terms, it may be a red flag!
 - Retaliation
 - Revenge
 - Personal axe to grind
 - Out to “get” someone
 - Single-issue “agenda”
- Personal benefit – financial or otherwise



Summing up...

- Recognize the change in roles
- Stay within your “job description,” and stay out of others’ “job descriptions”
- Act as “we,” not “I”
- Be cautious about citizen pressures that may lead you to do the wrong thing
- Check your personal motives to make sure they’re not taking you in the wrong direction



V. Budgeting basics for elected officials

Sam Mamet



Budget: What is It?

- The annual financial statement of your municipality's proposed revenues and spending
- A tool to communicate with your community about your financial health
- A statement of your community's priorities
- An opportunity to tell your story



Budget: Why do It?



Budget: Why do It?

- Lays out your plan: your vision in action
- Oh yeah, and it's **required**
 - Statutory cities and towns:
 - CRS 29-1-103. Budgets required.
 - Home rule municipalities:
 - CRS 29-1-113 (2). Filing of budget



Budget: What's in It?

The heart of the budget:

- Anticipated **revenue**
- Proposed **expenditures**

Other requirements may be spelled out in state statute or your home rule charter



Budget Schedule*

October 15: Budget submitted to governing body

December 10: County provides final assessed value

December 15: Certification of mill levy to county commissioners

December 31: Date to adopt your budget **IF** you want to decide your numbers

January 31: Budget due to DOLA**

*statutory

**includes home rule



Sources of Revenue

- **Sales and use tax**
 - Levied on retail sales of tangible personal property
- **Property tax**
 - Levied based on valuation of taxable property
- **Fees**
 - Imposed to defray the cost of a particular service
- **Intergovernmental revenue**
 - Distributed by formula or grant process



Limitations

- Most well-known limitation: **TABOR**
 - Requires voter approval for tax increase
 - Requires voter approval for debt authority
 - Limits revenue growth to inflation plus annual local growth
 - Voters may elect to allow government to retain revenue, generally or specifically
- Statute also places **5.5% limit** on property tax revenue growth
 - Voters may elect to waive this limit as well



Capital Budget

Long term plan (usually ~5 years) for capital improvements

- Infrastructure improvements
- Government buildings
- Community centers

Most come with operating and maintenance costs. Avoid committing **one-time dollars** to **ongoing expenses**



Budget Amendments

Life happens. So do budget amendments.

- **Amendment** – to move money from one appropriated fund to another
- **Supplement** – to authorize the expenditure of unanticipated revenue
- **Revision** – reduction of appropriation to reduce expenditure levels



CML Resources and Publications

- *Colorado Municipal Government: An Introduction*
- *Municipal Taxes and Fees: Financing Municipal Government*
- *TABOR: A Guide to Taxpayer Bill of Rights*
- Video: “Take 5: Budget Basics” at www.cml.org/videos

- Remember your most important resource: **your staff!**



What's your story?

- How will you **invest** in your community's **future**?
- What **services** will you cover? Will any be **subsidized**?
- Have you **evaluated** your programs and services based on **measurable outcomes**?
- Do expenditures reflect the **goals** set by your organization?
- Have you included **stakeholders** in the conversation?



VI. Open Meetings



Dianne Criswell
Legislative Council



Governing Law

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



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



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)



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)*



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)



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).*



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).



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)



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.

C.R.S. 24-6-402(2)(d.5)(II)



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)*



VII. Additional CML Resources



Lisa White
Membership Services
Manager



Empowered cities and towns, united for a strong Colorado.

www.cml.org



Effective Governance: Resources & Skills for Elected Officials Workshop

Wed, March 21

Budgeting Basics

- Westminster Budget Manager and Council member

Public Official Liability, Ethics, Conflict of Interest

Social and traditional media

- Thornton communications director and mayor

Basics of Parliamentary Procedures

Open meetings

Staff Council Relations

- Alamosa city manager and mayor



- \$85 for CML members if register by March 7th
- To register, visit www.cml.org and go to “training calendar”



CML Annual Conference

- June 19-22 in Vail
- Registration rate is less than \$250 for CML members



Additional CIRSA Resources

www.cirsa.org



Remember...we're here to serve you!

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