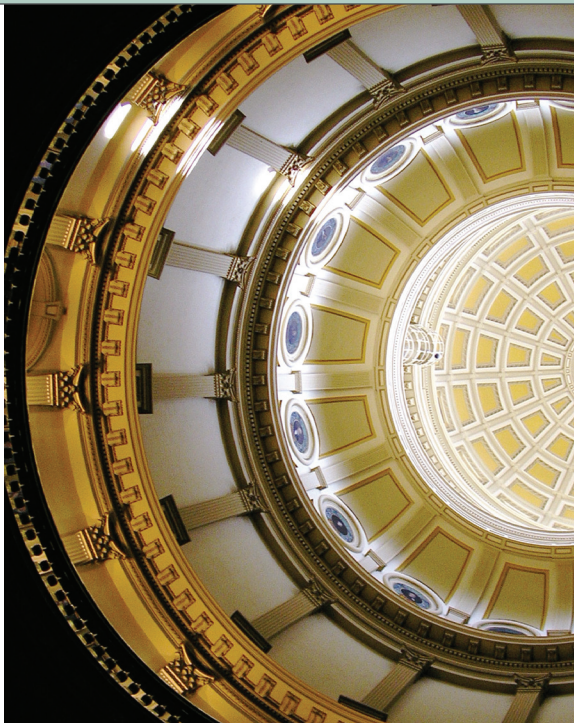




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92ND CML ANNUAL CONFERENCE

Breckenridge • June 17–20

ATTORNEYS SESSIONS

**MUNICIPAL ATTORNEYS SECTION SESSIONS
92ND CML ANNUAL CONFERENCE • JUNE 17-20, 2014 • BRECKENRIDGE**

WEDNESDAY**1:00–2:15 P.M.****2014 LEGISLATIVE UPDATE****BRR Breckenridge Ballroom Peak 17***Co-arranged by the Attorneys Section*

This annual analysis of the legislative session reveals how Colorado municipalities fared in 2014 on the issues affecting them. Ballot issues that may affect municipalities also will be discussed, as will emerging trends in state-municipal relations, with an eye toward issues that may arise in 2015.

Presenters: CML advocacy team

WEDNESDAY**2:45–4:00 P.M.****SIGN REGULATION IN THE DIGITAL AGE** *(Advanced session)***BRR Breckenridge Ballroom Peaks 14–16***Arranged by the Attorneys Section*

Review the basic concepts of sign regulation and the new challenges presented by digital display technology. Topics include the on-site and off-site distinction; the commercial and noncommercial distinction; content neutrality versus viewpoint neutrality; the separate rules for political signs; rules versus guidelines; discretion, flexibility, and variances; complete bans or allowing digital signage for stores but not billboards; revenue opportunities and risks for billboards on government land; the rise of the government speech doctrine and the decline of public forum; and common issues in sign litigation.

Presenter: Randal Morrison, Sabine & Morrison

THURSDAY**8:30–9:45 A.M.****FLOOD, SWEAT & TEARS: LEGAL CONSIDERATIONS AMID DISASTER** *(Advanced session)***DT Columbine Ballroom A–C***Arranged by the Attorneys Section*

Municipal attorneys are not left out of the heavy lifting when dealing with emergency situations, such as the recent floods. This session covers practical considerations from drafting emergency ordinances to using TABOR emergency reserves.

Presenters: Kendra Carberry, Hayes Phillips Hoffmann & Carberry PC; Bob Cole, Collins Cockrel & Cole; Tim Cox, Widner Michow & Cox LLP

THURSDAY**10:15–11:30 A.M.****RUNNING EFFECTIVE MEETINGS 101: BOB'S RULES****DT Columbine Ballroom A–C***Arranged by the Attorneys Section*

Robert's Rules of Order may be a useful guide for running public meetings, but it also can be long-winded and include provisions that do not embrace the spirit of transparency and openness in public meetings. "Bob's Rules" provide more streamlined and relevant guidelines for municipal elected officials.

Presenter: Bob Widner, Widner Michow & Cox LLP

THURSDAY**1:45–3:00 P.M.****DISTINGUISHING THE GADFLY FROM THE GUNSLINGER: IDENTIFYING AND MANAGING THE POTENTIAL FOR VIOLENCE****DT Columbine Ballroom A–C***Arranged by the Attorneys Section*

Violence in public settings is an issue that can affect all municipalities. This session will address the psychology of mass shooters and how municipalities can respond appropriately to known potential threats and the associated legal issues.

Presenters: Paul Godec, Kissinger & Fellman; Todd Faubion, Pinnacol Assurance security consultant

THURSDAY**3:15–4:30 P.M.****RUNNING EFFECTIVE MEETINGS 201: POINT OF DISORDER****DT Columbine Ballroom A–C***Arranged by the Attorneys Section*

Audience participation is a must in this meeting run amok! Put "Bob's Rules" into practice to address difficult situations in public meetings.

Presenter: Bob Widner, Widner Michow & Cox LLP

FRIDAY**9:00–10:15 A.M.****ABCs OF IMPROVEMENT DISTRICTS FOR COLORADO CITIES & TOWNS** *(Advanced session)***DT Columbine Ballroom A–C***Arranged by the Attorneys Section*

Receive a primer on BIDs, GIDs, LIDs, SIDs, and other improvement districts, as well as receive a case law update and pointers on complex relationships with other governmental entities.

Presenters: Rick Kron, Spencer Fane Britt & Browne LLP; Dee Wisor, Butler Snow LLP

FRIDAY**10:30–11:45 A.M.****ETHICAL CONSIDERATIONS IN MEDIATION OF DISPUTES INVOLVING MUNICIPALITIES** *(Advanced session)***DT Columbine Ballroom A–C***Arranged by the Attorneys Section*

Specific legislative enactments relating to municipalities (i.e., open meeting and open records acts) create special hurdles to municipalities engaged in the mediation process. This session highlights ethical concerns relating to, and complying with, those legislative requirements while still providing for the effective, successful, and ethical resolution of disputes through mediation.

Presenter: John E. Hayes, JAMS

FRIDAY**NOON–1:30 P.M.****ATTORNEYS LUNCHEON: FIRST AMENDMENT DISCUSSION** *(Advanced session)***DT Mt. Elbert Ballroom A–B***Arranged by the Attorneys Section*

Municipal attorneys will gain the tools to address common situations that invoke the First Amendment.

Presenters: Melinda Culley, Light Kelly PC; Doug Marek, Greeley city attorney

Advanced registration and ticket required. No on-site sales.

CML training does not just occur once a year at the annual conference. CML and its partners provide municipal officials with valuable opportunities in a variety of formats on a wide range of topics all year long. These educational opportunities are affordable — webinars are even free to municipal members — and effective ways to remain in-the-know on topics of municipal importance. All in-person trainings take place at the CML offices in Denver unless otherwise indicated.

JULY 14

Effective Governance: Resources and Skills for Elected Officials Workshop

Calling all elected officials! This workshop is for you. Whether you were just elected or are experienced, we are confident you will find value in this program. In addition to the great knowledge and information you will gather, you will have the opportunity to connect with other elected officials from all across the state. It is an event that you won't want to miss!

AUGUST 13

Analysis on Long-Term Fiscal Trends Webinar

Presented by Benoy Jacob, Ph.D., University of Colorado Denver School of Public Affairs assistant professor. Details coming soon.

AUGUST 15

Boot Camp for Municipal Prosecutors

Details coming soon.

AUGUST 20

Governance and Intergovernmental Cooperation for Local Government Officials from Smaller Jurisdictions Workshop

Location: Fruita

The Department of Local Affairs (DOLA), in partnership with CML, Colorado Counties Inc., and Special District Association of Colorado, is hosting this day-long workshop. Elected and appointed municipal, county, and special district officials from across the state are invited to participate in this event, which will provide valuable information and tools to those leading smaller jurisdictions. More details coming soon.

OCTOBER 10–11

Annual Seminar on Municipal Law

Location: Cheyenne Mountain Resort, Colorado Springs

Details coming soon.

RECORDED WEBINARS & WORKSHOPS

Can't make it to an event or participate in a webinar? No problem! CML posts recordings of webinars online for members to access for free, and a select number of in-person workshops are recorded and sold on DVD for a nominal fee. Visit www.cml.org for details.

For more information or to register for any of the above events, visit www.cml.org, under Events > Training.

2014 CML DISTRICT MEETINGS — SAVE THE DATE

Wednesday, Sept. 10	District 12, Frisco
Monday, Sept. 15	District 9, Mancos
Tuesday, Sept. 16	District 8, Creede
Wednesday, Sept. 17	District 10, Cedaredge
Tuesday, Sept. 23	Districts 7/14, Pueblo
Wednesday, Sept. 24	District 6, La Junta
Monday, Sept. 29	District 4, Colorado Springs
Wednesday, Oct. 1	District 3, Arvada
Thursday, Oct. 2	District 2, Estes Park
Tuesday, Oct. 7	District 5, Limon
Wednesday, Oct. 8	District 11, Parachute
Thursday, Oct. 9	District 13, Florence
TBD	District 1, Akron



CLE INFORMATION

CML has secured 13 General and 1.5 Ethics Credits; you must be registered to receive credits.

CLE accredited sessions are arranged by CML's Attorneys Section.


Attorney handbooks for CLE accredited sessions will not be printed. CML understands the value of having these materials available during the conference and for future reference, so all materials received for CLE accredited sessions, including speaker bios, are available online in a way that they may be printed easily and assembled into a binder.

NEW CLE FILING INFORMATION

The Board of Continuing Legal & Judicial Education is moving to an online CLE system that allows attorneys to enter their own credits online. The Notice of Accreditation provides the website information necessary for online submission.

The CLE Board advises that attorneys find information concerning the entry of their affidavit on the notice by visiting its website, www.cletrack.com. Upon entering their affidavit online, the attorneys should not mail in the affidavit to the Colorado CLE Office.

Remember, CML publishes a wealth of information for you throughout the year, from periodicals with the latest news to technical and legal research publications. Samples and order forms can be found at the CML display table near the Work Zone (Colorado Ballroom South Foyer) or at www.cml.org/publications.



MUNIVERSITY

Elected officials earn credit in the MUNiversity program when you participate in CML trainings. See page 23 for more information.

92nd CML Annual Conference

June 19 – 22, 2014 in Breckenridge, Colorado

CLE Speaker Biographical Information

Kevin Bommer is responsible for handling special projects at CML and managing the legislative program, as well as advocating municipal interests before the state legislature. His issues include employment, labor, severance tax and federal mineral lease, medical marijuana, pensions, water, beer and liquor licensing, health care, immigration, and homeland security and other issues of municipal interest. He also assists in training and answering inquiries for other municipal officials on various topics. Kevin joined the League in 1999.

Kendra Carberry is a partner with the law firm of Hayes, Phillips, Hoffmann & Carberry, P.C., where her practice is concentrated in local government law. Ms. Carberry is the Town Attorney for the Towns of Superior, Winter Park, Platteville and Mountain View and the County Attorney for Morgan County. She serves as special counsel to the Town of Vail and several other municipalities, and serves as general counsel to 5 special districts, 2 urban renewal authorities, and several other governmental agencies. She also acts as a hearing officer for Boulder County and the Cities of Fort Collins, Denver, Thornton, Golden, and Aurora. She earned her B.A. from the University of Virginia and her J.D. from the University of Colorado. Ms. Carberry has lectured and authored articles on various municipal subjects, including home rule, elections, open meetings and public records. She is a member of the Denver and Colorado bar associations.

Bob Cole worked for nine years for the United States Forest Service in the Sequoia, Cleveland and Klamath National Forests in California, primarily in fire management before becoming a lawyer. Bob received his BS degree in Forest Management from Oklahoma State University in 1980 and JD degree from CU in 1986. He is a member of the Board of Directors of the National Forest Foundation and Chair of its Grants Committee; volunteer assistant coach of the Evergreen High School Mountain Bike Team; former President of Snow Dodgers Youth Ski Club; a member of the National Fire Protection Association Wildland Fire Working Section; an associate member of the Colorado State Fire Chief's Association; an associate member of the National Association of Forest Service Retirees; previously Chair for the Mile High Chapter of the Society of American Foresters; and a former member of the Clear Creek County Planning Commission and Upper Bear Creek/East Mount Evans master plan task force. Bob's legal practice focuses on special districts, emergency services and communications authorities, and municipalities. He organized the City of Centennial and was its first City Attorney. Bob's clients include the Towns of Gypsum and Pagosa Springs, the Centennial Urban Redevelopment Authority, South Metro Fire Rescue Authority, El Paso-Teller Counties 911 Authority and Douglas County 911 Authority. Bob is married and has 4 teenage children, lives in Evergreen and enjoys bicycling, backpacking, fly fishing, and hunting.

Tim Cox is a partner with the law firm of Widner Michow & Cox LLP. His practice includes representation of Colorado municipalities and counties on a broad range of local government matters. Since 2007, Tim has served as the City Attorney for the City of Lakewood, the largest municipality in Colorado to contract for its primary legal services. He is a member of the City's Management Team and provides day-to-day legal advice to the City Council and City staff on issues such as open meetings and open records, zoning and land use planning, contracts, real property, annexation, public works, and elections. Tim has also been the Town Attorney for the Town of Lyons since 2005. He has drafted numerous ordinances, resolutions, policies, procedures, contracts, agreements and other municipal documents. In addition to his duties for Lakewood and Lyons, Tim has served as the Town Attorney for Lochbuie and Assistant City Attorney for Centennial, and has provided legal services for Central City, Leadville and Park County. Prior to joining Widner Michow & Cox, Tim served as the Acting County Attorney for Jefferson County. As Acting County Attorney, he supervised one of the largest local government legal staffs in Colorado, consisting of 22 attorneys and 13 support staff. Before being appointed Acting County Attorney, Tim was an Assistant Jefferson County Attorney working primarily on litigation and land use/zoning matters. Tim has also worked in private practice with Kennedy & Christopher, P.C. in Denver, Colorado, and Roche, Carens & DeGiacomo, P.C., in Boston,

Massachusetts. Tim received his bachelor's degree from Boston College and his law degree from Suffolk University Law School. He lives in Evergreen with his wife and two daughters.

Melinda Culley is an associate at the law firm of Light Kelly, P.C. in Denver. Her practice focuses on providing general counsel services to municipalities and public entities. The firm serves as City or Town Attorneys to a number of municipalities, including Bennett, Dacono, Firestone, Haxtun, Jamestown, Keenesburg, Kremmling, Louisville, Otis, Sedgwick and Wiggins and provides general counsel to public entities, including the Denver Regional Council of Governments. Melinda received her B.A. from the University of Kansas in 2002 and her J.D. from the University of Colorado in 2006.

Todd Faubion oversees security operations and crisis management functions, and performs internal investigations for Pinnacol Assurance. Faubion joined Pinnacol in 2005 as a senior criminal investigator and moved to human resources in 2009. With over ten years of previous law enforcement experience, he holds a master's degree in forensic psychology from Argosy University and a master's degree in organizational security from the University of Denver. Faubion is certified in close personal protection through Executive Security International (ESI) and as a fraud examiner with the Association of Certified Fraud Examiners (ACFE). He works as an adjunct instructor at Everest College, teaching courses in criminal justice and general psychology; and he teaches anti-stalking, threat management and executive protection at ESI.

Paul D. Godec has served as Special Counsel for Kissinger & Fellman, P.C., since October 2010. Paul obtained his Bachelor of Science in Civil Engineering from Rice University in 1983 and his Juris Doctorate from Washington University School of Law in St. Louis in 1986. Paul focuses his practice in municipal law, employment law, employment contracting, public employment, employment severance agreements, medical professional licensure and credentialing, and insurance defense. Paul's practice also involves complex civil litigation including contract, health care, employment, covenants not to compete, construction, construction defect, civil protective (restraining) orders, and civil rights and law enforcement defense. Paul's extensive experience has allowed him to resolve numerous cases successfully through trials or alternative dispute resolution, and to find winning and efficient solutions to his clients' legal needs. Kissinger & Fellman, P.C. provides various legal services for municipal and business clients including as municipal attorneys; special municipal counsel on utilities, telecommunications, franchising, and taxation issues; defense counsel on civil rights and law enforcement issues; employment law; and litigation counsel in civil litigation.

John Hayes practiced law for 38 years, specializing in municipal law for 32 of those years. John, who is a founding director of Hayes, Philips, Hoffmann and Carberry, served as City/Town Attorney for Wheat Ridge, Sheridan, Greenwood Village and Winter Park, as well as serving as General Counsel for the Parker Water and Sanitation District, Castle Pines North Metro District, Health District of Northern Larimer County, and as a hearing officer in Westminster, Denver, Aurora and Longmont. He is a past president of the CML Municipal Attorney Section and the Metro City Attorney Association. Now retired from the private practice of law, he is currently affiliated with JAMS as a mediator/arbitrator, and serves as a hearing officer for the Denver Water Department and Denver Municipal Airport System.

Rick Kron joined Grimshaw & Harring in 1987, which merged with Spencer Fane in 2012. His practice concentrates almost exclusively on special districts, business improvement districts, intergovernmental authorities and Colorado election law. Rick holds a Bachelor of Urban Planning and a B.A. LAS (Political Science) from the University of Illinois-Urbana, and M.S. and Regional Planning from the University of Wisconsin-Madison, and J.D. from the University of Colorado in Boulder.

Doug Marek is the Greeley City Attorney. A Colorado native and a graduate of Colorado College, he received his J.D. from Drake University Law School. Doug's career has focused on government practice and litigation in state and federal courts, and has included work for municipalities, school districts, and the State of Iowa. Prior to returning to Colorado in 2012 he served as City Attorney for the City of Ames, Iowa.

Randal Morrison, "Randy" to friends, is a nationally recognized authority on the law of signs and billboards. His client list includes four of the ten largest cities in the nation. He has successfully defended billboard lawsuits filed against cities in California, Texas, Kentucky, South Carolina, and Nevada, and guided

cities in many other states through the sign code update process. He is a frequent speaker at state and national conventions of municipal attorneys, planners and public officials. Morrison is admitted to practice before the U.S. Supreme Court, four of the federal courts of appeals, many federal district courts, and all California state courts. He has also litigated international trademark before the International Chamber of Commerce in London England. Upon his 1986 graduation from the University of the Pacific, McGeorge School of Law in Sacramento California, the Associate Dean ranked him in the top 1% of all students who had ever graduated from the school. His pre-law life includes several years in Colorado as a radio broadcaster; he was a disc jockey and music programmer at KBPI Denver and was the co-designer of the original programming format for KBCO Boulder-Denver.

Mark Radtke works on several policy projects of concern to municipalities throughout the state including transportation revenue and municipal finance. His lobbying responsibilities include transportation, urban renewal, downtown development authorities, property tax, economic development, and municipal debt and finance issues. Mark joined the League in 2007, bringing with him a background in journalism, public relations and lobbying.

Meghan Storrie is responsible for advocating municipal interests before the state legislature. Her issues include affordable housing, building codes, lottery-related issues, gaming, historical preservation, and criminal justice. Meghan joined the League in 2011.

Bob Widner somehow maintained his sanity after sitting through well more than 2000 local government public meetings during his 25 years of services as the attorney representing a variety of Colorado cities, towns, and counties. Although his meeting experience has not yet placed him in the Guinness Book of World Records, the pain and torture he suffered during meetings provides him insight into what works - and what does not work - when conducting public meetings. Bob created "*Bob's Rules of Order*" as a simplified set of procedural and parliamentary rules to help local governments conduct effective and efficient meetings and hearings.

Bob is a founding partner of Widner Michow & Cox LLP. His law firm is devoted exclusively to representing Colorado local governments. Bob currently serves as the City Attorney for the City of Centennial and is an adjunct professor of law at the University of Colorado Law School where he teaches land use law.

Geoff Wilson drafts legislation, provides research and advice, and represents the League before the General Assembly, various state agencies and officials, and the appellate courts on various matters affecting municipalities. He also provides information to municipal officials on legal matters through inquiry service. His areas of particular emphasis include sales and use taxation, TABOR, telecommunications, elections, open meetings and open records, land use, oil and gas regulation, utilities, and environmental matters. Additionally, Geoff provides legal services to the League on internal matters. He has been with the League since 1987.

Dee Wisor graduated from Dickinson College in 1973 and from the University of Denver School of Law in 1976. He is a partner in Butler Snow LLP. He has worked for local and state governments for his entire career. He started his career as Staff Attorney to the Colorado Municipal League. His practice primarily involves municipal bond approvals and disclosure work for a variety of Colorado and Nevada issuers. Mr. Wisor was named "2005 Best of the Bar" for Work in Public Finance by the Denver Business Journal. He is also been listed in The Best Lawyers in America since 2007 and has been selected as The Best Lawyers' 2012 Public Finance Lawyer of the Year, for Denver. He is a fellow in the American College of Bond Counsel. His current professional, civic and volunteer activities include: Board of Directors, National Association of Bond Lawyers; Board of Directors, Colorado Fiscal Institute; Board of Directors, Denver Public Schools Foundation; and Election Taskforce of the Colorado Lawyers' Committee.

2014 LEGISLATIVE UPDATE

This is a handout for the 2014 Legislative Session, co-arranged by the Attorneys Section, at the 92nd CML Annual Conference, presented by the CML advocacy team (Kevin Bommer, Mark Radtke, Meghan Storrie, and Geoff Wilson.) The following is a summary of bills passed during the 2014 legislative session with an impact on Colorado's cities and towns. This is an excerpt of the *2014 Laws Enacted Affecting Colorado Municipalities*; for the complete publication, which includes the reprinted bills, visit www.cml.org/2014-laws after the conference.

HB 14-1017 **AFFORDABLE HOUSING**

Expand availability of affordable housing

Changes the name of the Home Investment Trust Fund to the Housing Investment Trust Fund, and expands the sources of moneys that may be used to support it. Includes any moneys made available by the General Assembly; all moneys collected by the Division of Housing for the trust fund from federal grants and from contributions; other grants, gifts, bequests, and donations received from any other organization, entity, or individual, public or private; and any fees or interest earned on such moneys. Clarifies that the division is authorized and directed to solicit, accept, expend, and disburse all moneys collected for the trust fund from the various public and private sources identified in the bill for the purpose of making, not just loans as under existing law, but also loan guarantees and for program administration. Specifies that any moneys in the trust fund at the end of any fiscal year do not revert to the general fund and that moneys in the trust fund are continuously appropriated to the division for the purposes specified in statute. Requires the division, in making loans of moneys from the trust fund, to give priority to owners of property that was either destroyed or incurred substantial damage as a result of one or more state or federally declared natural disasters. Establishes standards and priorities for the State income tax credit administered through the Colorado Housing and Finance Authority. Contains other provisions. Effective May 29, 2014. Lobbyist: Meghan Storrie, mstorrie@cml.org.

SB 14-118 **AFFORDABLE HOUSING**

Protections for people with disabilities

Conforms several definitions related to discrimination based on a disability to the federal Americans With Disabilities Act of 1990, including changing the term "assistance dog" to "service animal." Increases the statutory fine for discrimination in places of public accommodation, housing, and or violations of the rights of an individual with a disability who uses a service animal or a trainer of a service animal to an amount not to exceed \$3,500 plus actual monetary damages, attorney fees and costs, and an order for compliance, if applicable. Specifies that a small business defendant is entitled to a 50-percent reduction of the statutory fine assessed if it corrects the accessibility violation within 30 days after the filing of the complaint, unless the defendant knowingly or intentionally caused the accessibility violation. Establishes penalties for a person who causes harm to a service animal or service animal in

training, or a person who owns an animal that causes harm to a service animal or service animal in training. Contains other provisions. Effective Aug. 6, 2014. Lobbyist: Meghan Storrie, mstorrie@cml.org.

SB 14-054 **BEER & LIQUOR**

Expansion of fine in lieu of penalty authority

Expands the ability of the state or a local licensing authority, upon petition of an alcohol beverage license or permit holder and in the licensing authority's sole discretion, to impose a fine on the license or permit holder in lieu of a license or permit suspension. Eliminates restriction on ability to petition for a fine where the licensing authority has issued a final decision suspending the license or permit for more than 14 days. Allows license or permit holder to petition to pay a fine, and allows the licensing authority to grant petition, regardless of whether license or permit holder had a license or permit suspended or paid a fine in lieu of suspension within the prior two years. Applies to final alcohol beverage license or permit suspension decisions issued by state or a local licensing authority on or after April 11, 2014. Effective April 11, 2014. Lobbyist: Kevin Bommer, kbommer@cml.org. *Reprinted*.

HB 14-1037 **CRIMINAL JUSTICE**

Enforcement of laws against designer drugs

Establishes that it is unlawful to distribute, dispense, manufacture, display for sale, offer for sale, attempt to sell, or sell any product that contains any amount of any synthetic cannabinoid, and states that a violation is a deceptive trade practice. Creates civil penalties for violators. Deems a violation is committed by a person for each individually packaged product. On and after Sept. 1, 2014, requires the Colorado Bureau of Investigation to maintain materials and equipment for law enforcement agencies and the Liquor Enforcement Division for presumptive identification of synthetic cannabinoids or other designer drugs. Amends existing provisions relating to the distribution of cathinones to conform to the bill's new provisions relating to synthetic cannabinoids. Effective Aug. 6, 2012. Lobbyist: Kevin Bommer, kbommer@cml.org.

SB 14-129 **CRIMINAL JUSTICE**

Cleanup of marijuana criminal provisions

Adds consumption and possession of marijuana and possession of marijuana paraphernalia to crime of underage possession or consumption of alcohol and makes crime an unclassified petty offense. Makes changes to

penalty structure. Encourages the Peace Officers Standards Training (POST) Board to offer advanced roadside impaired driving training course as an elective to basic field sobriety training recertification. Changes open marijuana container crime to require that prosecution prove that container has a broken seal, that contents were partially removed, and that there is evidence that marijuana was consumed in vehicle. Applies to offenses committed on or after July 1, 2014. Effective June 6, 2014. Lobbyist: Kevin Bommer, kbommer@cml.org.

HB 14-1061 **CRIMINAL JUSTICE**

Eliminate prison for inability to pay fines

Changes current law that provides that part of a criminal sentence must include a sentence to prison if an individual criminal defendant fails to pay a fine. Changes this requirement so that the sentence must include notice that if a defendant willfully fails to pay a fine, cost, restitution, or other monetary payment, the court may hold the person in contempt of court and sentence the person to prison. Provides that when the court imposes a monetary payment as part of the sentence, the court must notify the defendant that if he or she is unable to pay the amount ordered, the defendant may ask the court for a waiver or change in the payment. Establishes procedures for when a criminal defendant may be held in contempt of court for willful failure to make a monetary payment. Effective May 9, 2014. Lobbyist: Meghan Storrie, mstorrie@cml.org. *Reprinted.*

HB 14- 1310 **CRIMINAL JUSTICE**

Funding breathalyzers for law enforcement

Creates the evidential breath testing cash fund for the collection of moneys to purchase breath-testing devices for law enforcement agencies. Directs the Department of Public Health and Environment to administer the fund. Specifies that the state board of health may promulgate rules for the administration of the fund. Repeals the fund effective Sept. 1, 2024. Adds that, before repeal, the Department of Regulatory Agencies shall review the use of the fund by the department of public health and environment. Effective Aug. 6, 2014. Lobbyist: Meghan Storrie, mstorrie@cml.org.

HB 14-1271 **CRIMINAL JUSTICE**

Mental health - Duty to warn target entities

Extends the current law that provides immunity and duty of mental health providers to warn a specific person or persons when a patient has communicated to the provider a serious threat of imminent physical violence against that person or persons. Allows mental health providers to warn specific entities that, if purposefully damaged or attacked as a result of a mental health patient's violence, would jeopardize public health and safety if the patient has communicated to the provider a serious threat of imminent physical violence against that entity persons or persons identifiable by their association with a specific location or entity. Effective on April 7, 2014. Lobbyist: Meghan Storrie, mstorrie@cml.org.

HB 14-1152 **CRIMINAL JUSTICE**
Passive surveillance records

Requires that video or still images obtained by passive surveillance by governmental entities, such as images from monitoring cameras, must be destroyed within three years of the recording of the images. Specifies that the custodian of a passive surveillance record may only access the record beyond the first anniversary after the date of its creation if there has been a notice of claim filed, or an accident or other specific incident that may cause the passive surveillance record to become evidence in any civil, labor, administrative, or felony criminal proceeding, in which case the passive surveillance record may be retained. Requires the custodian to preserve a record of the reason for which the passive surveillance record was accessed and the person who accessed the record beyond the first anniversary after its creation. Creates exceptions allowing retention of passive surveillance records of any correctional facility, local jail, or private contract prison and passive surveillance records made or maintained as required under federal law. Includes a definition of "passive surveillance." Effective April 4, 2014. Lobbyist: Meghan Storrie, mstorrie@cml.org. *Reprinted.*

HB 14-1340 **CRIMINAL JUSTICE**
State toxicology laboratory

Directs the Colorado Bureau of Investigation to operate a state toxicology laboratory for the purpose of assisting law enforcement agencies in executing their duties, including but not limited to, the enforcement of laws pertaining to driving under the influence of alcohol or drugs. Establishes that the bureau must do this on or before July 1, 2015. Authorizes the bureau to impose a fee for performing the work of the laboratory. Specifies that the amount of the fee shall not exceed the total amount of direct and indirect costs incurred by the bureau in performing the work of the laboratory. Directs the bureau to transmit all moneys collected as fees to the state treasurer, who shall credit the same to the state toxicology laboratory fund, which is created in the bill. Contains other provisions. Effective April 18, 2014. Lobbyist: Meghan Storrie, mstorrie@cml.org.

SB 14-073 ECONOMIC DEVELOPMENT
Brownfields clean up tax credit

Creates a state income tax credit to encourage the clean-up of contaminated property; to qualify, a project must go through the Colorado Department of Public Health and Environment's Voluntary Cleanup Program. Creates a tax credit of 40 percent for the first \$750,000 of expenditures and of 30 percent for expenditures between \$750,000 and \$1.5 million, with no additional credit for expenditures above \$1.5 million. Establishes a five-year carry-forward option for taxpayers. Caps total credit payments to \$3 million a year. Effective Aug. 6, 2014. Lobbyist: Mark Radtke, mradtke@cml.org.

HB 14-1093 ECONOMIC DEVELOPMENT

Creative District Community Loan Fund

Appropriates \$100,000 to begin a loan fund administered by the Department of Economic Development. Authorizes the award of loans up to \$250,000 for development or construction of commercial real estate, mixed-use projects, community facilities, or public infrastructure improvements in state certified creative districts. Requires a local match of at least three times the loan amount. Effective Aug. 6, 2014. Lobbyist Mark Radtke, mradtke@cml.org.

HB 14-1163 ECONOMIC DEVELOPMENT

Enterprise Zone Tax Credit cap

Clarifies the limit on the amount of Enterprise Zone tax credit that may be claimed after tax year 2014 as \$750,000 per year. Effective March 27, 2014. Lobbyist: Mark Radtke, mradtke@cml.org.

SB 14-183 ECONOMIC DEVELOPMENT

Business personal property tax incentives

Extends the amount of time a municipality, county, or special district can rebate a businesses' personal property tax from 10 years to 35 years. Allows the tax incentive to be awarded to a new business, an expanding business, or businesses that are considering re-locating to another state. Effective May 15, 2014. Lobbyist: Mark Radtke, mradtke@cml.org.

HB 14-1350 ECONOMIC DEVELOPMENT

Regional Tourism Act changes

Caps the amount of state sales tax that can be allocated to a future Regional Tourism Authority (RTA); requires a third-party economic analysis of historical sales tax growth rate; limits the increment to sales tax growth directly related to the project; and requires a significant portion of the sales tax revenue be attributable to transactions with nonresidents of Colorado. Changes do not apply to the three currently approved RTAs. Effective June 2, 2014. Lobbyist: Mark Radtke, mradtke@cml.org.

HB 14-1164 ELECTIONS

Mail ballots, Technical corrections

Makes a variety of conforming amendments to the municipal election code (MEC) to accommodate elimination of durational residence in the municipality as a condition of voting in municipal elections. Generally implements a requirement of residence in the municipality and durational residence of 22 days in the state as a condition of voting in an election. Adds mail ballot provisions to the MEC. Provides for maintenance of a local permanent absentee voters list. Contains numerous other provisions, including creation of a special districts election code in article 13.5 of Title 1, C.R.S. Effective Feb. 18, 2014. Lobbyist: Geoff Wilson, gwilson@cml.org.

HB 14-1323 EMPLOYMENT

Access restrictions to personal medical information

Prohibits the Department of Revenue from accessing an individual's personal medical information or medical record without the individual's consent and creates numerous related restrictions and exceptions. Creates the Government Access to Personal Medical Information Task Force to review, analyze, and make recommendations regarding the ability of state and local government departments and agencies to access, use, and distribute personal medical information. Establishes membership and meeting frequency requirements. Requires a report and recommendations to specified legislative committees by Nov. 1, 2014. Effective May 31, 2014. Lobbyist: Kevin Bommer, kbommer@cml.org.

SB 14-172 EMPLOYMENT

Mandatory firefighter heart & circulatory malfunction benefits

Requires a municipality, special district, fire authority, or county improvement district that employs one or more professional firefighters to maintain accident insurance, self-insure, or participate in self-insurance pool or multiple employer trust to provide benefits for firefighters who with heart and circulatory malfunction resulting from a work event. Establishes minimum and maximum benefits and eligibility requirements. Allows optional coverage for volunteers. Appropriates money to Department of Local Affairs to reimburse employers for cost of mandated coverage. States that coverage becomes optional for employer if appropriated funds are insufficient to pay for cost of benefit. Effective Jan. 1, 2015. Lobbyist: Kevin Bommer, kbommer@cml.org. *Reprinted.*

SB 14-005 EMPLOYMENT

Wage Protection Act

Establishes numerous provisions for purposes of duties, obligations, and liabilities related to payment of wages including expanding wage claims to include violations involving the state minimum wage; requiring employers to maintain records reflecting information in an employee's pay statement for at least three years after payment of the wages and related requirements; allows for find of employer in noncompliance; and requires employers to mail a check for wages to the employee's last-known address within 60 days after check was due if employer is unable to otherwise deliver check. Establishes new penalties and allowable actions for unpaid wages. Establishes parameters on claims. Contains other provisions. Some sections effective May 29, 2014. , otherwise effective on Jan. 1, 2015. Lobbyist: Kevin Bommer, kbommer@cml.org.

SB 14-106 FEDERAL MINERAL LEASE

Local Government Permanent Fund distributions

Authorizes the General Assembly to make an appropriation in either current fiscal year or next fiscal year when March revenue estimate in any fiscal year indicates that total amount of moneys to be deposited into mineral leasing fund

during that fiscal year will be at least 10 percent less than the amount deposited in the preceding fiscal year. Changes revenue estimate used to determine whether total amount of moneys anticipated to be deposited into the mineral leasing fund during that fiscal year will be at least 10 percent less from March revenue estimate to the December revenue estimate. Effective March 27, 2014. Lobbyist: Kevin Bommer, kbommer@cml.org.

SB 14-031 **FIRE & POLICE PENSION**
Association Old Hire plan modifications

Makes numerous modifications to administration of an employer's old hire police officers' and firefighters' pension plans (Old Hire plans). Clarifies acceptable use of plan moneys when none of the members in an Old Hire plan are active participants in the plan, but the plan is still obligated to pay the benefit liabilities of members who still receive benefits from the plan fund. Specifies that annual contributions to state-assisted Old Hire plans are required to be made in at least the amount required to amortize the unfunded liability of the plan over 20 years or number of years equal to average remaining life expectancy of plan's members plus service cost attributable to active members, whichever is less. Allows a lesser payment to be made in 2015 if new amount of required annual contribution by the governing body of a state-assisted old hire plan is more than governing body's required annual contribution to the plan in 2014, and if new amount would cause a hardship to the taxpayers of the governing body. Requires governing body to contribute full amount of new contribution beginning in 2016. Repeals obsolete language related to state-assisted old hire contributions by the state. Modifies requirements concerning actuarial study of each old hire plan such that each study be conducted for each plan by July 1, 2014, and every two years thereafter. Contains other provisions. Effective March 20, 2014. Lobbyist: Kevin Bommer, kbommer@cml.org.

HB 14- 1141 **GOVERNMENT**
Confidentiality Social Security Numbers

Prohibits an entity with a board of directors, including an advisory board, from requiring an unpaid member of the board to disclose his or her Social Security number to the entity to serve as a member of the board except when required by law or by a condition of accreditation to obtain the Social Security number for purposes of a background check or to properly account for reimbursement payments. Makes it unlawful for the state or any local government to deny an individual a right, benefit, or privilege provided by law because the individual refuses to disclose his or her Social Security number unless the disclosure is required by state or federal law. Requires the state or any local government that requests an individual to disclose his or her Social Security number to inform the individual whether the disclosure is mandatory or voluntary, by what statutory or other authority the Social Security number is solicited, and what uses will be made of the individual's Social Security number. Clarifies that Colorado's statute on confidentiality of Social Security numbers does not apply

with respect to patient information for entities subject to the federal Health Insurance Portability and Accountability Act of 1996. Effective Aug. 6, 2014. Lobbyist: Meghan Storrie, mstorrie@cml.org.

HB 14-1311 **HISTORIC PRESERVATION**
Job Creation & Main Street Revitalization Act

Creates a new income tax credit to be claimed by an owner of a historic property for recovery of certain costs related to preserving the property. Covers income tax years commencing on or after Jan. 1, 2016, but prior to Jan. 1, 2020. Requires the Office of Economic Development and International Trade (OEDIT), in consultation with History Colorado, to develop standards for the approval of the substantial rehabilitation of qualified structures for which the new tax credit is being claimed. Sets requirements for the property owner to submit an application and rehabilitation plan. Authorizes OEDIT to create a fee structure. Establishes ceilings for projects to receive the tax credit. Contains other provisions. Effective May 14, 2014. Lobbyist: Meghan Storrie, mstorrie@cml.org.

SB 14-017 **LAND USE**
Local development approval preemption

Directs the Water Resources Review Committee to investigate minimizing agricultural dry-up by limiting municipal outdoor water consumption. Directs that investigation should identify and quantify best practices limiting municipal outdoor water consumption. Authorizes committee to propose legislation, if appropriate, to facilitate the implementation of practices "reasonable and likely" to result in measurable conservation of municipal water used for outdoor purposes. Effective April 11, 2014. Lobbyist: Kevin Bommer, kbommer@cml.org.

HB 14-1029 **LAW ENFORCEMENT**
Handicapped parking

Increases penalties for handicapped parking placard fraud. Reclassifies blocking access to handicapped parking and parking without a placard from Class B traffic infractions to unclassified misdemeanors. Increases the fine structure. Effective July 1, 2014, applies to offenses committed after Jan. 1, 2015. Lobbyist: Mark Radtke, mradtke@cml.org.
Reprinted.

SB 14-049 **LAW ENFORCEMENT**
Rail facilities metal theft

Adds the intent to steal or remove materials as additional ways to commit a crime under the currently existing law regarding tampering with a public transportation facility with the intent to cause damage as a class 3 felony crime of endangering public transportation. Adds utility transmission facilities to sites protected. Effective July 1, 2014. Lobbyist: Mark Radtke, mradtke@cml.org.

Cannabis credit cooperatives.

Enacts the Marijuana Financial Services Cooperatives Act. Establishes cannabis credit co-ops as a type of financial services entity, membership in which is restricted to entities that are licensed to own or operate a marijuana business. Subjects co-ops to regulation by the State Commissioner of Financial Services similar to that of credit unions, with numerous specified differences. Contains numerous other provisions. Effective June 6, 2014. Lobbyist: Kevin Bommer, kbommer@cml.org.

Disposition of state marijuana revenue

Specifies disposition of retail marijuana moneys received by state during the 2013-14 state fiscal year. Beginning July 1, 2014, requires all retail marijuana excise tax revenues, all retail marijuana sales tax revenues, and all marijuana state sales tax revenues to be deposited in marijuana tax cash fund. Specifies moneys attributable to fees will remain in and continue to be deposited in that fund. Allows for specific appropriations of marijuana cash fund moneys to state agencies for various costs and programs. Directs that after July 1, 2014, marijuana cash fund moneys can only be appropriated to Department of Revenue for costs associated with the regulation, control, and taxation of medical and retail marijuana. Specifies that the General Assembly may appropriate the moneys in the newly created marijuana tax cash fund for specified purposes. Prohibits General Assembly from appropriating the moneys in the marijuana tax cash fund until the fiscal year following the fiscal year in which moneys were received by the state, except that moneys in the marijuana tax cash fund may be appropriated to Department of Revenue in the same fiscal year. States that remaining moneys are subject to annual appropriation by the General Assembly. Specifies permissible purposes for future use of marijuana tax cash fund moneys. Contains numerous other provisions and appropriations. Effective July 1, 2015. Lobbyist: Kevin Bommer, kbommer@cml.org.

Keep legal marijuana from minors under 21

Requires medical marijuana-infused products must be sold in child-proof packaging with warning stating "medicinal product - keep out of reach of children." Requires that medical marijuana and medical marijuana-infused products must be sold in either child-proof packaging or in opaque and resealable exit package or container that meets standards established by rule. Gives a retail marijuana store the ability to confiscate a fraudulent identification and detain and question the person who provided the fraudulent identification. Makes selling marijuana to a person under 21 years of age at a retail marijuana store a class 1 misdemeanor. Requires any person growing marijuana in a residence where a person under 21 years of age resides to maintain grow in "enclosed and locked space." Contains other provisions. Effective March 17, 2014. Lobbyist: Kevin Bommer, kbommer@cml.org. *Reprinted.*

One ounce equivalency

Directs the Department of Revenue to promulgate rules establishing equivalent of one ounce of retail marijuana flower in various retail marijuana products. Authorizes department to contract for scientific study of equivalency of marijuana flower in marijuana products. Prohibits a retail marijuana store from selling more than one ounce of retail marijuana or equivalent in retail marijuana products during any single transaction to a Colorado resident or more than one-quarter ounce or equivalent to a non-resident. Effective May 21, 2014. Lobbyist: Kevin Bommer, kbommer@cml.org.

Retail background check fingerprint authority

Allows a local jurisdiction to submit fingerprints for purposes of conducting a criminal history background check or to acquire a name-based criminal history check if the retail marijuana license applicant's fingerprints are unclassifiable. Effective March 17, 2014. Lobbyist: Kevin Bommer, kbommer@cml.org.

Sale of edible marijuana products

Requires the Department of Revenue to promulgate rules by Jan. 1, 2016, requiring edible marijuana products to be clearly identifiable with standard symbol indicating product contains marijuana and not for consumption by children. Requires the department convene stakeholder group by Aug. 1, 2014 to make recommendations on rules. Requires the department to report findings to specified legislative committees by Feb. 1, 2015. Effective May 21 2014. Lobbyist: Kevin Bommer, kbommer@cml.org.

Community Development Financing Institutions

Classifies Community Development Financing Institutions as "qualified holders" under the state's foreclosure sale statute. Allows entities covered under the definition of "qualified holder" to present a request for full or partial release of collateral pledged without presentation of the original promissory note. Effective Aug. 6, 2014. Lobbyist: Mark Radtke, mradtke@cml.org.

County road and bridge fund disasters

Allows temporary transfer of county general fund dollars to county road and bridge fund for four years following a governor's emergency declaration; contains protections to hold harmless the municipal share of the mill levy revenue during this period. Effective Feb. 19, 2014. Lobbyist: Mark Radtke, mradtke@cml.org.

Energy performance contracts

Authorizes the Colorado Energy Office to identify small, local government energy efficiency projects to be combined

into one energy performance contract signed with a pre-qualified energy service provider. Provides that participation by local governments is voluntary. Effective June 6, 2014. Lobbyist: Mark Radtke, mradtke@cml.org.

HB 14-1103 **MUNICIPAL FINANCE**
Municipal bond investment ratings

Requires general obligation or revenue bonds issued by entities within Colorado must carry at least two credit ratings at or above "A" while other domestic GO and revenue bonds must carry at least two "AA" ratings to qualify for the investment of public funds. Requires securities to reach maturity within five years. Effective March 27, 2014. Lobbyist: Mark Radtke, mradtke@cml.org.

HB 14-1356 **OIL AND GAS**
Commission penalty authority

Increases the penalty for violation of a state oil and gas conservation commission rule or order from \$1,000 per day to \$15,000 per day. Prescribes procedures for imposing such fines. Contains other provisions. Effective June 6, 2014. Lobbyist: Geoff Wilson, gwilson@cml.org.

SB 14-009 **OIL AND GAS**
Real property sale contracts, Disclosures

Requires, through a direction to the state real estate commission, that real estate sale contracts include a bold face disclosure of the possibility that the mineral estate may be severed from the surface estate and that development of the minerals may have certain impacts on the surface estate. Effective Aug. 6, 2014. Lobbyist: Geoff Wilson, gwilson@cml.org.

HB 14-1193 **OPEN RECORDS**
Research and retrieval fees

Requires that a custodian may impose a research and retrieval fee for records only if the custodian has in place a written policy, posted on the custodian's website or published, that specifies "applicable conditions" in research and retrieval and the amount of any fee. Under such policy, the first hour of research and retrieval service shall be free, and the fee may not exceed \$30 per hour. Provides for adjustment of the fee cap every five years beginning in 2019, based on the percentage change in the Denver-Boulder-Greeley Consumer Price Index. Effective July 1, 2014. Lobbyist: Geoff Wilson, gwilson@cml.org.
Reprinted.

HB 14-1011 **PENSIONS/RETIREMENT**
Retirees on municipal volunteer fire pension boards

Starting with the next election, allows a retired fire department member, a retired fire department member returned to active service, and an active fire department member to serve as elected members of the volunteer firefighter pension board. Specifies that such board

members are elected by the fire department members, retired fire department members, and retired fire department members returned to active service of such fire departments. Effective Aug. 6, 2014. Lobbyist: Kevin Bommer, kbommer@cml.org.

HB 14-1390 **OPEN MEETINGS**
Standing

Amends the law to provide that any person denied or threatened with denial of rights conferred on the public by the Open Meetings Law (OML) has standing to challenge a violation of the OML. Effective June 6, 2014. Lobbyist: Geoff Wilson, gwilson@cml.org.

HB 14-1060 **PLANNING**
Compensation for planning and zoning commissioners

Specifies that, via ordinance, a statutory municipality may compensate their planning and zoning commissioners. Effective Aug. 6, 2014. Lobbyist: Meghan Storrie, mstorrie@cml.org.

SB 14-121 **PUBLIC SAFETY**
Assistance to a local government after a disaster emergency

Authorizes the governor to determine the percentage at which the state and a local government will contribute moneys to cover the nonfederal cost share required by federal law when disaster emergency triggers federal assistance to the local government. Authorizes the governor to amend the percentage at which the state and local government will contribute moneys to the nonfederal cost share based on the needs of the individual local governments. Effective March 21, 2014. Lobbyist: Meghan Storrie, mstorrie@cml.org.

HB 14-1004 **PUBLIC SAFETY**
Emergency management

Makes various changes to the manner in which emergency management functions are administered. Eliminates the Colorado Emergency Planning Commission and transfers its functions and duties to the Department of Public Safety for allocation to the director of the Division of Homeland Security and Emergency Management. Creates the Emergency Planning Subcommittee, a new permanent body under the Homeland Security and All-Hazards Senior Advisory Committee in the division while eliminating the Governor's Disaster Emergency Council. Allows the governor to render disaster assistance upon gubernatorial declaration. Effective Feb. 27, 2014. Lobbyist: Meghan Storrie, mstorrie@cml.org.

SB 14-138 **PUBLIC SAFETY**
Civil immunity for volunteers at emergencies

Extends the limited immunity now held by volunteer firefighters who provide services at the scene of an emergency to volunteers performing services for nonprofit

corporations and nonprofit organizations. Effective March 21, 2014. Lobbyist: Meghan Storrie, mstorrie@cml.org.

SB 14-164 **PUBLIC SAFETY**
Colorado Aerial Firefighting Fleet aircraft acquisitions

Creates the Colorado Firefighting Air Corps (C-FAC) under the Division of Fire Prevention and Control in the Department of Public Safety. Empowers the division to acquire firefighting aircraft for the C-FAC. Directs the division to acquire or contract for firefighting aircraft for use during the 2014 fire season as feasible and appropriate within available appropriations in a manner that hews as closely to the division's March 28, 2014 special report to the governor and General Assembly on Colorado firefighting air corps and strategies. Directs the Wildfire Matters Review Committee to consider the creation of an advisory commission to assist the director of the division in performing his or her duties. Requires the director of the division to report annually to that committee. Effective May 12, 2014. Lobbyist: Meghan Storrie, mstorrie@cml.org.

SB 14-008 **PUBLIC SAFETY**
Create Wildfire Information & Resource Center

Creates the Wildfire Information & Resource Center in the Division of Fire Prevention and Control in the Department of Public Safety. Describes the type of information that the center should feature. Effective May 14, 2014. Lobbyist: Meghan Storrie, mstorrie@cml.org.

SB 14-046 **PUBLIC SAFETY**
Firefighter safety grant program

For two state fiscal years, directs \$3.25 million transfer from the mineral leasing fund in the Department of Local Affairs to new Local Firefighter Safety and Disease Prevention Fund and directs funds be used for need-based grant program to provide funding or reimbursement to local governments for equipment and training to increase firefighter safety and prevent occupation-related diseases. Contains provisions related to implementation. Effective May 15, 2014. Lobbyist: Kevin Bommer, kbommer@cml.org.

SB 14-179 **PUBLIC SAFETY**
Flood debris cleanup grants

Creates a flood debris cleanup stream restoration grant account in the flood and drought response fund for the purpose of allowing the Colorado Water Conservation Board to make grants to help pay the costs of watershed cleanup and stream restoration in areas affected by the flood. Makes a statutory appropriation of \$2,500,000 from the disaster emergency fund to the board for implementation of the grant program. Specifies that the appropriation and the special account are both subject to automatic repeal on July 1, 2015. Effective May 17, 2014. Lobbyist: Meghan Storrie, mstorrie@cml.org.

HB 14-1203 **PUBLIC SAFETY**
Funding for digital trunked radio system maintenance

Directs the General Assembly, for fiscal years 2013-2014 through 2024-2025, to appropriate a total of \$3.5 million from the general fund, or from any other fund, to the trust fund for digital trunked radio. Adds that the moneys appropriated to the trust fund shall be used for the replacement of legacy radio equipment and hardware at radio tower sites. Directs that in each fiscal year beginning with the 2017-2018 through the 2024-2025, the General Assembly transfer a total of \$3.7 million from the general fund, or any other fund, to the trust fund. Specifies that the trust fund shall be used for software upgrade assurance. Requires the General Assembly to determine the amount that will be appropriated from the general fund and from any other fund for each purpose in each fiscal year. Effective May 2, 2014. Lobbyist: Meghan Storrie, mstorrie@cml.org.

SB 14-097 **PUBLIC SAFETY**
Immunity for public agencies in wildfire mitigation

Extends existing protections held by public agencies concerning immunity from civil liability to immunize such agencies from the acts of an insurer or insurance company, corporation, association, or partnership, including any employees, contractors, or agents, engaged in activities intended to protect the insurable private property interests of the insurer's policyholders from damage. Specifies that neither an insurer nor any of its agents engaged in activities intended to protect the insurable private property interests of the insurer's policyholders from damage constitute a private organization entitled to immunity from liability under the statute nor is any agent of the insurer a volunteer for purposes of the Colorado Governmental Immunity Act, regardless of whether such activities may be subject to the direction of a local emergency planning committee or a state or local fire or law enforcement agency. Authorizes an insurer to provide services protecting the property of its policyholders in the course of an emergency. Effective March 21, 2014. Lobbyist: Meghan Storrie, mstorrie@cml.org.

SB 14-193 **PUBLIC SAFETY**
Location information after *US v. Jones*

Implements a U.S. Supreme Court decision stating the use of a GPS device to monitor a vehicle's movement constitutes a search requiring the government to obtain a search warrant. Prohibits a governmental entity from obtaining location information from an electronic device without first obtaining a search warrant, a subpoena, or a court order. Specifies certain exceptions. Effective June 6, 2014. Lobbyist: Meghan Storrie, mstorrie@cml.org.

HB 14-1059 **PUBLIC SAFETY**
No disorderly conduct for blanks fired at funerals

Clarifies that the ritual discharge of blank ammunition cartridges at a funeral for a deceased person who was a

veteran of the United States armed forces does not constitute disorderly conduct. Effective March 7, 2014. Lobbyist: Meghan Storrie, mstorrie@cml.org.

SB 14-162 PUBLIC SAFETY
Quality management, Prehospital EMS providers

Specifies the mandatory components of a quality management program established by an emergency medical services (EMS) organization, the purpose of which is to conduct assessments of prehospital care provided by EMS providers. Adds that information collected and maintained pursuant to a quality management program that contains the required components is confidential, and persons who participate in a quality management program cannot be compelled to testify in a civil or administrative proceeding. Specifies that confidentiality protections do not apply to factual testimony about which a person has personal knowledge. Clarifies that persons participating in a quality management program in good faith are not liable for any damages resulting from the proceedings. Effective June 5, 2014. Lobbyist: Meghan Storrie, mstorrie@cml.org.

SB 14-127 PUBLIC SAFETY
State radio systems subcommittee and report

Creates the Consolidated Communications System Authority, which is composed of representatives of entities that use the statewide digital trunked radio system as their primary means of public safety wireless communication. Reorganizes the authority as a subcommittee under the Homeland Security and All-Hazards Senior Advisory Committee in the Division of Homeland Security and Emergency Management in the Department of Public Safety. Adds members and modifies duties of that body. Makes conforming amendments necessitated by the reorganization. Schedules the subcommittee for sunset review and repeal in 2019. Directs the executive director of the department to undertake a needs assessment and formulate a business plan, in consultation with the subcommittee, regarding statewide radio communications and to report the findings to the joint budget committee prior to 2015. Effective June 6, 2014. Lobbyist: Meghan Storrie, mstorrie@cml.org.

SB 14-190 PUBLIC SAFETY
Statewide discovery sharing system

Requires the discovery project steering committee to develop a request for proposal and selection process for choosing a vendor to develop the system. Specifies that the committee make a recommendation to the Colorado District Attorneys Council (CDAC) regarding the vendor after the application process is complete. Requires CDAC to select a vendor to develop the system after the application and selection processes are complete. Establishes that the General Assembly shall appropriate moneys to the judicial department for allocation to CDAC for development, continued enhancement, and maintenance of the system. Creates a criminal surcharge to fund the development, continued enhancement, and maintenance of the system.

Specifies a \$10 surcharge applies to each felony conviction, and a \$5 surcharge applies to each misdemeanor conviction in county court if the defendant is represented by private counsel or appears pro se. Gives civil immunity to district attorneys who make a good-faith effort to redact all information legally required to be redacted and provide discovery documents that contain information that should have been redacted. Effective May 29, 2014. Lobbyist: Meghan Storrie, mstorrie@cml.org.

SB 14-029 SOLID WASTE
Paint stewardship program

Directs creation of a paint stewardship program by Jan. 1, 2015, which would cause to be created a statewide network of locations for disposal and recycling of waste or left-over paint. Requires any person selling paint in Colorado after 2015 to be a participant in the program. Contains numerous other provisions. Effective Aug. 6, 2014. Lobbyist: Geoff Wilson, gwilson@cml.org.

HB 14-1393 TABOR
Treatment of federal funds

Clarifies two issues pertaining to federal funding and the Taxpayer Bill of Rights (TABOR): that any federal funds received by a local government, regardless of whether they pass through the state prior to receipt, shall not be included in the local government's calculation of its fiscal year spending; and that any grant of federal funds received by an enterprise, regardless of whether such federal funds pass through the state or any local government in the state prior to receipt by the enterprise, shall not be included in the enterprise's calculation of the total percentage of annual revenues that it receives in grants from the state and local governments. Specifies that the bill makes no changes to TABOR. Effective May 31, 2014. Lobbyist: Meghan Storrie, mstorrie@cml.org. *Reprinted.*

HB 14-1279 TAXATION
Business personal property tax credit

Creates a state income tax credit to compensate small businesses for payment of business personal property tax (BPPT), a property tax collected on non-real property such as manufacturing equipment, business furniture, and office equipment. Provides that businesses with less than \$15,000 in BPPT assessment qualify for the credit. Does not change the local collection and distribution of the tax revenue from businesses; however, allows businesses to apply for a state income tax credit to recover the property tax paid. Effective Aug. 6, 2014; tax credit begins with 2015 tax year. Lobbyist: Mark Radtke, mradtke@cml.org.

HB 14-1006 TAXATION
Local Marketing District revenue

Changes the filing and remittance deadlines for lodging taxes levied by a Local Marketing District from quarterly to monthly. Effective July 1, 2014. Lobbyist: Mark Radtke, mradtke@cml.org.

HB 14-1159 **TAXATION**
Sales and use, Biogas equipment

Creates a state sales and use tax exemption for certain components for biogas production systems. Makes such an exemption a local option for state collected municipalities. Effective May 17, 2014. Lobbyist: Geoff Wilson, gwilson@cml.org.

HB 14-1374 **TAXATION**
Sales and use, Certain aircraft

Exempts aircraft purchased by on-demand air carriers that meet certain conditions specified in the bill from state sales and use tax liability. Effective July 1, 2014. Lobbyist: Geoff Wilson, gwilson@cml.org.

HB 14-1348 **TAXATION**
Sales and use, Marketplace Fairness Act

Amends language contained in the 2013 session's HB 13-1295, which provided for implementation of the Marketplace Fairness Act (MFA) in Colorado if approved by the U.S. Congress, to make certain definitions and provisions concerning location of a sale effective upon passage of the MFA by Congress. Effective May 31, 2014. Lobbyist: Geoff Wilson, gwilson@cml.org.

HB 14-1178 **TAXATION**
Sales and use, Spaceflight property

Creates a state sales and use tax exemption for certain equipment used in outer space. Makes such an exemption a local option for municipalities that are state collected. Effective May 20, 2014. Lobbyist: Geoff Wilson, gwilson@cml.org.

HB 14-1269 **TAXATION**
Sales and use, Tax nexus

Amends the state sales and use tax statutes to describe various activities that will give rise to a presumption that a person or corporation is engaged in business in Colorado and is obliged to collect state sales and use tax. Details the circumstances where such an obligation may be created by virtue of a contract by an out-of-state vendor with a person who has the requisite "physical presence" in the state. Contains other provisions. Effective July 1, 2014. Lobbyist: Geoff Wilson, gwilson@cml.org.

SJR 14-038 **TAXATION**
Sales and use, Uniform definitions

Requests CML to develop, in cooperation with its members and with input from the business community, a set of standardized definitions for use by municipalities. Requests that CML also develop a process for maintaining standardization of definitions over time and that a coordinated source of tax guidance relating to these definitions be developed. Requests that home rule municipalities that locally collect their sales and use taxes begin using these definitions by August 2016. Contains other provisions. Approved May 7, 2014. Lobbyist: Geoff Wilson, gwilson@cml.org. *Reprinted.*

HB 14-1327 **TELECOMMUNICATIONS**
Broadband, Miscellaneous

Incorporates into state law federal permitting and "shot clock" requirements related to broadband facilities, including 90 days to process a complete application for a colocation and 150 days for a new installation. Defines broadband facilities. Requires notice of trenching by the state or a political subdivision to broadband providers who have signed up to receive such notice with the Colorado Department of Transportation, and requires joint trenching with broadband providers in such situations, subject to broad exceptions relating to interference with the project, public health or safety, or other factors. Provides for a refund of state sales and use taxes paid by broadband providers on equipment installed in certain targeted areas. Contains numerous other provisions. Effective Aug. 6, 2014. Lobbyist: Geoff Wilson, gwilson@cml.org. *Reprinted.*

SB 14-018 **TOBACCO**
Sales to minors

Amends the statutes concerning sales of cigarettes to minors to include nicotine and tobacco products. Effective April 1, 2014. Lobbyist: Geoff Wilson, gwilson@cml.org.

HB 14-1161 **TRANSPORTATION**
Amtrak Southwest Chief Commission

Creates the Southwest Chief Rail Line Economic Development, Rural Tourism, and Infrastructure Repair and Maintenance Commission, which is dedicated to preserving Amtrak rail service in southeastern Colorado and adding Pueblo as a stop on the Southwest Chief route. Creates a fund to accept dollars in aid of achieving this goal, but no state money was allocated to the fund. Effective Aug. 6, 2014. Lobbyist: Mark Radtke, mradtke@cml.org.

SB 14-146 **TRANSPORTATION**
Speed limit studies

Allows the Colorado Department of Transportation (CDOT) to consider data contained in municipal speed limit traffic studies conducted on state highways when performing a CDOT traffic study. Effective May 2, 2014. Lobbyist: Mark Radtke, mradtke@cml.org.

HB 14-1160 **TRANSPORTATION**
Divisible load overweight permits

Exempts waste water vehicles contracted by or owned and operated by a city, county, municipal utility, or special district from wheel- and axle-load restrictions. Specifically applies to trucks with vacuum equipment to load liquid or solid waste or storm water. Authorizes, beginning Jan. 1, 2015, an annual fleet permit fee of \$2,000 plus \$35 per vehicle for overweight vehicles with two- or three-axle divisible loads. Effective Aug. 6, 2014. Lobbyist: Mark Radtke, mradtke@cml.org.

SB 14-060**TRANSPORTATION****Flagger certification**

Allows the Colorado Department of Transportation (CDOT) to authorize public and private traffic flagperson certification training and develop training and examination materials that must be used for such certification. Provides resulting certification of public and private sector flagpersons to be recognized statewide. Effective March 27, 2014. Lobbyist: Mark Radtke, mradtke@cml.org.

HB 14-1105**TRANSPORTATION****Intergovernmental fuel sales**

Changes statutory language to specifically allow intergovernmental fuel sales among any governmental units holding a motor fuels tax exemption certificate. Effective Aug. 6, 2014. Lobbyist: Mark Radtke, mradtke@cml.org.
Reprinted.

HB 14-1027**TRANSPORTATION****Plug-in electric vehicle definition**

Redefines “plug-in electric vehicle” in statute as “any motor vehicle that can be recharged from any external source of electricity and the electricity stored in a rechargeable battery pack propels or contributes to propel the vehicle’s drive wheel.” Effective Feb. 19, 2014. Lobbyist: Mark Radtke, mradtke@cml.org.

HB 14-1301**TRANSPORTATION****Safe Routes to School**

Allocates \$700,000 of state general fund to the Colorado Department of Transportation (CDOT) to fund the Safe Routes to School in FY 2014-15 as federal funds to support this program disappear in September. Effective June 3, 2014. Lobbyist: Mark Radtke, mradtke@cml.org.

SB 14-115**WATER & WASTEWATER****Colorado Water Plan requirements**

Requires the Colorado Water Conservation Board to develop a state water plan with involvement of public and basin roundtables. Requires a report on scope, fundamental approach, and basic elements of plan to Water Resources Review Committee by Aug. 1, 2014. Requires committee to hold at least one public hearing on draft plan in each geographic region associated with basin roundtables to receive public feedback, as well as to provide summary of the public feedback and committee feedback to board by Nov. 1, 2014. Requires board to then present draft plan to committee by July 1, 2015, to be followed by additional public meetings in each basin roundtable regions and to provide summary of committee and public feedback to board by Nov. 1, 2015. Requires same procedure for significant plan amendments. Contains numerous requirements for activity after Nov. 1, 2017. States that the state water plan does not have force or effect of law. Effective May 15, 2014. Lobbyist: Kevin Bommer, kbommer@cml.org.

HB 14-1005**WATER & WASTEWATER****Ditch headgate relocation**

Clarifies that a water right owner may relocate a ditch headgate pursuant to 1881 act without filing for a change of water right under the Water Right Determination and Administration Act of 1969 if relocation does not physically interfere with complete use or enjoyment of other water rights. Effective May 16, 2014. Lobbyist: Kevin Bommer, kbommer@cml.org.

SB 14-171**WATER & WASTEWATER****Including water conservation fixture as energy efficiency improvement**

Adds water conservation fixtures to the definition of an “energy efficiency improvement,” for which the Colorado New Energy Improvement District may arrange financing, secured by a lien on affected real estate. Financing, under current law, is allowed for installation of energy efficiency improvements in residences and commercial buildings. Effective Aug. 6, 2014. Lobbyist: Kevin Bommer, kbommer@cml.org.

SB 14-142**WATER & WASTEWATER****Pesticide inspection of water & wastewater systems**

Eliminates the Commissioner of Agriculture’s responsibility to inspect including public water systems and domestic wastewater treatment works as part of commissioner’s duty to regulate use of agricultural chemicals in Colorado. Effective March 27, 2014. Lobbyist: Kevin Bommer, kbommer@cml.org.

HB 14-1008**WATER & WASTEWATER****Private entity forest health loans allowed**

Authorizes the Colorado Water Resources and Power Development Authority to make loans to private entities for purposes of forest health projects contemplated by legislation passed in 2013. Effective May 12, 2014. Lobbyist: Kevin Bommer, kbommer@cml.org.

SB 14-103**WATER & WASTEWATER****Prohibition on non-WaterSense fixture sales**

Defines a “WaterSense-listed plumbing fixture” with specific criteria. Prohibits sale of new lavatory faucets, shower heads, flushing urinals, tank-type toilets, and tank-type water closets on and after Sept. 1, 2016, unless they are WaterSense-listed plumbing fixtures. Amends or repeals conflicting portions of current law. Effective Aug. 6, 2014. Lobbyist: Kevin Bommer, kbommer@cml.org.

SB 14-025**WATER & WASTEWATER****Small communities grant program clarifications**

Clarifies that state severance tax dollars credited to Small Communities Water and Wastewater grant fund may be used for domestic wastewater treatment works, as well as drinking water treatment works. Contains related provisions. Effective Feb. 27, 2014. Lobbyist: Kevin Bommer, kbommer@cml.org.

HB 14-1002 WATER & WASTEWATER

Water Infrastructure Natural Disaster Grant Fund

Creates a fund and directs the Colorado Department of Public Health and Environment to award \$17 million grants to local governments, including local governments accepting grants on behalf of and in coordination with not-for-profit public water systems, under rules promulgated by the Water Quality Control Commission. Grants designated for planning, design, construction, improvement, renovation, or reconstruction of domestic wastewater treatment works and public drinking water systems impacted, damaged, or destroyed in connection with the flood of September 2013. Grants allowed only in counties where disaster emergency declared. Grants must be awarded for FY 2014-15 and, as needed, for FY 2015-16. Unencumbered moneys remaining in the fund on Sept. 1, 2015, shall be transferred to the nutrients grant fund. Effective May 17, 2014. Lobbyist: Kevin Bommer, kbommer@cml.org.

SB 14-191 WORKERS' COMPENSATION

Claims resolution procedures

Authorizes Division of Workers' Compensation director or administrative law judge (ALJ) presiding over workers' compensation cases, to consider medical treatment guidelines adopted by director in determining appropriateness of certain medical treatment. Requires director to adopt rules governing approval of settlements in workers' compensation cases, including procedures for electronic transmission of documents and verification of signatures. Adjusts measurement of time within which a hearing must commence from 100 days after date hearing is set to 120 days after date of service of request for hearing or notice to set. Extends time for objection to a summary order by an ALJ from seven days to 10 days. Allows director or ALJ to summon out-of-state parties to appear, either in person or by telephone, at hearing or deposition and authorizes sanctions for failure to appear. Sets 30-day deadline for director, ALJ, or administrative panel to comply with directions accompanying remand of case or order by an appellate tribunal. Allows claimant to receive \$75 per day, plus transportation and lodging, if claimant is required to travel for medical examination requested by employer and misses work as a result. Requires authorized physician to give written notice, with explanation, to claimant and employer if physician refuses to treat claimant or discharges claimant from medical care for a nonmedical reason. Allows employer 15 days to select another physician before claimant is allowed to select a physician independently. Adjusts maximum lump-sum settlement from max of \$60,000 to range of \$80,868 to \$161,734, depending on number of claimants and adjusted whenever adjustments are made to state average weekly wage. Effective July 1, 2014. Lobbyist: Kevin Bommer, kbommer@cml.org.

HB 14-1343 WORKERS' COMPENSATION

Peace officers PTSD task force

Creates a peace officer post-traumatic stress disorder (PTSD) task force to research work-related peace officer

PTSD and other relevant topics as determined by the task force. Establishes membership of task force and requires findings to be reported to the health committees of reference in General Assembly. Contains other provisions. Effective June 6, 2014. Lobbyist: Kevin Bommer, kbommer@cml.org.

HB 14-1383 WORKERS' COMPENSATION

Physician choice

Changes current requirement that employer or workers' compensation insurer provide a list of at least two physicians or two corporate medical providers or one physician and one corporate medical provider to an injured employee from which to select a treating physician to four physicians and corporate medical providers. Changes current law stating if there are fewer than four physicians or corporate medical providers within 30 miles of the employer's place of business, the employer or insurer may instead designate one physician or one corporate medical provider. Adds exemption for rural areas where there are more than three, but fewer than nine physicians or corporate medical providers within 30 miles of the employer's place of business such that employer or insurer may instead designate two physicians or two corporate medical providers or a combination of the providers. Effective April 1, 2015. Lobbyist: Kevin Bommer, kbommer@cml.org.

SIGN REGULATION IN THE DIGITAL AGE
Randal R. Morrison, Sabine & Morrison, San Diego
www.signlaw.com; tel: 619.234.2864; rrmsignlaw@gmail.com
Colorado Municipal League Conference, Breckenridge, June 18, 2014

PROGRAM OUTLINE

subject to adjustment at time of live presentation

- I. BASIC CONCEPTS
 - A. What is a sign?
 - B. Historical importance of signs
 - C. Why regulate signs?
 - D. The First Amendment
 - E. *Police Dept. of Chicago v. Mosley*, 408 US 92 (1972)
 - F. New way? *Reed v. Gilbert (II)*, 707 F3d 1057 (9th Cir 2014)
 - G. Medium vs. Message and the sign regulator's mantra
 - H. Commercial / Noncommercial – *Central Hudson Gas*, 447 US 557 (1980)

- II. BILLBOARDS AS A DISTINCT CLASS
 - A. Onsite / Offsite / General Advertising
 - B. *Fifth Avenue Coach v. New York*, 221 US 467 (1911) and *Railway Express Agency*, 336 US 106 (1949)
 - C. A better way to define billboards
 - D. Evading billboard rules with “onsite” gimmicks
 - E. Billboards on Indian land: *Shivwits Band v. Utah*, 428 F.3d 966 (10th Cir 2005)

- III. TOWER OF BABEL: *METROMEDIA V. SAN DIEGO*, 453 US 490 (1981)
 - A. Three basic rules
 - 1. Billboards
 - 2. Favoring commercial
 - 3. Discriminating within noncommercial
 - B. “Underruling” *Metromedia: Rappa v. New Castle County*, 18 F3d 1043 (3rd Cir 1994)

- IV. YARD SIGNS
 - A. *Linmark Realty v. Willingboro*, 431 US 85 (1977) (real estate for sale)
 - B. *City of Ladue v. Gilleo*, 512 US 43 (1994) (protest)
 - C. Solving the yard sign problem—*GK Ltd. v. Lake Oswego*, 436 F.3d 1064 (9th Cir 2006)

- V. CONTENT NEUTRALITY / TIME, PLACE AND MANNER
 - A. Content neutrality / viewpoint neutrality
 - B. Rules vs. Guidelines – legal risks of discretion and flexibility
 - C. Permissible and impermissible discretion
 - D. Limits of “time, place and manner”
 - E. Exemptions: *Mountain States Media v. Adams County*, 389 Fed.Appx. 829 (10th 2010)

- VI. PUBLIC FORUM AND GOVERNMENT SPEECH
 - A. *Lehman v. Shaker Heights*, 418 US 298 (1977)
 - B. Byron White explains: *Children of the Rosary v. Phoenix*, 154 F.3d 972 (9th Cir 1998)
 - C. *Taxpayers for Vincent*, 466 US 789 (1984)
 - D. Categories + rules, *Arkansas Educational Television v. Forbes*, 523 US 666 (1988)

- E. Traditional Public Forum areas
 - 1. Live, in person protestors – *Faustin v. Denver*, 268 F3d 942 (10th Cir 2001)
 - 2. Artists, commercial signs in TPF
 - 3. Airspace above parks / FAA pre-emption
 - 4. Changing forum category: *Utah Gospel Mission v. SLC*, 425 F3d 1249 (10th 2005)
 - 5. Government Speech – displacing public forum?
 - 6. *People for the Ethical Treatment of Animals v. Gittens*, 396 F3d 416 (DC Cir 2005)
 - 7. Opening a forum?
 - 8. Memorial crosses: *American Atheists v. Davenport*, 637 F3d 1095 (10th Cir 2010)
- F. Ten Commandments / religious images
 - 1. *Van Orden v. Perry*, 545 US 677 (2005)
 - 2. *Pleasant Grove v. Summum*, 555 US 460 (2009)
 - 3. *Fleming v. Jefferson County School*, 298 F3d 918 (10th Cir 2002) (memorial tiles)
 - 4. *Wells v. Denver*, 257 F.3d 1132 (10th Cir 2001) (holiday displays / solstice)

VII. DIGITAL SIGNS

- A. The digital debate: modernizing or carnivalizing?
- B. The definition problem
- C. Flashing, blinking, intermittent light
- D. Federal Highway guidance memo and driver distraction study
- E. Banning all digitals
- F. Banning digital billboards but allowing digital store signs
- G. Digital conversion deals

VIII. REVENUE OPPORTUNITIES FOR GOVERNMENTS

- A. City as landlord to new digital billboards
- B. Digitals only on city land? *Metro Lights v. Los Angeles*, 551 F.3d 898 (9th Cir 2010)
- C. Content limits – *Uptown Pawn and Jewelry v. City of Hollywood FL.*, 337 F.3d 1275 (11th Cir 2003)
- D. Private landlord objections and claims

IX. HIGHWAY BEAUTIFICATION ACT, 23 USC 131

X. SIGN ORDINANCE UPDATE

- A. Process models
- B. Two chapter (regulatory / proprietary) approach

XI. SIGN LITIGATION

- A. Common themes
 - 1. Favoring commercial
 - 2. Unbridled discretion
 - 3. Content control
 - 4. Time limit on permit decision
- B. Defenses
 - 1. Standing – scope of challenge
 - 2. Exhaustion, finality, ripeness
 - 3. Emergency fix / mootness
 - 4. Time, Place, Manner
- C. Settlement, favoritism and precedent – *Summit Media LLC v. City of Los Angeles* (2012)

FLOOD, SWEAT & TEARS

The Role of the Municipal Lawyer
in a Local Disaster

FLOOD, SWEAT & TEARS

Tim Cox	Widner Michow & Cox LLP
Bob Cole	Collins Cockrel & Cole PC
Kendra Carberry	Hayes Phillips Hoffman & Carberry PC

FLOOD, SWEAT & TEARS

- ✦ **Tim Lessons from Lyons**
- ✦ **Bob All Hazards Emergency Management**
- ✦ **Kendra A Personal Perspective**

LYONS – BEFORE THE FLOOD



LYONS – BEFORE THE FLOOD



LYONS – AFTER THE FLOOD



LYONS – AFTER THE FLOOD



LYONS – AFTER THE FLOOD



LYONS – SEPTEMBER 12, 2013



Lyons – Response Phase

Declaration of Local Disaster Emergency:
C.R.S. 24-33.5-709

- Authorizes "principal executive officer" to declare disaster to activate any local disaster plan and to authorize aid
- Declaration only valid for 7 days except by consent of governing body

Lyons – Response Phase

Declaration of Local Disaster Emergency:
C.R.S. 24-33.5-709

- Lyons administrator/mayor declared disaster in early hours after flood
- Held special meeting to extend emergency declaration for 60 days

Lyons – Response Phase

Declaration of Local Disaster Emergency:
C.R.S. 24-33.5-709

- Additional provisions
 - Town staff directed to dedicate all resources to flood recovery
 - Authorized Town business to be conducted elsewhere
 - "Eased" Open Meetings Law requirements, restrictions

Lyons – Response Phase

TABOR Reserves:
Colorado Constitution, Art. X, Sec. 20(5)

- To use for declared emergencies only, each district shall reserve for 1993 1% or more, for 1994 2% or more, and for all later years 35 or more of its fiscal year spending excluding bonded debt service. Unused reserves apply to the next year's reserve.

Lyons – Response Phase

TABOR Reserves:
Colorado Constitution, Art. X, Sec. 20(5)

Ordinance authorizing expenditure of emergency reserves during declared local disaster

Lyons – Response Phase

Official Posting Place



Lyons – Response Phase

Curfew, Park Closure

Businesses and homes abandoned, police patrols at night

Meadow Park – unstable banks, dangerous rocks



Lyons – Response Phase

Purchasing Policies

Code limits Town Administrator's authority to approve contracts based on purpose and amount

Adopted ordinance suspending purchasing policies

Lyons – Response Phase

Mutual Aid

Intergovernmental agreements normally require Board of Trustees approval

Resolution authorized Administrator to enter into agreements for mutual aid

Lyons – Response Phase

Utility/Water Theft

Some parts of town were ready to reconnect before others

Electric or gas available before water – safety concerns

Temporary water supply

Lyons – Response Phase

Utility/Water Theft

Ordinance made it unlawful to connect without consent

Also unlawful to use water from cisterns

Lyons – Recovery Phase

Debris Removal

Large volume of trees, rocks, mud

Public and private property



Lyons – Recovery Phase

Emergency Creek Repairs

Bank stabilization needed to avoid further damage

Lyons – Recovery Phase

Lease of private property

Needed place for new public works building



Lyons – Recovery Phase

Waiver of administrative fees

Town wanted to encourage early redevelopment and rehabilitation of damaged property

Lyons – Recovery Phase

Temporary uses and structures

Property owners sought to make use of land in short-term

Town wanted to facilitate quick re-use while still preserving zoning designations

Lyons – Recovery Phase

Substantial Damage Determination

FEMA urged Town to implement appeal process for those aggrieved by determination

Town wanted process to be easy for those waiting to know the fate of their homes

A PERSONAL PERSPECTIVE

Kendra Carberry



A PERSONAL PERSPECTIVE



Before

A PERSONAL PERSPECTIVE



After

A PERSONAL PERSPECTIVE



AFTER THE FLOOD . . .

ITEMS NEEDED BY PROPERTY OWNERS QUICKLY (but after the water has receded):

- **Limited/No Entry Placard**
 - This is provided by the building department after an initial inspection that should occur quickly after the flood
 - Other jurisdictions will "loan" building inspectors for this purpose (ours were from Wheat Ridge and Parker)

AFTER THE FLOOD . . .

"Determination of Substantial Damage" Letter

- This is typically a letter from the land use department to the property owner
- If the damage is greater than 50%, this letter allows a property owner to apply for Increased Cost of Compliance ("ICC") funds from the NFIP (up to \$30,000)
- This letter also assists the property owner with the initial NFIP estimate, so the sooner the property owner receives it, the better

AFTER THE FLOOD . . .

"Determination of Substantial Damage" Letter (continued)

- In most jurisdictions, this letter also controls whether a legal nonconforming structure may be repaired (usually if the damage is < 50% of value), or needs to be reconstructed in full compliance with applicable codes (usually if the damage is ≥ 50% of value)

AFTER THE FLOOD . . .

"Determination of Substantial Damage" Letter (continued)

- FEMA/NFIP allows any determination of value to be used (assessed value, recent appraisal, homeowners' insurance value)
- Boulder County now provides an appeal process if a property owner disagrees with the initial determination, but the adoption of the appeal process resulted in a 5-month delay in the mailing of the letters. Consider adopting this appeal process now

AFTER THE FLOOD . . .

FEMA Right-of-Entry Form

- Typically, these forms allow local government/FEMA representatives to enter private property to assess and remediate flood damage
- The initial form sent by Boulder County was extremely broad – I would suggest a more limited form, with a timeframe, purpose, etc.

AFTER THE FLOOD . . .

FEMA Right-of-Entry Form (continued)

- If the property owner had flood insurance, the form must include a statement that the property owner will not accept flood insurance proceeds for any work that a local government or FEMA actually performs
- The form must include an indemnification clause (property owner indemnifies local government/FEMA representatives)

AFTER THE FLOOD . . .

Volunteer Coordination

AFTER THE FLOOD . . .

Base Flood Elevation Certificate

- Consider having a list of local surveyors/engineers qualified to issue this certificate

AFTER THE FLOOD . . .

Dumpsters

- These are usually provided by a local company (in our case, Western Disposal) on FEMA's dime
- Locations are often on public roads and in public parks, so coordination is essential
- May want to consider volunteer "dumpster guards" to prevent the dumping of hazardous or non-disaster-related waste

AFTER THE FLOOD . . .

ITEMS NEEDED BY PROPERTY OWNERS LATER (but not too late):

- For agricultural properties, proof of agricultural zoning and agricultural property tax status
- The assessment documentation comes from the county
- The zoning proof comes from the municipality or county, as applicable

AFTER THE FLOOD . . .

A central location (website) with links to the following:

- U.S. Department of Agriculture (to register for grants)
- U.S. Farm Service Agency (to register for grants)
- Colorado Farm Aid grant application
- Colorado Farm Bureau grant application

AFTER THE FLOOD . . .

A central location (website) with links to the following:
(continued)

- CDBG grant application
- Local community foundation website (if any)
- United Way website
- United Policyholders website – this is a consumer protection group for flood insurance policyholders

AFTER THE FLOOD . . .

A list of local real estate appraisers qualified to provide pre- and post-flood appraisals:

- This is necessary for both income tax purposes and for appealing a flood insurance claim payment

AFTER THE FLOOD . . .

Information concerning any applicable waiver/abatement/reduction in property taxes

AFTER THE FLOOD . . .

A system for advance notification of repairs to waterway near property

AFTER THE FLOOD . . .
Information on floodplain/floodway map revisions

QUESTIONS?

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Special Districts:
Metropolitan
Fire
Water & Sanitation
Park & Recreation
Sewerage
Ambulance &
Health Services

Municipalities:
General Council
Special Council
Competition
Development
Urban Renewal

Service Authorities:
Water & Sewer
911
Emergency
Communications

Water & Environmental
Local Government
Elections
Employment
Finance


Bob Cole - All Hazards Emergency Management



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1. Framework for All Hazards Emergency Management


- 5 Phases of Emergency Management
 - Prevention
 - Mitigation
 - Preparedness
 - Response
 - Recovery




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1. Framework for All Hazards Emergency Management


- National Incident Management System (NIMS)
 - Preparedness
 - Communications and Information Management
 - Resource Management
 - Command and Management
 - Ongoing Management and Maintenance




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1. Framework for All Hazards Emergency Management


- Incident Command System (ICS).
 - Command
 - Operations
 - Planning
 - Logistics
 - Finance/Administration




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1. Framework for All Hazards Emergency Management


- Multi-Agency Coordination System (MACS)
- Emergency Operation Center (EOC) v. Incident Command Post
- Emergency Manager v. Incident Commander (IC)



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1. Framework for All Hazards Emergency Management

- Plans, Plans and More Plans!
 - Federal, state and local plans
 - Training/Exercise Plan
 - Public Education Plan
 - Emergency Management Strategic Plan

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**1. Framework for All Hazards
Emergency Management
Plans, Plans and More Plans!**


- Warning Notification Plans
 - Sirens
 - Emergency Notification Systems (ENS)
 - National Oceanic and Atmospheric Administration (NOAA) weather alerts
 - National Weather Service (NWS) internet and cell alerts

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**1. Framework for All Hazards
Emergency Management
Plans, Plans and More Plans!**


- Evacuation Plans
 - People and animals
 - Mandatory, voluntary and self-evacuation
 - Shelter-in-Place
 - Security
- Access and Functional Needs (AFN) Planning




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**1. Framework for All Hazards
Emergency Management
Plans, Plans and More Plans!**


- Continuation of Operations/Governance Plans (including legal services)
 - Succession Plan
 - Power and Connectivity
 - Back-ups and Redundancies




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**1. Framework for All Hazards
Emergency Management
Plans, Plans and More Plans!**


- Emergency Operations Plan (EOP)
 - Mobilization Plans
 - Resource Management Plans
 - Access and Transportation Plans
 - Communications and IT Plans
 - Logistics Plans
 - Facilities Plans




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**1. Framework for All Hazards
Emergency Management
Plans, Plans and More Plans!**

- Incident Management Plan
- Volunteer Coordination and Donations Management Plan
- Recovery Plan




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2. Legal Authorities




- Federal Disaster and Emergency Assistance Act (Stafford Act)
- Colorado Disaster Emergency Act Part 7, Article 33.5, Title 24, C.R.S.

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2. Legal Authorities

Colorado Disaster Emergency Act


- **Purpose:**
 - Reduce vulnerabilities from natural catastrophes, catastrophes of human origin, civil disturbance, or hostile military or paramilitary action
 - Prepare for disasters and emergencies
 - Restoration and rehab
 - Clarify and strengthen roles of the governor, state agencies, and local government
 - Coordination
 - Emergency management system
 - Prevention of disasters caused or aggravated by inadequate planning for regulation of public and private facilities and land use


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2. Legal Authorities

Colorado Disaster Emergency Act

- **Key Definitions:**
 - “Disaster” broadly defined to include “occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from” natural and human causes of a wide variety.
 - “Political Subdivisions” broadly defined to include county, city and county, city, town and other agencies designated by law as a political subdivision of the state.



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2. Legal Authorities

Colorado Disaster Emergency Act Governor's Powers

- **Responsible for meeting dangers presented by disasters**
- **Executive orders, proclamations, and regulations**
- **Governor's disaster emergency council**
- **Disaster declaration if “a disaster has occurred” or “occurrence or the threat thereof is imminent.”**
 - 30 days unless renewed by the Governor. Joint resolution of the general assembly can terminate.
 - activates disaster response and recovery aspects of state, local, and interjurisdictional disaster emergency plans.
 - “Governor is commander-in-chief of organized and unorganized militia and all other forces available for emergency duty.”



2. Legal Authorities
Colorado Disaster Emergency Act
Governor's Powers

- Responsible for meeting dangers presented by disasters
- Executive orders, proclamations, and regulations
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 - activates disaster response and recovery aspects of state, local, and interjurisdictional disaster emergency plans.
 - "Governor is commander-in-chief of organized and unorganized militia and all other forces available for emergency duty."



2. Legal Authorities
Colorado Disaster Emergency Act
Governor's Powers


- Other Governor powers during declared disaster emergency:
 - suspend regulatory statutes and agency regulations if strict compliance would hinder coping actions
 - utilize resources of state and political subdivisions
 - commandeer private property
 - compel evacuation
 - control ingress and egress from disaster area
 - suspend sale, dispensing, or transportation of alcoholic beverages, firearms, explosives or combustibles.
 - Emergency Epidemic Response Committee.



2. Legal Authorities
Colorado Disaster Emergency Act
Office of Emergency Management


- Prepares and implements State Disaster Plan
- Assists with development of local plans
- All-hazards response resources database and mobilization plan.




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2. Legal Authorities
Colorado Disaster Emergency Act
Office of Emergency Management


- Mobilization upon request of Governor, sheriff, emergency manager or person authorized in state resource mobilization plan, and large-scale emergency, disaster, or other local incident exceeds or will exceed local capabilities and mutual aid.



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2. Legal Authorities
Colorado Disaster Emergency Act
Office of Emergency Management

- Facilitate reimbursement to mobilized state agencies and jurisdiction from federal and state funds. For reimbursement must be mobilized pursuant to decision of the Executive Director of the Department of Public Safety, and participating in a mutual aid agreement under part 7.
- Resource Mobilization Fund and Disaster Emergency Fund

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2. Legal Authorities
Colorado Disaster Emergency Act
Local and Interjurisdictional Disaster Agencies and Services


- Political subdivisions are within the jurisdiction of OEM and local disaster agency.
- County disaster agency is the lead.
- Municipal disaster agency determined by Governor.
- Joint disaster agencies determined by Governor.




2. Legal Authorities
Colorado Disaster Emergency Act
Local and Interjurisdictional Disaster Agencies and Services

- Prepares local disaster emergency plan.
- Local emergency manager provides training, planning, mitigation alternatives, and recovery operations, and link between IC and local governments.






2. Legal Authorities
Colorado Disaster Emergency Act
Local and Interjurisdictional Disaster Agencies and Services




Local disaster emergency declaration

- Only by principal executive office of a political subdivision
- Continues for 7 days, only, unless consent of the governing board
- Prompt and general publicity, and file with county clerk and recorder, municipal clerk, Office of Emergency Management
- Activates response and recovery aspects of local disaster emergency plan and authorize furnishing of aid and assistance.




2. Legal Authorities
Colorado Disaster Emergency Act
Disaster Prevention

- Governor may suspend or impose local standards if:
 - area is susceptible to a catastrophic disaster without adequate warning, existing building standards and land-use controls are inadequate and could add substantially to the magnitude of the disaster, and changes in zoning, land-use or building regulations are essential; and
 - holds a hearing and local governments with jurisdiction do not act; and
 - requests the general assembly take legislative action to mitigate the impact of disaster.




2. Legal Authorities
Other Statutes

- Hazmat
 - Federal Emergency Planning and Community Right-to-Know Act, SARA Title III, requires LEPCs to address hazmat incidents.
 - Colorado Emergency Planning Commission, REPCs and LEPC. Part 15, Article 33.5, Title 1501, C.R.S.
 - General Hazmat and DERA §29-22-102, C.R.S.
- CGIA
- Compensation for taking property. §24-33.5-711, C.R.S.
- Mutual aid. §24-33.5-713, C.R.S.




2. Legal Authorities
Other Statutes

- Civil Defense Worker Compensation and Liability. Parts 8 and 9, Article 33.5, Title 24, C.R.S.
- School Buildings and Buses for Civil Defense. Part 10, Article 33.5, Title 24, C.R.S.
- Disaster Relief. Part 11, Article 33.5, Title 24, C.R.S.
 - Debris removal on public or private land by state and the state's instrumentalities if Governor or Presidential major disaster or emergency declaration.
 - Loans to state and local governments upon Presidential declaration.
- Division of Homeland Security and Emergency Management. Part 16, Article 33.5, Title 24, C.R.S.



2. Legal Authorities
Municipal Legal Authority


- Charter
- Municipal Code/Policies
 - Emergency/Disaster Declaration Authority
 - Emergency Curfew
 - Emergency Evacuation/Establishment of Police lines
 - Emergency meeting procedures
 - Emergency authority to exceed budget
 - Emergency Access to Tabor reserves
 - Price Controls During an Emergency
 - Property Seizure
 - Emergency Contracting Procedures

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2. Legal Authorities


Municipal Legal Authority

- Personnel Manual – exceptions in case of emergencies for:
 - Holidays
 - Limitations on hours/OT authorization
 - OT for salaried employees (pre-emergency authorization needed for FEMA reimbursement)



TOWN OF
PAGOSA
SPRINGS


Personnel Handbook

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3. Emergency Management Information Resources

- FEMA, <http://www.fema.gov>
- Colorado Division of Homeland Security & Emergency Management, <http://www.dhsem.state.co.us>
 - Colorado Emergency Management Program Guide
 - Resource Library.


<http://www.dhsem.state.co.us/emergency-management/resources>



EMERGENCY MANAGEMENT PROGRAM GUIDE
FOR COLORADO
January 2013




Colorado Office of Emergency Management
Department of Public Safety
Division of Homeland Security and Emergency Management
Office of Emergency Management
1800 S. Wacker Drive, Suite 200
Denver, CO 80202
(303) 863-8800
www.dhsem.state.co.us
www.colorado.gov

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3. Emergency Management Information Resources

- National Response and Mobilization Plan
- Colorado Resource Mobilization Plan
- NFPA Standard 1600, <http://www.nfpa.org>
- IAEM International Association of Emergency Managers <http://www.iaem.com/home.cfm?c=Global> Resources tab and Reference Materials
- Colorado Emergency Management Association <http://cemacolorado.com/>

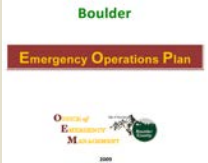
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4. Document Toolkit

- County Response Plan
- Local Response Plan
- County Wildfire Annual Operations Plan (AOP)

Boulder


Emergency Operations Plan




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4. Document Toolkit


- Emergency Contacts
 - Council Members
 - Municipal Manager
 - County Attorney and BOCC
 - Emergency Manager
 - State OEM Field Manager
 - Law Enforcement
 - Fire, Ambulance
 - PSAP
 - Department Heads
 - Public Works
 - Water, Sewer, Electricity, Natural Gas, Telephone Utilities
 - Hospital
 - Insurance Carrier/Claims Department,




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4. Document Toolkit



- Select State Emergency Operations Plans
 - Wildfire
 - Tornado
 - Winter Incident
 - Terrorism
 - Resource Mobilization Plan
- Mutual Aid Agreements
- Requesting Assistance




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4. Document Toolkit


- Charter
- Municipal Code
- Personnel Manual





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4. Document Toolkit


- Emergency/Disaster Declaration
- Supplemental Declarations to implement emergency powers, or emergency ordinances to establish emergency powers.
- Equipment and Services Contracts
 - Inspection forms
- Waivers of Liability
 - Volunteers
 - Property Owners
 - Contractors



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5. Training


- NIMS/ICS
 - Introduction to the Incident Command System (ICS-100)
 - Introduction to NIMS (IS-700)
 - NIMS Multiagency Coordination System (MACS) (IS-701)
 - Introduction to National Response Framework (IS-800)
- Multi Agency Exercises
- Intra-agency Exercises

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6. Emergency Incident Evolution



- Initial reliance on local resources
- The IC is in charge of on-scene operations!
- Mutual and Automatic Aid
- Local Emergency Manager provides support
- EOC support and coordination role





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6. Emergency Incident Evolution


- Local Emergency Declaration
 - Emergency Fire Fund (EFF)
 - Wildfire Emergency Response Funds (WERF)
 - Flood Response Fund
- Delegation of Authority to Incident Management Team (IMT)





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6. Emergency Incident Evolution


- State Emergency Declaration
 - Governor’s Disaster Declaration
 - State Emergency Reserve Fund
 - MACS activation
- Federal Emergency Declarations
 - Presidential Disaster Declaration
 - FEMA Fire Management Assistance – Current threat of major disaster, 75% federal cost share
 - Agricultural Emergency Disaster Designation






6. Emergency Incident Evolution


- Recovery Phase
 - Coordination through EOC and Emergency Manager
 - Transition Emergency Support Functions (ESFs) to Recovery Support Functions (RSFs)
 - Appoint Recovery Task Force or Coordination Group
 - Disaster Assistance Center – local, state and federal representatives







6. Emergency Incident Evolution

- Recovery Phase Continued
 - Damage Assessments
 - Rapid Needs Assessment
 - Preliminary Damage Assessment
 - Safety Assessments
 - Security Assessment
 - Behavioral Health Needs
 - Debris Management
 - Re-entry
 - Volunteer coordination and donations management
 - Economic, housing and finance priorities








7. Role of the Municipal Attorney


- Understand the framework of emergency response and recovery
- Know legal authorities
- Know where to find emergency management resources
- Have a documents toolkit and ready access to legal forms and documents
- Participate in training

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7. Role of the Municipal Attorney During an emergency or disaster incident



- Help ensure continuance of government
- Legal support for operational personnel




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7. Role of the Municipal Attorney During an emergency or disaster incident


- Support the Policy Group
 - Coordination of local resources with EOC Manager
 - Policy Decisions – establish goals and priorities considering financial, economic, legal, political and social implications
 - Strategic Decisions requested by IC or Emergency Manager
 - Priorities for incident and recovery planning
 - Legal guidance to policy makers, IC and emergency manager
 - Delegations of Authority
 - Emergency and Disaster Declarations
 - Coordination with Policy Groups of other affected jurisdictions

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7. Role of the Municipal Attorney During an emergency or disaster incident

- Be alert, keep the calm, think clearly, act decisively



Colorado Municipal League Annual Conference
Breckenridge, Colorado
June 17 – 20, 2014

“Running Effective Meetings 101 -- Bob’s Rules”

Robert (Bob) Widner
Widner Michow & Cox LLP
City Attorney, City of Centennial

The following materials are excerpted from “*The Colorado Handbook for Effective Local Government Meetings*” (tentative title) which is anticipated for publication in the fourth quarter of 2014. These materials are intended to support and aid understanding of information to be presented at the 2014 Colorado Municipal League Annual Conference in Breckenridge, Colorado, June 17 – 20, 2014 in the session titled “Running Effective Meetings 101 – Bob’s Rules.”

The excerpted materials primarily include “Bob’s Rules of Order” which are offered as a simplified set of motions and rules premised very broadly on the seminal handbook *Roberts Rules of Order*.

It is hoped that, through a uniform understanding of simplified local procedural rules, government officials engaged in public meetings can more effectively conduct the public’s business.

An important disclaimer about legal advice:

These materials and the content of this conference session are for informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem. If anything you read in these materials or hear during the CML Conference presentation is inconsistent with your local attorney’s advice or counsel, your local attorney’s advice and counsel is correct.

A note about what rules govern your community:

Colorado local governments enjoy fairly broad authority to craft rules to govern their day-to-day affairs and the conduct of their local meetings. In determining what rules might govern a particular matter, it is important to consult your local charter (for home rule municipalities), local ordinances, resolutions, and bylaws, and to have an understanding of the local historical

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practices that have guided your community meetings in the past. Overshadowing all of these local rules and practices is our state law -- to the extent it might be applicable -- which should be considered when determining proper meeting procedure.

The rules and processes contained in these materials are not applicable to your community unless your community takes appropriate steps to formally incorporate the rules and processes into your local laws and policies.

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Excerpts from
Colorado Handbook for Effective Local Government Meetings
(Publication Pending, Fall 2014)

Introduction

Efficient and well run public meetings are a necessity for local government. An efficient and well-run meeting allows all scheduled business to be accomplished, voices to be equally heard, and differences of opinion to be aired amicably. Whether the meeting issues are deeply challenging and emotional or simply ministerial and non-confrontational, a well-run meeting leaves all participants feeling that the decisions made during the meeting are the product of fairness, equality, and respect. Poorly run meetings can undermine confidence in local government by allowing a perceived inequality among participants when engaged in debate and discussion, injecting conflict and argument between the participants, and adding confusion to the decision-making process and uncertainty in the eventual decision. Unfortunately, efficient and well-run meetings for many Colorado local governments may be the exception and not the rule.

The seminal handbook, *Roberts Rules of Order*, is perhaps the most widely known set of rules designed to facilitate and manage meetings. Beginning with the pocket handbook first drafted in 1878, and with significant rewriting and amendment since that time, *Roberts Rules of Order* has evolved into a complex set of rules intended to organize large meetings of every type. Due to the sheer volume and complexity of *Roberts Rules of Order*, it is unreasonable for all meeting participants to fully comprehend and gain a working knowledge of *Roberts Rules of Order*. As a result, *Roberts Rules of Order* is often ineffective for use in conducting the meetings of local government.

***[Materials Deleted from Original]

“*Bob’s Rules of Order*” is intended as a simplified set of rules better suited to manage local government meetings and decision-making within Colorado. Although *Bob’s Rules of Order* calls upon the basic concepts offered by *Robert’s Rules*, *Bob’s Rules* pares down the available motions to those essential to advance the goal of running an efficient public meeting for Colorado local government.

Key Terminology

Amendment (or to Amend) - An amendment is a motion to change, to add words to, or to omit words from, a pending main motion. The change is usually to clarify or improve the wording of the original motion and must, of course, be germane to that motion.

Body – The formally constituted organization commissioned with the obligation and duty to act on behalf of the local government.

Chairperson – The person appointed or elected to preside over the meeting.

Floor – The privilege or right to speak to the body.

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Member – A person appointed or elected to hold office as a recognized participant of the body.

Motion – A formal proposal seeking specific action by the body typically preceded by the words “I move that ...” Motions are generally introduced by voice but may be presented in writing.

Moving Party – The Member presenting a motion or point for action by the body.

Out of Order – An act or action that fails to comport with these Rules of Order

Point – A declaration of a member addressed to the chairperson requesting to bring before the body a matter for immediate decision or resolution. There are three recognized points: (1) Point of Order; (2) Point of Information; and (3) Point of Appeal.

Second – An oral declaration by a Member to express that a motion offered to the body should receive debate or discussion.

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General Rules Governing the Meeting

- Floor Required to Address Body. Except when raising a Point (Point of Order, Point of Information, or Point of Appeal), a Member must first be recognized by the Chairperson and be given the floor in order to address the Body.
- Time Limit for Floor. A Member’s right to the floor should be limited to five (5) minutes. A Member may request that the Chairperson grant additional time. Such request should customarily be granted by the Chairperson unless the Chairperson determines that other Members are waiting to be recognized to obtain the floor or that meeting efficiency necessitates that the requested extension be denied. When one Member is denied a request for an extension of time to speak, no other Member shall be granted an extension of time for the same agenda item.
- Limitation on Obtaining Floor. A Member should only speak once to any motion under debate until such time that all others seeking the floor have been provided an opportunity to speak to the motion.
- No Interruptions or Side Discussions. In order to maintain a clear recorded meeting record, only one person shall speak at any one time. Interrupting a person who has the floor or engaging in side discussions while another person has the floor is out of order.
- Second Required for Debate. All motions must receive a second before debate or discussion may begin. A second does not connote approval of the motion but only that the Member offering the second supports fuller discussion of the motion.
- Chairperson Discretion. The Chairperson may independently decide to deviate from the Rules of Order in order to increase meeting efficiency and to best enable full and informed discussion of a matter before the Body. However, such

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independent action by the Chairperson remains subject to a Point of Order and Point of Appeal through which a Member can bring the meeting into full compliance with the Rules of Order.

- Voting:

Vote Requirement. A majority vote of the quorum present is required for any motion unless a different requirement is set by these Rules of Order or by applicable law. For example, a supermajority (2/3rds of quorum present) is required for a Motion to Call the Question pursuant to these Rules of Order and a supermajority (2/3rds of a quorum present) is required for a motion for executive session pursuant to the Colorado Open Meetings Law (C.R.S. § 24-6-402(4)).

Aye or Nay Vote Required. A vote of aye or nay (or another form of affirmative or negative declaration such as “yes” or “no”) shall be taken upon motions. Every Member, when present, must vote aye or nay unless:

- (1) The Member is excused by the Chairperson due to the Member’s declaration of a conflict of interest at the introduction of the agenda item or immediately upon discovery of a legally recognized conflict of interest; or
- (2) The Member is excused by the Chairperson because the member is without sufficient information upon which to enable an informed vote due to an absence at a prior meeting, e.g., the member did not attend the meeting for which meeting minutes are moved for approval.

No Abstention. An unexcused member’s vote to “abstain” or other similar declaration other than “aye” or “nay” shall be recorded as a “nay” vote on the pending motion or matter.

No Explanation of Vote. Members shall not explain their vote except during discussion and deliberation prior to the calling of the vote on the question. Any attempt to explain a vote or to condition the vote immediately prior to casting the vote is out of order.

***[Materials Deleted from Original]

Meeting Notice, Minutes, and Recording of Meetings

A. Notice

The most effective meetings involve active participation by varying viewpoints and opinions. Participation is best achieved through adequate and reasonable notice given to interested parties.

Notice of a meeting should include information that would clearly inform the layperson of the date, time, place, and general purpose of the meeting. ***[Materials Deleted from Original]

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It is often surprising for some to learn that state law requires relative little notice to the public of local government meetings where business may be conducted. In fact, absent any local rules or practices requiring greater notice, most meetings can be conducted, and important public business accomplished with as little as 24 hours' notice posted at some general location in the community that is annual designated and could include a local bulletin board.¹ Locally adopted rules can greatly aid in the effort of providing greater notice to inform the community of meetings. Municipalities should consider establishing minimum notice requirements and, if desired non-mandatory or "courtesy" notice guidelines with the understanding that failure to comply with the mandatory requirements may undermine the ability to conduct a meeting or, at worst, invalidate action taken during a meeting held without compliance with the required notice.

***[Materials Deleted from Original]

Chairperson's Privileges & Duties

- Chairperson to Direct Meeting. The Chairperson is privileged to act as the director of the meeting. The Chairperson shall seek to clarify the actions pending before the Body during the meeting and prior to a vote. For example, the Chairperson is encouraged to restate motions, announce expectations for the meeting agenda, and recommend to the Body the proper procedure or rules for a particular course of action. The Chairperson has a continuing right to the floor although, like any other member, shall be held to compliance with the Rules of Order.
- Chairperson as Parliamentarian. The Chairperson is the meeting parliamentarian and shall decide all questions of process and procedure. Such decisions are subject to appeal by a Point of Appeal. The Chairperson may consult with the Body's legal counsel or administrative staff to assist in rendering decisions regarding the application of the Rules of Order.
- Chairperson as Facilitator of Discussion. As the meeting director, the Chairperson should generally encourage and enlist other Members to propose or to second motions and to lead initial debate. Nevertheless, the Chairperson is entitled to the same rights as Members regarding the presentation of motions, seconding motions, and debate and may exercise such privilege as deemed appropriate by the Chairperson.

¹ C.R.S. § 24-6-402(2)(c) provides:

"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."

- Temporary Informal Recesses. The Chairperson may declare a temporary recess without motion or consent of the Body. However, no recess shall be declared which would interrupt a member who has properly secured the floor to speak.

Moving Party's Privileges

- At any time *prior to* receiving a second on a motion, the Moving Party may unilaterally withdraw or unilaterally amend a motion provided that the Moving Party has the floor. A motion, *once seconded*, belongs to the decision-making Body and the Moving Party's privileges are limited.
- The Moving Party retains the following limited privileges after the motion receives a second if the Moving Party has properly secured the floor to speak:
 - A. The Moving Party may speak to the rationale, purpose, meaning, or need of the motion prior to the opening of full debate to other members of the Body.
 - B. The Moving Party may withdraw his/her seconded motion unless an objection is raised by Point of Order. An objection to the Moving Party's withdraw of the seconded motion will summarily defeat the Moving Party's request to withdraw.
 - C. The Moving Party may accept a proposed amendment (a "Friendly Amendment") unless an objection is raised by Point of Order. An objection to a Friendly Amendment will summarily defeat the Moving Party's privilege to accept a Friendly Amendment and, in such case, a formal Motion to Amend would be in order.
 - D. During debate, to further explain or clarify the meaning, intent, or purpose of the motion or to otherwise respond to a Point of Information.

***[Materials Deleted from Original]

Classes & Priority for Points and Motions

There are three classes for motions and points: (1) Privileged; (2) Main; and (3) Subordinate. The class determines the priority or importance of the motion or point and, therefore, determines whether the motion or point is "in order" when made, i.e., if the motion or point proposed is appropriate for the Body to consider at the time it is presented.

- **PRIVILEGED** motions, which include all three Points, do not require a pending main motion on the floor and do not relate directly to a pending question. Privileged motions or points may be raised at anytime. Privileged *points* do not require the floor; privileged *motions* require the floor. Privileged motions oftentimes involve an administrative or ministerial aspect of the meeting that

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needs to be resolved independently of the business then-pending before the Body. The following motions or points are recognized as privileged and are listed *in order of precedence*:

- Point of Order
 - Point of Information
 - Point of Appeal
 - Motion to Recess
 - Motion for Executive Session
- A **MAIN** motion formally presents to the Body an item for action. A Main motion can be made only when no other motion is pending. If a Main motion is presented when another pending motion or point is before the Body, it is out of order.

Although there are as many Main motions as there are subject matters that a Body may consider, there are four (4) commonly recognized *specific* Main motions used in local government decision-making:

- Motion to Adjourn
 - Motion to Reconsider
 - Motion to Postpone an Agenda Item to a Date Certain
 - Motion to Postpone Indefinitely
- A **SUBORDINATE** motion is related to and supplements or builds upon the Main motion. A Subordinate motion must be dealt with before the Main motion can be voted on. A Subordinate motion is in order only when there is a pending main motion on the floor. Once a seconded Subordinate motion is pending on the floor, neither a MAIN motion nor another Subordinate motion is in order.

There are three (3) recognized Subordinate motions:

- Motion to Amend (a Main Motion)
- Motion to Continue Matter Before the Body to Date Certain
- Motion to Call the Question (Close Debate)

Points and Motions in Detail

A. Points

There are three “Points:” (1) Point of Order; (2) Point of Information; and (3) Point of Appeal. Points do not require a second. They are each “privileged” and may be raised at anytime.

- **Point of Order** (or to “raise a question of order” as it is sometimes expressed), is an opportunity for a Member to express an opinion that the rules or procedures of the Body are being violated. The appropriate means of asserting such opportunity is for the member to wait for a break in the discussion and state “Point of Order” and wait to be recognized by the Chairperson. Any existing debate or discussion should cease. Upon the Chairperson’s recognition, the member must succinctly state the general rule or procedure believed to be in violation. A point of order should not interrupt another speaker, does not require a second, is not debatable, is not amendable, and cannot be reconsidered. For example:

Member Jones was granted the floor and proposed a motion to approve a site plan. Member Jones then proceeded to discuss the rationale for his motion.

Member Jones: [has the floor and is engaged in debate on a motion, he pauses in his debate]

Member Smith: “Point of Order.”

Chairperson: “Excuse me a moment, Mr. Jones. The Chairperson recognizes Ms. Smith.”

Member Smith: “I believe we are debating a motion that did not receive a second. I believe that this is out of order because a motion requires a second before debate.”

Chairperson: “You are correct Ms. Smith, I do not recall a second was offered. Therefore, let us cease debate. Do I have a second on the motion? [A second is offered]. Thank you for your Point of Order, Ms. Smith. Mr. Jones, you have the floor and may commence debate.”

- **Point of Information** is a *request to receive information* on a specific question, either about process, meeting conduct, clarification of a motion, or about a fact at any time during a meeting. A Point of Information is not an opportunity for a member to *provide* information to the Body and should never be used as a means of continuously interrupting the flow of debate. Using a Point of Information to provide information or to interrupt debate would be out of order.

As an example of the proper use of a Point of Information while the Body is engaged in debate on a seconded motion:

Member Quinn: [Has the floor and is offering her thoughts on a pending matter.]

Member Frank: “Madam Chairperson, Point of Information”

Chairperson: “Excuse me a moment, Ms. Quinn. The Chairperson recognizes Member Frank.”

Member Frank: “Ms. Quinn said there are more than 5,000 vehicles passing through the Main Street intersection during the peak evening hours. But I recall that our Traffic Engineer stated earlier that the traffic count at the intersection during evening peak hours was only 1,500 vehicles. What is the correct number?”

Chairperson: “Let’s have the Traffic Engineer provide us the accurate figure for traffic count.”

Following the Traffic Engineer’s advisement, Ms. Quinn again has the floor.

- **Point of Appeal** is a request of a member to challenge a decision of the Chairperson concerning the application of the Rules of Order. A Point of Appeal shall customarily be in order immediately following the Chairperson’s decision and may be declared out of order and unavailable where the Body has relied upon the Chairperson’s decision and continued the proceeding in reliance upon, or in accordance with, the Chairperson’s decision. The member making the Point of Appeal may briefly state his or her reason for the Point, and the Chairperson may briefly explain his or her ruling, but there shall be no further debate on the appeal.

As an example of the use of a Point of Appeal when a motion is pending discussion:

Chairperson: “We have on the floor a Motion to Call the Question that was seconded.” The vote on a Motion to Call the Question is not debatable and will require a majority vote of the quorum present.”

Member Thomas: “Point of Appeal”

Chairperson: Mr. Thomas has raised a Point of Appeal. Mr. Thomas, you have the floor. What is your appeal?”

Member Thomas: I appeal the Chairperson’s decision regarding the required vote on a Motion to Call the Question. A Motion to Call the Question requires a 2/3rds vote pursuant to our Rules of Order.

Chairperson: “My decision regarding the required vote is being appealed. I believe that closing debate is a rather simple

matter only requiring a majority vote like a majority of all of our motions.”

“We shall now vote on the appeal. Mr. Thomas appeals my decision regarding a vote on a Motion to Call the Question requires a simple majority of this quorum. Mr. Thomas asserts it should be a 2/3rds vote. The question we are now voting on is ‘Shall the decision of the Chairperson be sustained?’”

[The Members vote to not sustain (they overturn) the Chairperson’s decision.]

Chairperson: “My decision is overturned on appeal. I stand corrected and will now declare that the Motion to Call the Question requires a vote of 2/3rds of the members of the Body. Let us proceed to the consideration of the Motion to Call the Question.”

B. Motions

- **Motion to Recess** **(Privileged)**

A Motion to Recess is intended to provide a temporary cessation in the meeting to accommodate matters such as restroom breaks or to consult with legal counsel or administrative staff. The motion should state approximate amount of time for the requested recess as a convenience to other members and the public in attendance. A second is required and the motion is not debatable and requires an immediate vote. A majority vote of quorum present required for approval.

As an example of a Motion to Recess, such motion might be stated as:

Member Thomas: “I move to recess our meeting for 15 minutes until 7:30.”

Member Jones: “Second.”

Chairperson: “We have a Motion to Recess on the floor to recess until 7:30. Because this motion is not debatable, would the clerk please call for the vote.”

- **Motion to Adjourn** **(Main)**

Motion to Adjourn is available to cease further action of the Body and immediately terminate the meeting. A Motion to Adjourn is debatable and requires a majority vote of quorum present required. Caution should be exercised when presenting a Motion to Adjourn when items are pending on the agenda that required prior notice (such as public hearing publication or posting of property) because these matters must be properly continued to a future date or new notice published and/or posted.

As an example of a Motion to Adjourn, such motion might be stated as:

Member Thomas: "I move to adjourn this meeting."

Member Jones: "Second."

Chairperson: "We have a Motion to Adjourn on the floor. Member Thomas, did you want to speak to your motion or open any debate?"

Member Thomas: "Thank you. I believe the remaining items on our agenda are not important and it is already 11:00 p.m. I believe we are all tired and can no longer concentrate."

Chairperson: Any other debate? Seeing none, would the clerk please call for the vote. Please note that only a simple majority of our quorum present tonight is needed to adjourn."

- **Motion to Reconsider** **(Main)**

A Motion to Reconsider is an extraordinary motion that requires a degree of care in presenting and, if approved, care in processing the matter to be reconsidered. A successful Motion to Reconsider will effectively void the prior vote taken on the previously decided motion and cause the matter to be reopened for another motion and a new consideration.

A Motion to Reconsider is only in order at the same meeting at which the decision to be reconsidered was made or at the *next* regular meeting of the Body. The motion must be made by a member on the prevailing side of the original motion to be reconsidered. The required second on the motion need not be a member from prevailing side. The motion is debatable but only for the reasons to explain or justify reconsideration and not for the purpose of debating the merits of the original motion.

A supermajority vote of 2/3rds of the quorum present is required for approval. All proceedings, testimony, evidence, and debate on the matter presented during the initial consideration of the original matter will remain part of the official record; only the decision or vote taken is voided.

In the event of a successful Motion for Reconsideration, it is recommended that the reconsideration of the original matter be continued to a future date as opposed to being heard at the same meeting in which the Motion for Reconsideration was approved. This recommendation stems from the fact that the matter under reconsideration will likely require new public notice so that interested parties (and possibly an applicant whose rights are being decided) are apprised of the new consideration and can attend and participate in the new consideration. Even when a successful Motion for Reconsideration was presented in the same night as the matter subject to reconsideration, the parties present

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for the original matter may have departed the meeting after what appeared to those attending to be a final decision on the original motion. Fairness will often dictate that the reconsideration be scheduled for a future date.

As an example of the typical process surrounding a Motion to Reconsider, such motion might be stated as:

Member Thomas: "I move to reconsider our decision to approve Ordinance 14 which required all owners to keep their dogs on leashes at all times. I believe I can make this motion because I voted "yes" on the ordinance and it was approved at our last meeting."

Member Jones: "Second."

Chairperson: "We have on the floor a Motion to Reconsider Ordinance 14 concerning our new dog leash law. Please note that a Motion to Reconsider, if we approve it tonight, will reopen the consideration of Ordinance 14 and require new debate, a new motion, and a new vote. Member Thomas, did you want to speak to your Motion to Reconsider? Please note that you are free to discuss the reason why you wish to seek reconsideration but this is not intended to be a debate of the merits of Ordinance 14 at this time."

Member Thomas: "Thank you. I would like us to reconsider Ordinance 14 because upon reflection over the last week I believe the Ordinance may be too restrictive and we might want to consider allowing an exemption to the leash requirement for owners that can maintain control over their dogs by using voice command."

Chairperson: "Any other debate concerning whether we should reconsider Ordinance 14? Seeing none, would the clerk please call for the vote. Please note that this Motion to Reconsider requires a supermajority of 2/3rds of the quorum present tonight to be approved. If approved, our administrative staff will need to schedule Ordinance 14 for discussion at a future date and provide or publish any required notices to the public concerning our reconsideration of Ordinance 14."

- **Motion to Postpone an Agenda Item to Date Certain (Main)**

A Motion to Postpone an Agenda Item to a Date Certain pertains to a matter that is not presently on the floor but is scheduled for later consideration on the Body’s agenda. The motion must identify a date and time certain for the agenda item to be reset for Body consideration. If the Moving Party desires to *indefinitely* postpone an item, a Motion to Postpone indefinitely is the appropriate motion (see below). The Motion to Postpone an Agenda Item to a Date Certain is debatable. A majority vote of quorum present required for approval.

As an example of a Motion to Postpone an Agenda Item to Date Certain, such motion might be stated as:

Member Smith: “I move to Postpone Agenda Item 8 which pertains to funding of the repainting of the offices in City Hall to our meeting on August 15 at 7:00 p.m. here in our Council Chambers.”

Member Edwards: “Second.”

Chairperson: “We have a Motion to Postpone Agenda Item 8 which pertains to the funding of the repainting of the offices. This motion is debatable, so I would offer Mr. Smith and other Members an opportunity to comment on the motion”.

Member Smith: “I believe that this is not an urgent matter and, quite frankly, there are more pressing matters to fully consider tonight. The August 15 agenda looks like a light meeting.”

Chairperson: “Any other discussion? Seeing none, would the clerk please call for the vote.”

- **Motion to Postpone Indefinitely (Main)**

A Motion to Postpone Indefinitely will effectively kill a matter that is subject to the Body’s consideration (and is usually on the meeting agenda or scheduled on a future agenda). This motion will remove the matter from the Body’s consideration without full debate of the matter and without directly voting the matter down on the matter’s merits. It is most commonly used to eliminate a matter from the current and/or future agendas because there is insufficient interest on the Body to hear the matter. As a caution, a Motion to Postpone Indefinitely would not be appropriate where the item involves a quasi-judicial matter for which an applicant has a right to a hearing and opportunity to be heard; legal counsel should be consulted regarding the use of this Motion for any quasi-judicial matter. The motion is debatable. A majority vote of quorum present required for approval. If approved, the matter will not be brought

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back to the Body unless the Body instructs that the item return for a future agenda.

As an example of a Motion to Postpone Indefinitely, such motion might be stated as:

Member Johnson: "I move to Postpone Indefinitely Agenda Item 2 which pertains to enacting a leash law for all cats in the town."

Member Samuels: "Second."

Chairperson: "We have a Motion to Postpone Agenda Item 2 indefinitely which pertains to our imposing a leash law on cats. This motion is debatable and requires a majority vote of the quorum present tonight. I would offer Ms. Johnson and other Members an opportunity to comment on the motion."

Member Johnson: "I have talked with many citizens about this proposal and believe that we are likely to be harshly criticized should be enact such an ordinance. So I think it is a waste of our time to continue to entertain this idea and I prefer just to eliminate the matter from tonight's agenda and our future consideration."

Chairperson: "Any other discussion? [Member Thomas requests floor] The floor recognizes, Mr. Thomas. Mr. Thomas you have the floor."

Mr. Thomas: "Thank you. Although I agree with Ms. Johnson about the public sentiment we are likely to hear about leashing cats, I think we should at least open the public debate and have the citizens comment to us directly. So I oppose the motion to postpone indefinitely."

Chairperson: "Seeing no other discussion, would the clerk please call for the vote."

[Vote fails to gain the required simple majority vote needed for a Motion to Postpone Indefinitely.]

Chairperson: "We do not have the required majority of the quorum so the offered motion is rejected or fails. We will consider the matter of leashing cats as our scheduled Agenda Item 2 tonight."

- **Motion to Amend (a Main Motion) (Subordinate)**

A Motion to Amend (a Main Motion) is applicable only to a Main motion on the floor. The motion must provide specificity as to the intended amendment. The motion is debatable. A majority vote of a quorum present required for approval. A motion to amend is not in order when another motion to amend is already pending (made and seconded) before the Body; e.g., the Body will deal with only one Motion to Amend at a time to avoid confusion.

As an example of a Motion to Amend a Main Motion, such motion might be stated as:

Member Smith: I move to Approve Ordinance No. 6 as presented to us tonight.”

Member Jackson: “Second.”

Chairperson: “We have a proper Motion on the floor that has received a second to approve Ordinance No. 6. Any discussion?”

Chairperson: “Yes, the Chair recognizes Mr. James. Mr. James, you have the floor.”

Member James: “Thank you. I move to amend the motion offered by Ms. Smith to change the amount of the penalty for the first violation stated in Section 1-1-3 on page 3 of Ordinance No. 6 from the stated \$100 for the first offense to \$200 for the first offense.”

Member Samuel: “Second.”

Chairperson: “We have a Motion to Amend before us to change the penalty in Section 1-1-3 of Ordinance No. 6 from \$100 to \$200 for the first offense. We will take up the Motion to Amend first and decide that Motion before we consider the Main Motion. It is debatable and requires a simple majority vote. I see no one wishing to comment or debate the offered amendment to Ordinance No. 6. Would the clerk call for the vote on the Motion to Amend only.”

[Motion receives majority vote of approval.]

Chairperson: ”The Motion to Amend is approved so Ordinance No. 6 is now amended to change the penalty for a first offense to \$200. We next turn to the Main Motion to approve Ordinance 6, now as amended. Any debate on Ordinance No. 6 as amended?”

Seeing none, would the clerk please call for the vote of Ordinance No. 6 as it was amended.”

- **Motion to Continue Matter to Date Certain (Subordinate)**

A Motion to Continue a Matter (that is before the Body) to a Date Certain postpones to holdover the current motion to a specific date, time, and place stated in the motion. Note that a motion to continue a matter without stating a date certain would operate more like a Motion to Postpone Indefinitely (see above) and would require the matter to be affirmative requested by the Body for future consideration and reintroduced and, when required, new publication of notice of the hearing or discussion. The motion is debatable. A majority vote of a quorum present required for approval.

As an example of a Motion to Continue a Matter to a Date Certain, such motion might be stated as:

Member Smith: “I move to continue this matter under consideration to our meeting on February 23 at 7:00 p.m. here in our Council Chambers.”

Member Edwards: “Second.”

Chairperson: “We have a Motion to Continue this matter we are considering to a date and time certain, that being our meeting of February 23, at 7:00 p.m. here in our Council Chambers. This motion is debatable and only requires a majority of the quorum here this evening. I would offer Mr. Smith and other Members an opportunity to comment on the motion.”

Member Smith: “I believe we need a continuation so that we can have a full opportunity to review the traffic study we received tonight. Without my detailed review of that study, I do not believe I am able to make an informed decision on the matter pending before us.”

Chairperson: “Any other discussion? The Chair recognizes Ms. Hampton.”

Member Hampton: “We have all had the traffic study for more than a month and we received a presentation on the study contents last week. With all respect to Mr, Smith, I believe a majority of us are fully informed and we can decide the issue tonight.”

Chairperson: “Seeing none other request to debate, would the clerk please call for the vote.”

- **Motion to Call the Question** **(Subordinate)**

A Motion to Call the Question (also more correctly phrased as to “Close Debate”) will close further debate and require vote on the motion pending before the Body. The motion applies only to the motion on the floor. The motion is not debatable. Due to the fact that such a motion will forestall the Body’s ability to discuss the merits of the pending matter, a supermajority vote of 2/3rds of the quorum present is required for approval in order that the Body evidences a strong intent that continuing debate is not necessary to decide the matter.

As an example of a Motion to Call the Question (or Close Debate), such motion might be stated as:

[A debatable motion is pending before the Body and the Body is engaged in debate.]

Member Bernie: “I move to Call the Question.”

Member Jones: “Second.”

Chairperson: “We have Motion to call the Question which will, if approved, close all debate on the matter presently before us and require a vote. This motion is not debatable. This motion will require a supermajority of our quorum by 2/3rds. Would the clerk please call for the vote.”

Chairperson: “The Motion to Call the Question is approved by a 2/3rds vote. Would the Clerk please call for the vote on the main motion.”

- **Motion for Executive Session** **(Privileged)**

Executive sessions are expressly permitted by state law to allow the Body to discuss certain topics in a closed non-public setting. The most common authorized executive session topics for local government include:

- A. Purchase, acquisition, lease, transfer, or sale of any real, personal, or other property interest; except that no executive session shall be held for the purpose of concealing the fact that a member of the local public body has a personal interest in such purchase, acquisition, lease, transfer, or sale.²
- B. Conferences with an attorney for the local public body for the purposes of receiving legal advice on specific legal questions. Mere presence or participation of an attorney at an executive

² C.R.S. § 24-6-402(4)(a).

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session of the local public body is not sufficient to qualify the executive session as a session involving legal advice.³

- C. Matters required to be kept confidential by federal or state law or rules and regulations. The Body shall announce the specific citation of the statutes or rules that are the basis for such confidentiality before holding the executive session.⁴
- D. Specialized details of security arrangements or investigations, including defenses against terrorism, both domestic and foreign, and including where disclosure of the matters discussed might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law.⁵
- E. Determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators.⁶
- F. Personnel matters *except if* the employee who is the subject of the session has requested an open meeting, or if the personnel matter involves more than one employee, all of the employees have requested an open meeting.⁷ However, you *cannot* hold an executive session for “personal matters” to discuss:
 - (i) an elected official or an appointed member of the Body;⁸ or
 - (ii) the appointment of a person to fill an appointed⁹ or elective office; or
 - (iii) personnel policies that do not require the discussion of matters personal to particular employees.¹⁰
- G. Consideration of any documents protected by the mandatory nondisclosure provisions of the "Colorado Open Records Act",¹¹ except that all consideration of documents or records that are work product as defined in C.R.S. § 24-72-2020 or that are subject to the governmental or deliberative process privilege shall occur in

³ C.R.S. § 24-6-402(4)(b).

⁴ C.R.S. § 24-6-402(4)(c).

⁵ C.R.S. § 24-6-402(4)(d).

⁶ C.R.S. § 24-6-402(4)(e).

⁷ C.R.S. § 24-6-402(4)(f)(I).

⁸ C.R.S. § 24-6-402(4)(f)(II).

⁹ *Id.* A special statutory provision of the Colorado Open Meetings Law (C.R.S. § 24-6-402(3.5)) may authorize non-public executive sessions to conduct some of the business associated with selecting the chief executive officer (commonly considered as the “city manager” or “town administrator.”) Consult your local counsel to understand the steps necessary to hold these special forms of non-public public meetings.

¹⁰ C.R.S. § 24-6-402(4)(II).

¹¹ *Id.*

a public meeting unless an executive session is otherwise allowed pursuant to state law.

Because the authorized purposes for executive session are limited and because errors in calling for an executive session may result in the session discussion becoming subject to public disclosure or actions, if any, invalidated, it is always advised to obtain legal advice regarding each motion.

Unlike other matters that will be open for public discussion, debated, and possibly decided by the Body, it is not necessary that the Executive Session be listed on the meeting agenda in advance. Oftentimes, the Body has no need for an executive session and the need arises during the meeting. For example, the need for legal advice may not be known until evidence or information is presented that give rise to a question requiring consultation with the Body's counsel.

The Motion for Executive Session must include the citation to Colorado Revised Statute subsection authorizing session and a brief description of subject matter.

The motion is debatable. However, care should be taken during debate to not disclose any confidential or sensitive information that might undermine the purpose of the executive session. For example, a town board member may state in debate during the public meeting that an executive session should be held to allow the council to decide "whether to spend up to \$2,000,000 on the acquisition of the vacant Thompson Property for a public park." Such public disclosure would essentially undermine the purpose of the executive session, that is, to give the town board the opportunity to determine negotiation strategy and the total amount willing to be paid to the seller for the Thompson Property. More appropriate would be to declare in debate that the executive session is needed to "allow the town board to decide the maximum amount the negotiation team can offer in negotiation."

Very importantly, a supermajority of 2/3rds of quorum present required for approval pursuant to the Colorado Open Meetings Law.

As an example of a Motion for Executive Session to obtain legal advice, such motion might be stated as follows:

Member Thomas: "I move to hold an executive session pursuant to C.R.S. § 24-6-402(4)(b) to receive legal advice on the right to impose a condition on the proposed rezoning application under discussion."

Member Jones: "Second."

Chairperson: "Is there any debate on this motion? Seeing none, would the clerk please call for the vote." Please

note that the vote required for executive session is a 2/3rds of the quorum present tonight.”

[Vote by the Body is taken and the vote is unanimous.]

Chairperson: “We are now authorized to enter into executive session.”

The Location of Executive Session

State law does not require that executive sessions be conducted in any particular location. Most communities remove the Body to a side room or conference chambers that allows for private conversation outside the hearing of the general public. Other communities ask members of the public attending the body’s meeting to exit the room to allow the necessary confidential conversation.

Confidentiality of Executive Sessions

Contrary to popular belief, there are no specific laws that require confidentiality of discussion in executive session or prohibit disclosure of confidential information discussed in an executive session. Attendees may therefore believe they are free to disclose information provided to them during the session. However, state law imposes upon all municipal officials, officers, and employees a statutory obligation to protect the public trust.¹² Where disclosure of confidential information harms the interests of the public, such disclosure may subject the official, officer, or employee to prosecution for the monetary harm inflicted on the public due to such disclosure.¹³ As a better protection, local rules of ethics and conduct may expressly provide that executive session information is deemed confidential and the disclosure of such information may violate local ethics standards and, for employees, may lead to disciplinary action.

***[Materials Deleted from Original]

Who May Attend an Executive Session?

State law does not specify who may attend an executive session. It is commonly understood that the Body determines the individuals that are necessary to conduct the executive session and provide the background information and advice to the Body. Besides the Body members, the most common attendees include the city or town manager or administrator, the Body’s legal counsel, and administrative staff members involved in the particular issue under discussion. Obviously, the city or town legal counsel is required for any executive session convened for the purpose of obtaining legal advice pursuant to C.R.S. § 24-6-402(4)(b).

A special note should be made when inviting individuals into the executive session who are not members of the municipal government. These individuals will not be bound to any local rules such as local ethics rules or personnel rules that require confidentiality. It is not uncommon for a municipality to require some form of confidentiality agreement or understanding by the non-municipal attendee as a condition of attendance.

¹² See Part 1, Article 18, Title 24, C.R.S., titled “Code of Ethics” and in particular C.R.S. § 24-18-103.

¹³ C.R.S. § 24-18-103(2)(prosecution by district attorney for breach of public trust).

On occasion, a Body member or several members of the Body may request that another member of the Body be excluded from the executive session. Such exclusion may be due to a myriad of reasons, for example, an actual or perceived conflict of interest, unwillingness of the excluded member to agree to keep executive session information confidential, or lack of confidence in the excluded member to maintain confidences. Although state law does not provide a means or method for exclusion of a Body member from an executive session, the law does not, conversely, give a right to a Body member to attend. It is recommended that local policy be created and approved by the Body that specifically authorizes the Body, as a whole, to decide executive session attendees.

***[Materials Deleted from Original]

Confidentiality of Executive Sessions

State law does not protect the confidentiality of executive sessions or prohibit the disclosure of executive session comments, discussion, or actions. Acknowledging this fact is troubling for most members of Bodies engaging in executive sessions due to the fact that it is at least implied by the non-public nature of executive sessions that such sessions are confidential. As a result of the absence of an explicit means of protecting confidentiality of executive sessions, many communities impose a confidentiality requirement through laws (e.g., ordinance) or through local codes of ethics or conduct making public or unauthorized disclosure of executive session information so troubling for the many communities

***[Materials Deleted from Original]

Suspension of Rules

A. Chairperson May Suspend

Subject to challenge by Point of Appeal, the Chairperson may elect to suspend operation of any rule provided by these Rules of Order; provided, however, that the Chairperson shall not be authorized to suspend or alter the vote required on any motion or matter.

B. Motion to Suspend

Any member may move to suspend the applicability of a rule of order by proposing a main motion; provided, however, that no motion may suspend or alter the vote required on any motion or matter. Such motion shall be presented only as a Main motion which motion shall require a second, be subject to debate, and shall require a majority vote of the quorum present for adoption.

Summary of Requirements for Motions and Points

MOTION	Type	Second Required?	Debatable?	Vote Required
Point of Order	Privileged	No	No	No Vote Required
Point of Information	Privileged	No	No	No Vote Required
Point of Appeal (to challenge the Chairperson's decision)	Privileged	No	Only as needed to explain the Decision and the applicable Rule subject to challenge	Majority of quorum present
Motion to Recess	Privileged	Yes	No	Majority of quorum present
Motion for Executive Session	Privileged	Yes	No	2/3rds of quorum present
Any Main Motion	Main	Yes	Yes	Majority of quorum present unless otherwise required by law, rule, or regulation
Motion to Adjourn	Main	Yes	Yes	Majority of quorum present
Motion to Reconsider	Main	Yes	Yes	2/3rds of quorum present
Motion to Postpone an Agenda Item	Main	Yes	Yes	Majority of quorum present
Motion to Postpone Indefinitely	Main	Yes	Yes	Majority of quorum present

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MOTION	Type	Second Required?	Debatable?	Vote Required
Motion to Amend (a Main Motion)	Subordinate (to a Main Motion)	Yes	Yes	Majority of quorum present
Motion to Continue Matter Before the Body to Date Certain	Subordinate (to a Main Motion)	Yes	Yes	Majority of quorum present
Motion to Call the Question (Close Debate)	Subordinate (to a Main Motion)	Yes	No	2/3rds of quorum present

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CML
COLORADO MUNICIPAL LEAGUE
The Voice of Colorado's Cities and Towns

CML's 92nd Annual Conference
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Breckenridge, Colorado


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Running Effective Meetings 101
Bob's Rules

Robert (Bob) Widner
Widner Michow & Cox LLP
City Attorney, City of Centennial


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Introductions

- Introduction and Preliminaries
- Who is this Guy?
- The Necessary Disclaimers
- Your Smarter Local Government Counsel
- The Handout Materials

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Where We Going?

- Two Sessions – 101 & 201
- 101 -- Intro to Effective Meetings & Rules
- 201 -- Play-out Simple Meeting

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The Problem

Common Meeting “Dysfunctions”
and
Why We Should Care

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The Reasons

- Lack of Professionalism and Courtesy
- Lack of Individual Member Preparation
- Lack of Rules
- Lack of Rule Use or Knowledge of Rules
- Lack of Member Equality
- Lack of the *Right* Leadership
- Lack of Established Policies


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The Big One

Lack of Professionalism and Courtesy

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Primary Cause

“Its All About **Me**”

Ego

Winning & Losing

My Value & Self Esteem

My Personal Agenda

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Primary Solution

“Getting the Head Straight”


Who Put You Here?

“You Ain’t So Bad”

Why are You Here?

The Purpose

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The Bottom Line

You were elected or appointed by the public to serve their needs and interests. Your “platform” was to seek their vote so you could represent them. You did not go door to door asking them to vote for you so you could pursue your own agenda, stroke your ego, or be unreasonable. You asked to be part of a team to make the city or town better.

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The “Effective” Meeting

- Everyone had Fair Opportunity to be Heard
- Relevant Issues were Addressed
- No “Rabbit Holes” Pursued for Long
- People Felt “Heard” and “Understood”
- Everyone Felt Respect

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The “Effective” Meeting

- Body’s Decision was Clear
- A Record was Made
- Body’s Decision is Reasonably Defensible
 - In Terms of the Applicable Law
 - In Terms of Logic and Reason

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The “Effective” Meeting

- It is NOT
 - Everyone Left Happy
 - Everyone Got What They Wanted
 - Everyone Loves the Council/Board

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The Effective Chairperson

- Role of Chairperson - Primary
 - Preparing the “Fertile Ground” for Decision
 - Parliamentarian?
 - Most Prepared Member
 - “Protector of Respect”
- Role of Chairperson – Secondary
 - A Member of the Body

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The Effective Member

- Knows Role, Purpose & Goal
- Knows the Rules Governing
- Leaves Personal Issues at the Door
- Three P’s –
 - Purpose
 - Preparation
 - Professionalism

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You Need to Know Your Roles

- Legislative
- Quasi-Judicial
- Administrative/Executive

Why?


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Meeting Format

- Agenda -- Scope and Setting
- “Study” or “Work” Sessions
- “Consent” Agendas
- “Discussion” Agenda


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“Road Mapping” the Meeting

- The Audience Perspective
- The Chairperson’s Role
- The Members’ Role

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The Value of Respect

- The Chairperson's Role
- The Members' Role
- Staff / Body Interactions
- Recall - Professionalism and Courtesy

Bottom Line?
Confidence in Government


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The Value of Rules

What good are rules, really?

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The Reasons (For Meeting Dysfunction)

- Lack of Professionalism and Courtesy
- Lack of Individual Member Preparation
- Lack of Rules
- Lack of Rule Use or Knowledge of Rules
- Lack of Member Equality
- Lack of the *Right* Leadership
- Lack of Established Policies

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Good Rules And Not So Good

- Roberts Rules of Order
- Rosenberg's Rules
- Most Communities' Rules

- But the Absolute Best?
 - Rules that are Used
 - Rules that are Simple & Understandable

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Bob's Rules of Order

- Terminology
 - “In Order” / “Out of Order”
 - “Floor”

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Bob's Rules of Order

- Basic Requirements
 - Chairperson as Parliamentarian
 - Recognition for “Floor”
 - No Side Discussions
 - Voting Yes or No
 - No Explaining Vote


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Bob's Rules of Order

Points vs. Motions


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Points and Motions

- Simple "Priority"
 - Privileged (*Always* "In Order")
 - Main (A "Business Step")
 - Subordinate (Below "Main")


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Points

Point of **Information**
Point of **Order**
Point of **Appeal**


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Motions

Lets See How Far We Get.....


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Flexibility

- Chairperson Discretion (with Appeal)
- Suspending the Rules


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Questions

A 101 Question or 201 Question?

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Distinguishing the Gadfly from the Gunslinger: Identifying and Managing the Potential for Violence

Paul D. Godec, Esq., Kissinger & Fellman, P.C.
Todd Faubion, Internal Risk, Security and Investigations, Pinnacol Assurance

1) POTENTIAL LIABILITIES – CIVIL LIABILITIES

- i) Negligent Hiring, Supervision, Retention, or Training
 - a) Example 1: Patient's wife is upset with medical care provided to husband. She and staff engage in heated confrontation. Staff calls security and security removes the woman from the premises by force. Woman suffers injuries and sues the hospital for negligent recruitment, hiring, retention, supervision and training of its staff and security personnel. *Siepierski v. Penrose*, 37 P.3d 537 (Colo. App. 2001).
 - b) Example 2: Trucker applies for a job. In the application, trucker notes "no previous convictions." Employer hires him. Turns out, he did have previous convictions (for assault, burglary, and domestic violence). While on a route, Trucker sexually assaults a hotel receptionist who then sues the employer for negligent hiring in failing to perform adequate background check. *Connes v. Molalla*, 831 P.2d 1316 (Colo. 1992).
- ii) Governmental Immunity
 - a) A municipality constitutes a "public entity" under the Colorado Governmental Immunity Act ("CGIA"). *See* Colo. Rev. Stat. § 24-10-103(5).
 - b) The CGIA provides general immunity for a public entity or the employees of a public entity involving claims that lie in tort or could lie in tort. *Id.* §§ 24-10-106(1) & - 118(2)(a). Certain statutory exceptions to immunity under the CGIA will rarely apply to the facts involving workplace violence. *See id.* §§ 24-10-106(1)(a), (b), (c), (d), (e), (g) & (h).
 - c) The CGIA does not bar actions grounded in contracts. *Grimm Constr. Co., Inc. v. Denver Bd. of Water Comm'rs*, 835 P.2d 599, 601 (Colo. App. 1992); *Elliott v. Colorado Dept. of Corrections*, 865 P.2d 859, 861 (Colo. App. 1993).
 - d) Under the CGIA, a public entity generally must pay the cost of defense for claims filed against public employees "where the claim against the public employee arises out of injuries sustained from an act or omission of such employee occurring during the performance of his duties and within the scope of his employment, except where such act or omission is willful and wanton[.]" Colo. Rev. Stat. § 24-10-110(1)(a).
 - e) The CGIA likewise generally requires a public entity to pay "all judgments and settlements of claims against any of its public employees where the claim against the public employee arises out of injuries sustained from an act or omission of such employee occurring during the performance of his duties and within the scope of his employment, except where such act or omission is willful and wanton" *Id.* § 24-10-110(1)(b)(I) (emphasis added).
 - f) Employees of public entities do not enjoy sovereign immunity for suits against them in their individual capacities for willful and wanton conduct, because those suits seek

relief from the individuals themselves rather than from the treasury of the public entity. *Middleton v. Hartman*, 45 P.3d 721, 724 & 728 (Colo. 2002); *Robinson v. City & County of Denver*, 39 F. Supp. 2d 1257, 1263 (D. Colo. 1999).

- g) The CGIA itself does not define “willful and wanton.” The Colorado Supreme Court, however, has interpreted the meaning of “willful and wanton” using statutes containing that phrase for purposes of an award of exemplary damages. “As used in this section, ‘willful and wanton conduct’ means conduct purposefully committed which the actor must have realized as dangerous, done heedlessly and recklessly, without regard to the safety of others, particularly the plaintiff.” *Moody v. Ungerer*, 885 P.2d 200, 205 (Colo. 1994); *see also* Colo. Rev. Stat. § 13-21-102(1)(b).
- h) Willful action means voluntary; by choice; intentional; purposeful. Wantonness signifies an even higher degree of culpability in that it is wholly disregarding of the rights, feelings and safety of others. It may, at times, even imply an element of evil. One may be said to be guilty of “wanton and willful disregard” when he is conscious of his misconduct, and although having no intent to injure anyone, from his knowledge of surrounding circumstances and existing conditions is aware that his conduct in the natural sequence of events will probably result in injury ..., and is unconcerned over the possibility of such result. *Moody*, 885 P.2d at 205, *quoting Pettingell v. Moede*, 129 Colo. 484, 271 P.2d 1038, 1042 (Colo. 1954).
- iii) An employer generally does not have a duty to supervise employees in their off-duty time unless the employee is on the employer’s premises or possesses the employer’s property. *Biel v. Alcott*, 876 P.2d 60 (Colo. 1993).
- iv) The employer must be found liable for a tort in order for the employer to be liable for negligent supervision. *Arnold v. Colo. St. Hosp.*, 910 P.2d 104 (Colo. 1995).

2) POTENTIAL LIABILITIES – 42 U.S.C. § 1983

- i) In order to establish a cause of action under 42 U.S.C. § 1983, a plaintiff must establish two elements:
 - a) Deprivation of a right secured by the Constitution or laws of the United States; and
 - b) Caused by a person acting under color of state law.¹
 - (1) Law enforcement officers usually act under color of state law.
- ii) Substantive Due Process Exceptions
 - a) State Created Danger Exception
 - (1) State liability under a state-created danger theory can be established if the plaintiff shows:
 - (a) Affirmative acts by the state which either create or increase the risk that an individual will be exposed to private acts of violence;
 - (b) The victim faces special danger, in that the state’s action place the victim specifically at risk, as distinguished from a risk that affects the public at large; and

¹ *Mayrides v. Del. County*, 666 F. Supp. 2d 861 (2009), *quoting McQueen v. Beecher Cmmt’y Sch.*, 433 F. 3d 460, 463 (6th Cir. 2006).

- (c) The state must have known or clearly should have known that its actions specifically endangered an individual.²
 - b) Custody Exception
 - (1) “When the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety.”³
- iii) Qualified Immunity
 - a) Qualified immunity can shield government officials from individual civil liability where their conduct “does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”⁴
 - b) U.S. Supreme Court utilizes a two-step analysis to determine whether qualified immunity applies:
 - (1) Whether, considering the allegations in a light most favorable to the party injured, a constitutional right has been violated, and
 - (2) Whether that right was clearly established.⁵
 - c) Violation of a Constitutional Right
 - (1) In detailing the law of qualified immunity, the Supreme Court has stated that lower courts should examine this threshold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer’s conduct violated a constitutional right?⁶
- iv) Representative Cases
 - a) *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005)
 - (1) Facts: Suit under 42 U.S.C. § 1983, alleging that petitioner violated the Fourteenth Amendment’s Due Process Clause
 - (a) Estranged wife had obtained a restraining order against her husband in divorce proceedings.
 - (b) Order provided in a “Notice to Law Enforcement Officials” that law enforcement officers “shall use every reasonable means to enforce this restraining order. You shall arrest, or, if an arrest would be impractical under the circumstances, seek a warrant for the arrest of the restrained person when ... information amounting to probable cause that the restrained person has violated or attempted to violate ... this order ...”
 - (c) Colo. Rev. Stat. § 18-6-803.5(3) provides that “[a] peace officer shall use every reasonable means to enforce a restraining order.” “A peace officer shall arrest, or, if an arrest would be impractical under the circumstances, seek a warrant for the arrest of a restrained person when ... information amounting to probable cause that the restrained person has violated or attempted to violate

² *Mayrides v. Del. County*, 666 F. Supp. 2d 861 (2009), quoting *Kallstrom v. City of Columbus*, 136 F. 3d 1055 (6th Cir. 1998).

³ *DeShaney v. Winnebago County Dept. of Social Services*, 489 U.S. 189 (1989).

⁴ *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982), citing *Procunier v. Navarette*, 434 U.S.555, 565 (1978).

⁵ *Mayrides v. Del. County*, 666 F. Supp. 2d 861 (2009), quoting *Estate of Carter v. City of Detroit*, 408 F.3d 305, 310-11 (6th Cir. 2005), citing *Saucier v. Katz*, 533 U.S. 194, 201 (2001).

⁶ *Saucier v. Katz*, 533 U.S. 194, 201 (2001) citing *Siegert v. Gilley*, 500 U.S. 226, 232 (1991).

any provision of a restraining order[.]” “A peace officer shall enforce a valid restraining order whether or not there is a record of the restraining order in the registry.”

- (d) Husband abducted three daughters while playing in their front yard and took them to an amusement park in Denver from which he called his estranged wife by telephone.
 - (e) Police officers, acting pursuant to official policy or custom, failed to respond to her repeated reports over several hours that her estranged husband had taken their three children in violation of her restraining order against him.
 - (f) The husband murdered all three children before engaging in a gun battle with police resulting in the husband’s death.
- (2) Analysis: “The simple distinction between government action that directly affects a citizen’s legal rights ... and action that is direction against a third party and affects the citizen only ... incidentally, provides a sufficient answer to” cases finding government-provided services to be entitlements.
- (a) “To have a property interest in a benefit, a person clearly must have more than an abstract need or desire” and “more than a unilateral expectation of it. The person must, instead, have a legitimate claim of entitlement to it.”
 - (b) A benefit does not become a protected entitlement if government officials may grant or deny the benefit at their discretion.
- (3) Rule of Law: The framers of the Fourteenth Amendment and 42 U.S.C. § 1983 did not create a system by which police departments become financially accountable for crimes that better policing might have prevented. “This result reflects ... continuing reluctance to treat the Fourteenth Amendment as ‘a font of tort law.’”
- b) *DeShaney v. Winnebago County Dept. of Social Services*, 489 U.S. 189 (1989)
- (1) Facts: Custody of a young child was given to the child’s father, who had allegedly abused the child several times. Winnebago County child services did not take custody of the child, and the mother brought suit against child services.
 - (2) Rule of law: The affirmative duty to protect arises not from the State’s knowledge of the individual’s predicament or from its expressions of intent to help him, but from the limitation which it has imposed on his freedom to act on his own behalf.
- c) *Morrow v. Balaski*, 719 F.3d 160 (3rd Cir. 2013)
- (1) Facts: School students and their parents sued a school district and an assistant principal, in their 42 U.S.C.S. § 1983 action alleging that school officials denied them substantive due process under the Fourteenth Amendment by not protecting the students from threats and assaults from fellow students.
 - (2) Rule of Law: Public schools do not have a constitutional duty to protect students from abuse inflicted by fellow students because the school did not have a “special relationship” with students that would create a constitutional duty to protect the students from harm from other students. Further, the “state-created danger” doctrine does not apply because defendants did not affirmatively create or

enhance a danger to the students by suspending the bullying student and then allowing her to return to school when the suspension ended.

- d) *Burella v. City of Philadelphia*, 501 F.3d 134 (3rd Cir. 2007)
- (1) Facts: The husband, a veteran of the city police department, shot and seriously injured his spouse and then shot and killed himself. Although she reported numerous incidents of abuse to the police over the years, obtained several restraining orders just days before the shooting, and told police that her husband continued threatening her despite the orders, police failed to arrest him.
 - (2) Rule of Law: The spouse did not allege any facts that would establish that the officers did anything other than fail to act. That failure, while tragic, did not create a cognizable state-created danger claim. Further, the officers had qualified immunity for the equal protection claim because no comparable evidence existed from which a reasonable jury could find an unlawful custom or infer a discriminatory motive.
- e) *Howard v. Bayes*, 457 F.3d 568 (6th Cir. 2006)
- (1) Facts: A deputy responded to a 911 call regarding a possible drug overdose at the daughter's residence. The daughter denied any violence. Her boyfriend only expressed concern that the daughter had taken some pills. The deputy and four emergency medical technicians left when the daughter refused treatment and signed a refusal-of-treatment form. The next morning, an ambulance was again called to the residence where the daughter was found physically beaten and unconscious. She died in the hospital, and her boyfriend was convicted of murder.
 - (2) Rule of Law: In light of the U.S. Supreme Court's decision in *Castle Rock*, plaintiff failed to demonstrate that a constitutional violation occurred. The deputy also properly remained entitled qualified immunity. Kentucky statutes requiring an arrest of perpetrators of domestic abuse did not create a property interest for victims of domestic abuse. Regarding a wrongful death claim, plaintiff failed to establish any duty on defendants' part to protect the daughter from harm.
- f) *Sutton v. Utah State Sch. For the Deaf & Blind*, 173 F.3d 1226 (1999)
- (1) Facts: A boy told his mother that he had been sexually assaulted at school, and the mother reported the allegation to the school's principal. Another assault occurred one week later. The abuser was caught and convicted. At the trial, the mother learned that her son was supposed to have a teacher's aide assigned to be with him, but the aide was not present when the last assault occurred. The mother brought suit against the school.
 - (2) Rule of law: Where a superior's failure to train amounts to deliberate indifference to the rights of persons with whom his subordinates come into contact, the inadequacy of training may serve as the basis for 42 U.S.C.S. § 1983 liability.
- g) *Phillips v. Kerns*, 483 Fed. Appx. 400 (2012)
- (1) Facts: Phillips brought suit against her neighbors under the Americans with Disabilities Act and 42 U.S.C. 1983 to try and settle her personal disputes with her neighbors in court.

- (2) Rule of law: As the Supreme Court said in both *Castle Rock* and *DeShaney*, “there is no right under the Due Process Clause, either procedural or substantive, to have the police enforce a restraining order or to arrest some third party.”
- (3) The court also stated: “The bottom line here is that Ms. Phillips is attempting to use the police to establish, settle, and protect what she deems to be her rights to property, from boundary lines to electrical outlet access. As Ms. Phillips has been regularly advised all along, these are civil, not police, matters which she must pursue in civil actions in the state courts. She is simply not entitled to have the police do that work for her.”
- h) *Roska v. Sneddon*, 437 F.3d 964 (2006)
 - (1) Facts: A family, including a child, sued caseworkers and their supervisor for deprivation of rights under the Fourth and Fourteenth Amendments as a result of the child’s removal from his home. The caseworkers removed the child from the home without a warrant, even though one of the caseworkers did not believe that the child was in danger of death. The mother had a psychological condition that caused her to inflict pain on the child. A physician treating the child informed the caseworker that removal of the child would not only inhibit the mother’s progress in recovering, it may destroy the family emotionally, scarring the child for life.
 - (2) Rule of law: Caseworkers are not entitled to qualified immunity because though they did rely on the appropriate statute (Utah Code Ann. § 62A-4a-202.1), they did not comply with the statute. The caseworkers should have offered preventative services to the family.

3) POTENTIAL LIABILITIES – WORKERS’ COMPENSATION

- i) Generally, Workers Compensation is the exclusive remedy for an employee who is harmed by a fellow employee. *See* Colo. Rev. Stat. § 8-41-102 & -301.
- ii) Courts look to “totality of circumstances” to determine whether the injury “arose out of” and “in the scope of” employment. *Popovich v. Irelando*, 811 P.2d 379 (Colo. 1991); *but see Archer v. Farmer Bros. Co.*, 70 P.3d 495 (Colo. App. 2002), *aff’d*, 90 P.3d 228 (Colo. 2004).

4) POTENTIAL LIABILITIES – O.S.H.A. PENALTIES

- i) “Each employer... shall furnish to each of his employees employment and a place of employment which are free of *recognized hazards* that are causing or are likely to cause death or serious physical harm to his employees.” 29 U.S.C. § 645(a)(1) (Occupational Safety & Health Act).
- ii) “Any employer who willfully or repeatedly violates the requirements of section 654 or this title, any standard, rule or... regulations prescribed pursuant to this chapter, may be assessed a civil penalty of no more than \$70,000 for each violation, but not less than \$5,000 for each willful violation.” 29 U.S.C. § 666(a) (Occupational Safety & Health Act).
- iii) An employer is not an insurer, and need not take steps to prevent hazards which are not generally foreseeable, including idiosyncratic behavior of an employee, but it must do all it feasibly can to prevent foreseeable hazards including conduct by its employees. An

employer may defend a charge that it violated OSHA by showing the taking of necessary precautions to prevent the occurrence of the violation. *Gen'l Dynamics Corp. v. Occ. Safety & Health Rev. Com'n*, 599 F.2d 453 (1st Cir. 1979).

5) SEXUAL & OTHER HARASSMENT

- i) Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, requires employers to protect employees against all forms of harassment (*e.g.*, sexual, racial, color, religious, national origin) which may create hostile or offensive workplace.
- ii) Anti-harassment rules also apply under the Age Discrimination in Employment Act (ADEA). 29 U.S.C. § 621 *et seq.*

6) CIVIL PROTECTION ORDERS

- i) Any county or district court shall have the authority to enter an emergency protection order
- ii) An emergency protection order may include:
 - a) Restraining a party from threatening, molesting, injuring, or contacting any other party;
 - b) Excluding a party from the family home or from the home of another party upon a showing that physical or emotional harm would otherwise result. Colo. Rev. Stat. § 13-14-103.
- iii) “[An authorized]court shall have original . . . jurisdiction to issue a temporary or permanent civil protection order . . . for any of the following purposes:
 - a) “To prevent assaults and threatened bodily harm;
 - b) “To prevent domestic abuse;
 - c) “To prevent emotional abuse of the elderly or of an at-risk adult;
 - d) “To prevent stalking.” Colo. Rev. Stat. § 13-14-102(1.5).

7) GENERAL WORKPLACE VIOLENCE

- i) Applicable Criminal Statutes
 - (1) **18-3-204 – Assault (Third Degree)**. “A person commits the crime of assault in the third degree if . . . [t]he person knowingly or recklessly causes bodily injury to another person or with criminal negligence the person causes bodily injury to another person by means of a deadly weapon[.]”
 - (2) **18-3-206 – Menacing**. “A person commits the crime of menacing if, by any threat or physical action, he or she knowingly places or attempts to place another person in fear of imminent serious bodily injury.”
 - (3) **18-3-208 – Reckless Endangerment**. “A person who recklessly engages in conduct which creates a substantial risk of serious bodily injury to another person commits reckless endangerment[.]”
 - (4) **18-3-303 – False Imprisonment**. “Any person who knowingly confines or detains another without the other's consent and without proper legal authority commits false imprisonment.”
 - (5) **18-9-108 – Disrupting Lawful Assembly**. “A person commits disrupting lawful assembly if, intending to prevent or disrupt any lawful meeting, procession, or

- gathering, he significantly obstructs or interferes with the meeting, procession, or gathering by physical action, verbal utterance, or any other means.”
- (6) **18-9-110 – Public Buildings / Trespass, Interference.**
- (a) “No person shall so conduct himself at or in any public building owned, operated, or controlled by ... any of the political subdivisions of the state ... as to willfully deny to any public official, public employee, or invitee on such premises the lawful rights of such official, employee, or invitee to enter, to use the facilities of, or to leave any such public building.”
 - (b) “No person shall, at or in any such public building, willfully impede any public official or employee in the lawful performance of duties or activities through the use of restraint, abduction, coercion, or intimidation or by force and violence or threat thereof.”
 - (c) “No person shall willfully refuse or fail to leave any such public building upon being requested to do so by the chief administrative officer or his designee charged with maintaining order in such public building, if the person has committed, is committing, threatens to commit, or incites others to commit any act which did, or would if completed, disrupt, impair, interfere with, or obstruct the lawful missions, processes, procedures, or functions being carried on in the public building.”
 - (d) “No person shall, at any meeting or session conducted ... in any public building, willfully impede, disrupt, or hinder the normal proceedings of such meeting or session by any act of intrusion into the chamber or other areas designated for the use of the body or official conducting the meeting or session or by any act designed to intimidate, coerce, or hinder any member of such body or official engaged in the performance of duties at such meeting or session.”
 - (e) “No person shall, by any act of intrusion into the chamber or other areas designated for the use of any executive body or official at or in any public building, willfully impede, disrupt, or hinder the normal proceedings of such body or official.”
- (7) **18-4-501 – Criminal Mischief.** “A person who knowingly damages the real or personal property of one or more other persons ... commits” criminal mischief.
- (8) **18-9-106 – Disorderly Conduct.** “A person commits disorderly conduct if he or she intentionally, knowingly, or recklessly:
- (a) “Makes a coarse and obviously offensive utterance, gesture, or display in a public place and the utterance, gesture, or display tends to incite an immediate breach of the peace; or
 - (b) “Fights with another in a public place except in an amateur or professional contest of athletic skill; or
 - (e) “... discharges a firearm in a public place except when ... hunting; or
 - (f) “... displays a deadly weapon, displays any article used or fashioned in a manner to cause a person to reasonably believe that the article is a deadly weapon, or represents verbally or otherwise that he or she is armed with a deadly weapon in a public place in a manner calculated to alarm.”

- (9) **18-9-111. Harassment – Stalking.** “A person commits harassment if, with intent to harass, annoy or alarm another person, he or she:
- (a) Strikes, shoves, kicks, or otherwise touches or subjects [another person] to physical contact[.]
 - (b) In a public place directs obscene language or makes an obscene gesture to or at another person; or
 - (c) Follows a person in or about a public place[.]
 - (d) Initiates communication with a person, anonymously or otherwise by telephone, computer, computer network, or computer system in a manner intended to harass or threaten bodily injury or property damage, or makes any comment, request, suggestion, or proposal . . . that is obscene[.]”
- (10) **18-3-602. Stalking - Penalty – Definitions.** “A person commits stalking if directly, or indirectly through another person, the person knowingly:
- (a) Makes a credible threat to another person and . . . repeatedly follows, approaches, contacts, or places under surveillance that person . . . ; or
 - (b) Makes a credible threat to another person and . . . repeatedly makes any form of communication with that person . . . , regardless of whether a conversation ensues; or
 - (c) Repeatedly follows, approaches, contacts, places under surveillance, or makes any form of communication with another person . . . that would cause a reasonable person to suffer serious emotional distress and does cause that person . . . to suffer serious emotional distress.”

8) EMPLOYMENT LAW CONSIDERATIONS

- i) Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 *et seq.*, may require accommodation of employee with mental or emotional disability unless employee becomes “unqualified” to perform essential job functions or poses a “direct threat” to the safety or health self or others.
 - a) Threat to co-worker, “Stop calling me or I’ll punch you in the face.” Employer’s warning: “Any single infraction . . . in the future will result in termination.” Referral to EAP resulting in diagnosis of ADHD. One year later, became “irrational and increasingly erratic” following disagreement with boss, and later fired. Suit under ADA rejected because “the ADA does not require that an employee whose unacceptable behavior threatens the safety of others be retained, even if the behavior stems from a mental disability[.]” *Calef v. Gillette Co.*, 322 F.3d 75 (1st Cir. 2003).
 - b) Severe mood swings that admittedly were “grossly out of proportion to any provocation or precipitating factors.” Agreed to short-term disability and diagnosed with Intermittent Explosive Disorder. Treated with drugs and therapy and returned to work. Months later, threatened to kill a manager who disparaged his performance. Co-worker reported threat, and employee was fired. ADA suit rejected because ADA exception for health and safety of others. *Koshko v. Gen’l Elec. Co.*, No. 01-C-5069 (N.D. Ill. 2003).

- ii) Family and Medical Leave Act (FMLA), 29 U.S.C. § 2601 *et seq.*, may require unpaid leave for a “serious health condition” which could include treatment for depression, bipolar disorder, ADHD, and other behavioral health conditions.

9) DOMESTIC VIOLENCE

- i) “Domestic violence” means an act or threatened act of violence upon a person with whom the actor is or has been involved in an intimate relationship.
- ii) “Intimate relationship” means a relationship between spouses, former spouses, past or present unmarried couples, or a person who are both the parents of the same child regardless of whether the persons have been married or have lived together at any time. Colo. Rev. Stat. 18-6-800.3(1) & (2).
- iii) “Domestic violence” also includes any other crime against a person or against property ... when *used as a method of coercion, control, punishment, intimidation, or revenge* directed against a person with whom the actor is or has been involved in an intimate relationship. Colo. Rev. Stat. 18-6-800.3(1).
- iv) Physician duty to warn
 - a) “It shall be the duty of every [physician] who attends or treats ... any ... injury arising from the discharge of a *firearm*, or an injury caused by a ... *sharp or pointed instrument* that the [physician] believes to have been intentionally inflicted ... or ... has reason to believe involves a criminal act, *including injuries resulting from domestic violence*, to report such injury at once to the police ...” Colo. Rev. Stat. § 12-36-135(1) (emphasis added).
 - b) Any [physician] who fails to make a report as required by this section commits a class 2 petty offense ... and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.” Colo. Rev. Stat. § 12-36-135(1).
 - c) “Any [physician] who, in good faith, makes a report ... shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to the making of such report, and shall have the same immunity with respect to participation in any judicial proceedings resulting from such report.” Colo. Rev. Stat. § 12-36-135(2).
 - d) “Any [physician] who makes a report ... shall not be subject to the physician-patient relationship ... as to the medical diagnosis and treatment. Such [physician] may be examined as a witness, but not as to statements made by the patient that are the subject matter [of any other physician-patient privilege].” Colo. Rev. Stat. § 12-36-135(3).
 - e) The duty to report to police abrogates the physician-patient privilege only for testimony about information received from the physician’s observations that led to a diagnosis about criminal conduct, but not about any other statements made by the patient to the physician. *People v. Covington*, 19 P.3d 15 (Colo. 2001).
- v) Mental health worker duty to warn
 - a) “A physician, social worker, psychiatric nurse, psychologist, or other mental health professional and a mental health hospital, community mental health center or clinic,

- institution, or their staff shall not be liable for damages in any civil action for failure to warn or protect any person against a mental health patient's violent behavior, and any such person shall not be held civilly liable for failure to predict such violent behavior, except where the patient has communicated to the mental health care provider a serious threat of imminent physical violence against a specific person or persons.” Colo. Rev. Stat. § 13-21-117.
- b) “A physician, social worker, psychiatric nurse, psychologist, or other mental health professional and a mental health hospital, community mental health center or clinic, institution, or their staff shall not be liable for damages in any civil action for warning any person against or predicting a mental health patient's violent behavior, and any such person shall not be subject to professional discipline for such warning or prediction.” *Id.*
 - c) “The provisions of this section shall not apply to the negligent release of a mental health patient from any mental health hospital or ward or to the negligent failure to initiate involuntary seventy-two-hour treatment and evaluation after a personal patient evaluation determining that the person appears to have a mental illness and, as a result of the mental illness, appears to be an imminent danger to others.” *Id.*
- vi) Municipal Duties to Victims of Domestic Abuse
- a) “A peace officer shall use every reasonable means to enforce a [restraining] order. A peace officer shall arrest, or, if an arrest would be impractical under the circumstances, seek a warrant for the arrest of the restrained person when ... [t]he restrained person has violated or attempted to violate any provision of a [restraining] order.” Colo. Rev. Stat. § 18-6-803.5(3)(a) & (b).
 - b) *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005).
- vii) Employees Suffering “Off Duty” Domestic Violence
- a) “Employers shall permit an employee to request or take **up to three working days of leave** from work in any twelve-month period, with or without pay, if the employee is a victim of domestic abuse, ... if such employee is...
 - (1) Seeking a civil protection order ...;
 - (2) Obtaining medical care or mental health counseling or both for ... herself or ... her children...;
 - (3) Making ... her home secure from the perpetrator ...;
 - (4) Seeking legal assistance to address ... domestic abuse[.]” (Colo. Rev. Stat. § 24-34-402.7(1)(a) (emphasis added))
 - b) “The [leave] provisions ... shall apply to employers who employ **fifty or more employees and to employees who have been employed with the employer for twelve months or more.**”
 - c) “An employee seeking leave ..., prior to receiving such leave, shall exhaust any and all annual or vacation leave, personal leave, and sick leave ... that may be available to the employee, unless employer waives this requirement.” Colo. Rev. Stat. § 24-34-402.7(1)(b) & (2)(b).

10) CONCEALED HANDGUN PERMITS

- i) A sheriff shall issue a permit to carry a concealed handgun to a person who:

- a) Is a legal resident of Colorado;
 - b) Is at least 21 years of age;
 - c) Submits evidence of completion of a handgun training class (or similar evidence of handgun competency); and
 - d) Is not otherwise ineligible to obtain a concealed handgun permit under state or federal law. Colo. Rev. Stat. § 18-12-203
- ii) Ineligible persons for permit to carry concealed handguns:
- a) Persons previously convicted of felonies;
 - b) Persons convicted of perjury in applying for permits;
 - c) Persons who chronically and habitually use alcohol to the point of impairment;
 - d) Persons who are addicted to controlled substances; and
 - e) Persons subject to certain temporary and permanent restraining orders. Colo. Rev. Stat. § 18-12-203.
- iii) “A permit to carry a concealed handgun authorizes the permittee to *carry* a concealed handgun in all areas of the state, except as specifically limited in this section. A permit does not authorize the permittee to *use* a handgun in a manner that would violate a provision of state law.” Colo. Rev. Stat. § 18-12-214(1)(a) (emphasis added).
- iv) Exceptions to Concealed Handgun Permits
- a) “Nothing ... shall be construed to limit, restrict, or prohibit in any manner the existing rights of a private property owner, private tenant, private employer, or private business entity.” Colo. Rev. Stat. § 18-12-214(5).
- v) Public Facilities
- a) “A permit... Does not authorize a person to carry a concealed handgun into a public building at which:
 - (1) Security personnel and electronic screening devices are permanently in place at each entrance to the building;
 - (2) Security personnel electronically screen each person who enters the building ...; and
 - (3) Security personnel require each person who is carrying a weapon of any kind to leave the weapon in the possession of security personnel” Colo. Rev. Stat. § 18-12-214(4).

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The contents of this presentation reflect the view of the presenter, not of CML.



First Amendment Issues for Municipalities

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First Amendment to the U.S. Constitution

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

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Scenario # 1 -- First Amendment Rights of Peddlers & Solicitors



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Scenario # 1 -- First Amendment Rights of Peddlers & Solicitors

Town ordinance requires registration of all door-to-door peddlers and solicitors unless they have a store-front business located within the town, in which case they are exempt.

Registration requires a criminal background check.

Registered peddlers and solicitors may only go door-to-door between 8:00 AM and 5:00 PM.

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Scenario # 1 -- First Amendment Rights of Peddlers & Solicitors

Can the town justify the exemption for solicitors from local store-front businesses? If so, how?

The town clerk would like to deny registration for any peddler with a prior criminal conviction. OK?

A solicitor complains that no one is home between 8:00 AM and 5:00 PM. Is the time limit justifiable?

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Scenario # 2 -- First Amendment Rights at Special Events



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Scenario # 2 -- First Amendment Rights at Special Events



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Scenario # 2 -- First Amendment Rights at Special Events

Town issues special events/street closure permit to private Arts Council for free summer concert series held in Town square. Arts Council allows vendors to set up booths in the area but has a policy to exclude religious and political organizations from the event. Arts Council asks Town police officer to instruct citizen distributing pamphlets about Christian faith to distribute the information outside the perimeter of the event. First Amendment issue?

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Scenario # 2 -- First Amendment Rights at Special Events

- What if the Art Council's restrictions on speech were content neutral (e.g., all persons wishing to distribute literature must do so from a booth)?
- What if the speech interferes with the event organizer's message?
- Does it matter if the Arts Council receives Town funding?
- What if the instructions to leave the area come from an off-duty police officer hired to provide security for the event?

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Scenario # 3 – Flag Mutilation



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Scenario # 3 – Flag Mutilation

Patriotic city resident calls the police complaining that a student apartment near the local university is displaying the Stars and Stripes upside down in a large window. Police officer calls local D.A. office to inquire whether displaying the flag improperly is a crime.

D.A. checks C.R.S. and advises "Yes."

Police officer asks students to remove flag.

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Scenario # 3 – Flag Mutilation

What happens if the students at the apartment comply with the request and remove the flag from their window?

The students complain about the police action, stating that their First Amendment rights have been violated. Is the police officer shielded from liability by the advice received from the DA?

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Scenario # 4 – Religion in the Municipal Workplace



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Scenario # 4 – Religion in the Public Workplace

Employee in City’s IT Department regularly includes “Put Your Faith in the Lord” as part of her email sign-off. Supervisor instructs the employee to stop this practice. First Amendment issue?

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Scenario # 4 – Religion in the Public Workplace

- What if City allows other types of email sign-offs?
 - “Have a blessed day.”
 - “Be the change you want to see in the world.”
-Mahatma Gandhi
- What if the employee’s job duties include regularly sending emails to citizens (e.g., Communications Director)?
- What if fellow employees object to the emails?

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Scenario # 5 – Nude Dancing as Expressive Conduct



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Scenario # 5 – Nude Dancing as Expressive Conduct

City planners receive inquiry from business owner who wants to open an alcohol-free performing arts establishment featuring totally nude dancers.

In response, City Council asks you to draft an ordinance prohibiting such activity if possible, and if not, imposing restrictions to prevent harmful secondary effects of sexually-oriented business.

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Scenario # 5 – Nude Dancing as Expressive Conduct

You draft an ordinance that makes it unlawful for the owner or manager of a business with a sales tax permit to allow any person to remain on the premises with exposed genitals. Will it pass constitutional muster?

What if you add an exemption for businesses devoted to the arts or theatrical performances?

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City of Sterling Personnel Policies

Effective Date: April 16, 2007		# of Pages: 3
Rev. Effective Date:		
Personnel Board Approval		Date
Board President	_____	_____
Board Member	_____	_____
Board Member	_____	_____

CHAPTER 16

WORKPLACE VIOLENCE

SECTION 1 - POLICY STATEMENT

It is the City of Sterling's policy to promote a safe environment for its employees and visitors which is free of harassment, intimidation, threats, or violent behavior. The City will not tolerate acts of violence committed by or against City employees or members of the public while on City property or while performing City business at other locations.

The City will not tolerate any action which may be interpreted as one of the following behaviors:

- Intimidating, threatening, or hostile behaviors or comments
- Threatening or hostile verbal or physical behaviors
- Stalking
- Physical or verbal abuse
- Comments regarding violence
- Oral or written statements, gestures, or expressions that communicate a direct or indirect threat of physical harm
- Harassment or assault
- Vandalism
- Threatening or harassing telephone calls or e-mail messages
- Violent criminal actions
- Arson
- Sabotage
- Bizarre or offensive comments about violent events or behavior
- Unauthorized use or possession of deadly weapons or explosives on or in City property, or
- Any other behavior which, in management's opinion, is inappropriate for the workplace.

This list is not all-inclusive, and any other acts deemed inappropriate will also be investigated.

Employees who engage in behavior that violates this policy, fail to report actions which fall under this policy or fail to take appropriate actions outlined in this policy will be deemed in violation of this policy and are subject to disciplinary action up to and including discharge through the City's **Discipline Policy**. Visitors who engage in behavior that violates this policy may be removed and/or prohibited from City facilities, vehicles, or leased property. Actions that appear to be a violation of law or that are deemed to pose a risk to others will be reported to the appropriate law enforcement officials.

City of Sterling Personnel Policies

Employees who feel they are subjected to any of the behavior described above, who observe or have knowledge of any violation of this policy, or who encounter suspicious persons on City property should immediately notify their supervisor. Employees, who believe that workplace violence is so imminent and dangerous that it requires an immediate response, should contact proper law enforcement authorities first, and then report the incident to their supervisor.

Please note: This policy may be waived when in conflict with Law Enforcement personnel's Use of Force when in the line of duty.

SECTION 2 - REPORTING WORKPLACE VIOLENCE

Violations of this policy should not be ignored. If an employee observes or experiences such behavior by anyone on City property or directed at City employees, whether the person is a City employee or not, the employee should report it immediately to a supervisor or department head, the Human Resources staff, Police Department, or the City Manager. Anyone receiving a complaint of this nature shall inform the City Manager of the complaint. If the immediate supervisor is responsible for the behavior, the employee should report to a manager above the supervisor or one of the other contacts listed herein.

If the employee believes the situation requires immediate action in order to avert a violent situation, the employee should contact the appropriate law enforcement agency immediately.

SECTION 3 - VIOLATION OF THIS POLICY

Any reported violation of this policy will be thoroughly and promptly investigated by the Department Director, Human Resources, or the City Manager or their designee. The City Manager or designee will immediately review reported acts of violence or potentially violent situations. During the review of reported acts of violence or potentially violent situations, the City Attorney, Law Enforcement Personnel, Human Resources or the Employee's immediate supervisor may provide input or consultation.

The City of Sterling will take the appropriate disciplinary action if warranted, based on the findings of the investigation. An employee whose behavior is determined to be in violation of this policy is subject to disciplinary action, up to and including dismissal through the City's Discipline Policy.

Please note: During the disciplinary hearing, appeal hearing, or Personnel Board Review, special safety/security precautions may need to be taken due to the nature of this policy violation.

SECTION 4 - SEARCHES

An employee may be subject to a search involving the work site, a City-assigned piece of equipment or property, and/or other items within their personal possession in certain circumstances while on City-owned or City-leased property to the extent allowed by law. During such a search, City property in the unlawful or unauthorized possession of the employee may be confiscated.

City of Sterling Personnel Policies

SECTION 5 - RESTRAINING/PROTECTIVE ORDER

An employee who obtains a protective or restraining order against a City employee or another person, which lists City locations as protected areas, must immediately notify their supervisor or other member of management about the order and its status. A valid restraining order means that the holder must have the physical document in their possession, and the named party must have been served the restraining order. For a supervisor to take action on an employee's restraining order the supervisor must see the physical document and verify the following information:

- Effective dates of the restraining order,
- Date of service of individual,
- Distance limits from a specific address,
- Contact limits; i.e., phone, physical, and
- Signature of a judge.

When an employee has a valid restraining order in place, their supervisor will inform the appropriate Law Enforcement Agency of the restraining order. If the restraining order is violated, the authorities will be notified immediately.

If the restraining order does not name another City employee or identify City locations, the City requests and highly recommends notification in order to alert the appropriate law enforcement agency.

Please Note: A restraining/protective order can only be canceled by the court system. Any reconciliation between the two parties does not lift the order, unless court ordered.

COPING

WITH AN ACTIVE SHOOTER SITUATION

- Be aware of your environment and any possible dangers
- Take note of the two nearest exits in any facility you visit
- If you are in an office, stay there and secure the door
- Attempt to take the active shooter down as a last resort

Contact your building management or human resources department for more information and training on active shooter response in your workplace.

PROFILE

OF AN ACTIVE SHOOTER

An active shooter is an individual actively engaged in killing or attempting to kill people in a confined and populated area, typically through the use of firearms.

CHARACTERISTICS

OF AN ACTIVE SHOOTER SITUATION

- Victims are selected at random
- The event is unpredictable and evolves quickly
- Law enforcement is usually required to end an active shooter situation



**CALL 911 WHEN IT
IS SAFE TO DO SO**

HOW TO RESPOND

WHEN AN ACTIVE SHOOTER IS IN YOUR VICINITY

1. EVACUATE

- Have an escape route and plan in mind
- Leave your belongings behind
- Keep your hands visible

2. HIDE OUT

- Hide in an area out of the active shooter's view
- Block entry to your hiding place and lock the doors
- Silence your cell phone and/or pager

3. TAKE ACTION

- As a last resort and only when your life is in imminent danger
- Attempt to incapacitate the active shooter
- Act with physical aggression and throw items at the active shooter

CALL 911 WHEN IT IS SAFE TO DO SO

HOW TO RESPOND

WHEN LAW ENFORCEMENT ARRIVES

- Remain calm and follow officers' instructions
- Put down any items in your hands (i.e., bags, jackets)
- Immediately raise hands and spread fingers
- Keep hands visible at all times
- Avoid quick movements toward officers such as attempting to hold on to them for safety
- Avoid pointing, screaming or yelling
- Do not stop to ask officers for help or direction when evacuating

INFORMATION

YOU SHOULD PROVIDE TO LAW ENFORCEMENT OR 911 OPERATOR

- Location of the active shooter
- Number of shooters
- Physical description of shooters
- Number and type of weapons held by shooters
- Number of potential victims at the location

HOW TO RESPOND

WHEN AN ACTIVE SHOOTER IS IN YOUR VICINITY

QUICKLY DETERMINE THE MOST REASONABLE WAY TO PROTECT YOUR OWN LIFE. CUSTOMERS AND CLIENTS ARE LIKELY TO FOLLOW THE LEAD OF EMPLOYEES AND MANAGERS DURING AN ACTIVE SHOOTER SITUATION.

1. EVACUATE

- Have an escape route and plan in mind
- Leave your belongings behind
- Keep your hands visible

2. HIDE OUT

- Hide in an area out of the active shooter's view.
- Block entry to your hiding place and lock the doors

3. TAKE ACTION

- As a last resort and only when your life is in imminent danger.
- Attempt to incapacitate the active shooter
- Act with physical aggression and throw items at the active shooter

**CALL 911 WHEN IT IS
SAFE TO DO SO**

HOW TO RESPOND WHEN LAW ENFORCEMENT ARRIVES ON THE SCENE

1. HOW YOU SHOULD REACT WHEN LAW ENFORCEMENT ARRIVES:

- Remain calm, and follow officers' instructions
- Immediately raise hands and spread fingers
- Keep hands visible at all times
- Avoid making quick movements toward officers such as attempting to hold on to them for safety
- Avoid pointing, screaming and/or yelling
- Do not stop to ask officers for help or direction when evacuating, just proceed in the direction from which officers are entering the premises

2. INFORMATION YOU SHOULD PROVIDE TO LAW ENFORCEMENT OR 911 OPERATOR:

- Location of the active shooter
- Number of shooters, if more than one
- Physical description of shooter/s
- Number and type of weapons held by the shooter/s
- Number of potential victims at the location

RECOGNIZING SIGNS OF POTENTIAL WORKPLACE VIOLENCE

AN ACTIVE SHOOTER MAY BE A CURRENT OR FORMER EMPLOYEE. ALERT YOUR HUMAN RESOURCES DEPARTMENT IF YOU BELIEVE AN EMPLOYEE EXHIBITS POTENTIALLY VIOLENT BEHAVIOR. INDICATORS OF POTENTIALLY VIOLENT BEHAVIOR MAY INCLUDE ONE OR MORE OF THE FOLLOWING:

- Increased use of alcohol and/or illegal drugs
- Unexplained increase in absenteeism, and/or vague physical complaints
- Depression/Withdrawal
- Increased severe mood swings, and noticeably unstable or emotional responses
- Increasingly talks of problems at home
- Increase in unsolicited comments about violence, firearms, and other dangerous weapons and violent crimes



Contact your building management or human resources department for more information and training on active shooter response in your workplace.

BOMB THREAT CALL PROCEDURES

Most bomb threats are received by phone. Bomb threats are serious until proven otherwise. Act quickly, but remain calm and obtain information with the checklist on the reverse of this card.

If a bomb threat is received by phone:

1. Remain calm. Keep the caller on the line for as long as possible. DO NOT HANG UP, even if the caller does.
2. Listen carefully. Be polite and show interest.
3. Try to keep the caller talking to learn more information.
4. If possible, write a note to a colleague to call the authorities or, as soon as the caller hangs up, immediately notify them yourself.
5. If your phone has a display, copy the number and/or letters on the window display.
6. Complete the Bomb Threat Checklist (reverse side) immediately. Write down as much detail as you can remember. Try to get exact words.
7. Immediately upon termination of the call, do not hang up, but from a different phone, contact FPS immediately with information and await instructions.

If a bomb threat is received by handwritten note:

- Call _____
- Handle note as minimally as possible.

If a bomb threat is received by e-mail:

- Call _____
- Do not delete the message.

Signs of a suspicious package:

- No return address
- Excessive postage
- Stains
- Strange odor
- Strange sounds
- Unexpected Delivery
- Poorly handwritten
- Misspelled Words
- Incorrect Titles
- Foreign Postage
- Restrictive Notes

DO NOT:

- Use two-way radios or cellular phone; radio signals have the potential to detonate a bomb.
- Evacuate the building until police arrive and evaluate the threat.
- Activate the fire alarm.
- Touch or move a suspicious package.

WHO TO CONTACT (select one)

- Follow your local guidelines
- Federal Protective Service (FPS) Police
1-877-4-FPS-411 (1-877-437-7411)
- 911

BOMB THREAT CHECKLIST

Date: Time:

Time Caller Hung Up: Phone Number where Call Received:

Ask Caller:

- Where is the bomb located?
(Building, Floor, Room, etc.)
- When will it go off?
- What does it look like?
- What kind of bomb is it?
- What will make it explode?
- Did you place the bomb? Yes No
- Why?
- What is your name?

Exact Words of Threat:

Information About Caller:

- Where is the caller located? (Background and level of noise)
- Estimated age:
- Is voice familiar? If so, who does it sound like?
- Other points:

Caller's Voice

- Accent
- Angry
- Calm
- Clearing throat
- Coughing
- Cracking voice
- Crying
- Deep
- Deep breathing
- Disguised
- Distinct
- Excited
- Female
- Laughter
- Lisp
- Loud
- Male
- Nasal
- Normal
- Ragged
- Rapid
- Raspy
- Slow
- Slurred
- Soft
- Stutter

Background Sounds:

- Animal Noises
- House Noises
- Kitchen Noises
- Street Noises
- Booth
- PA system
- Conversation
- Music
- Motor
- Clear
- Static
- Office machinery
- Factory machinery
- Local
- Long distance

Threat Language:

- Incoherent
- Message read
- Taped
- Irrational
- Profane
- Well-spoken

Other Information:



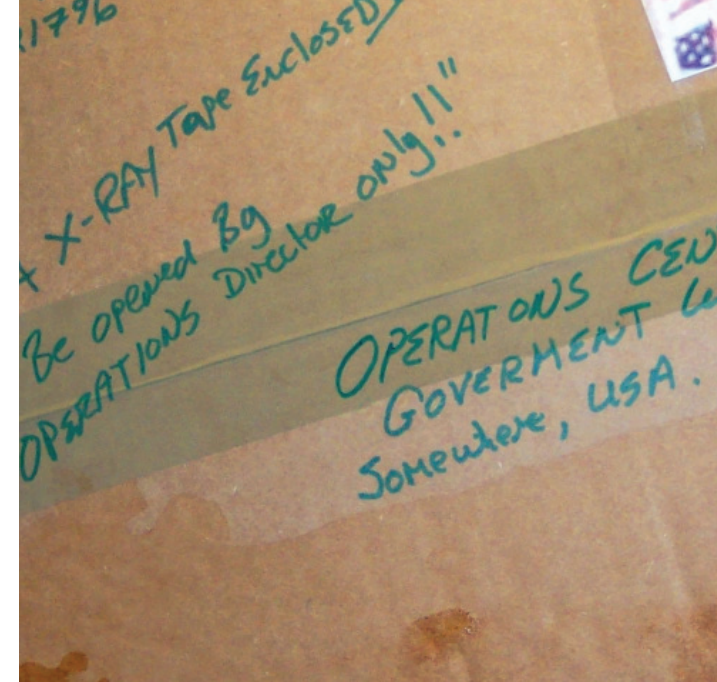
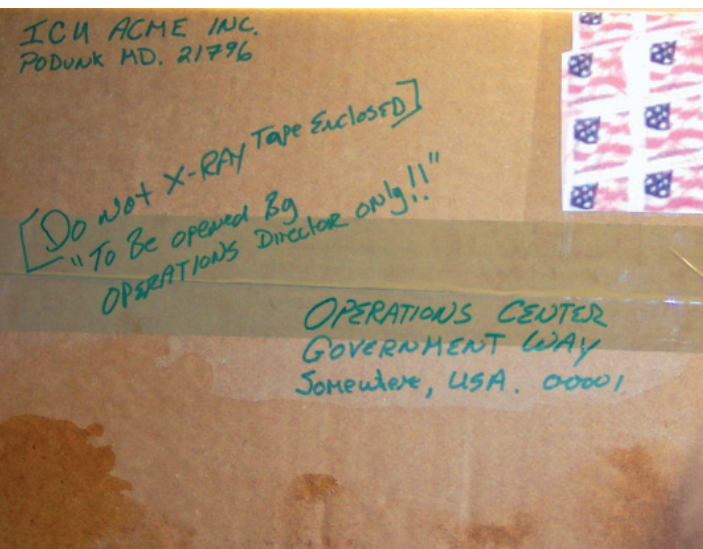
Homeland Security

Characteristics of a Suspicious Package

Always remain aware!

Look for the anomalies:

- Rigid or bulky
- Lopsided or uneven
- Wrapped in string
- Badly written or misspelled labels
- Generic or incorrect titles
- Excessive postage
- No postage
- Foreign writing, postage, or return address
- Missing, nonsensical, or unknown return address
- Leaks, stains, powders, or protruding materials
- Ticking, vibration, or other sound



Response Checklist

Suspicious Packages and Mail



U.S. Department of Homeland Security

Office of Security

Phone: (202) 447-5010

E-mail: OfficeofSecurity@dhs.gov



Homeland
Security

CHECKLIST OF ACTIONS TO TAKE

1. Leave the mail piece or substance where it was found. Do not disturb. Do not try to clean up the substance.
2. Clear the immediate area of all persons and keep others away.
3. Instruct people in the immediate area to wash hands and other exposed skin with soap and water.
4. Direct these people to a designated area away from the substance to await further instruction.
5. List the names of the persons in the immediate area of the mail piece or substance.
6. Cordon off the immediate area.
7. Shut down all equipment in the immediate area and HVAC systems (heating, ventilation, and air conditioning).
8. If possible without disturbing the mail piece or substance, document:

Location of mail piece or substance:

Description of substance:

Description of mail piece (markings, labels, declarations, postage):

Addressee's name and address:

Mailer's name and address:

9. Contact and pass information to the appropriate agency. A list of Contacts in Case of Emergency is provided at right.
10. Take actions and make appropriate notifications as directed or as published in your local emergency plan.

Contacts in Case of **EMERGENCY**

FEDERALLY LEASED OR OWNED FACILITIES

Life-threatening Emergencies

Dial 911 & follow your building's procedures, then:
 Notify the Federal Protective Service (FPS)
 National Toll Free Number:
 1-877-4FPS-411 (1-877-437-7411)

Non-Life-threatening Emergencies Security Issues

Contact local building security management representative, then call:
 Federal Protective Service (FPS)
 National Toll Free Number:
 1-877-4FPS-411 (1-877-437-7411)

NEBRASKA AVENUE COMPLEX PROCEDURES

Medical Emergencies

Dial 911, then call:
 NAC Security Desk
 Phone: (202) 282-9700

Non-Life-threatening Emergencies

NAC Security Desk
 Phone: (202) 282-9700

NON-FEDERAL BUILDINGS

Dial 911 or follow your building's procedures.



Phone Threat Checklist

The Phone Threat Checklist is based on a similar form used by California State government offices. It should be near all phones likely to receive calls from the public.

The Checklist allows employees to document telephone threats in an organized way. Once the checklist is completed, it should be routed to the employer's Security Department or Threat Management Teams for review.

Additionally, the Checklist's questions 5 through 9 have assisted employees in getting to the heart of callers' complaints. It is possible for employees to defuse callers' anger and frustration by allowing them to explain why they are mad and what help they would like.

Sometimes upset callers do not realize that their words are coming across as threatening. When callers are directly asked question 9, they may be startled. Some have been known to apologize and then become reasonable.

Of course, if the call is in fact intended as a threat, completing the form with the caller's own words will be strong evidence for later consideration by the employer's Threat Management Team, Security Department, or even Law Enforcement.

Prior to distribution, the "Notify" box should be filled in with the name, telephone and fax numbers of the person or office within the organization that should be notified when telephone threats are received.

Employees should also be advised to call for emergency police assistance if they believe that they or others are in imminent danger of harm.

Phone Threat Checklist

1. Date of Call	2. Time of Call	3. Caller I.D.
4. Exact Words of the Caller:		

ASK THE CALLER (ASK THE QUESTIONS IN THE FOLLOWING ORDER)

5. Who are you talking about (where do you think you are calling)?	
6. Why are you making these comments?	
7. Is there any other way to help you?	
8. What is your name and telephone number?	
9. Are you really threatening someone?	

Note the Following

10. <input type="checkbox"/> Male <input type="checkbox"/> Female	11. Estimated Age: _____	12. Accent? <input type="checkbox"/> Yes <input type="checkbox"/> No Description:
13. Speech Pattern <input type="checkbox"/> Slow <input type="checkbox"/> Excited <input type="checkbox"/> Disguised <input type="checkbox"/> Broken <input type="checkbox"/> Normal <input type="checkbox"/> Rapid <input type="checkbox"/> Loud <input type="checkbox"/> Slurred <input type="checkbox"/> Sincere <input type="checkbox"/> Other _____		
14. Background Noises		
15. Additional Comments		

Name of Person Receiving Call: _____
 Office: _____ Phone: _____

NOTIFY

PHYSICAL SECURITY CHECKLIST

NOTE: This checklist has been prepared and published for adaptation and use by employers. Attention is directed to the fact that individual organizations will have specific Workplace Violence (WPV) requirements which are not possible to list here. A "yes" response to the question does not necessarily indicate that the organization is free of WPV problems in that area.

POLICIES		Yes	No
1	Is there a formal workplace violence policy in place?		
2	Is it policy to use hiring processes as part of an integrated workplace violence screening/reduction procedure?		
3	Is there a drug-free workplace policy in effect?		
4	Is use/possession of alcohol prohibited in the workplace and during work hours?		
5	Is there a policy making workplace safety and security the responsibility of all employees?		
6	Is there a clearly defined and fair discipline policy?		
7	Is there a policy prohibiting the possession of weapons in the workplace?		
8	Are there policies that promote a respectful workplace by prohibiting harassment and requiring cooperation and civil communication (applicable to all employees and managers)?		
9	Are all policies relating to workplace violence clearly communicated to all employees?		
10	Are company WPV policies seriously regarded by management?		
11	Are company WPV policies enforced?		

PERSONNEL SCREENING		Yes	No
1	Does employer use a formal written application form for all hires?		
2	Do all applicants authorize in writing the employer to conduct a full background investigation?		
3	Does the employer reserve the right to withhold or terminate employment if background investigation results are unsatisfactory?		
4	Does the employer verify all periods of non-employment during prior 7-10 years?		
5	Does the employer call each previous employer and inquire into applicants' history of threats, violence, inappropriate behavior or illegal harassment in addition to normal job performance topics?		
6	Does the employer consider a demonstrated commitment to respectful/non-violent interaction with others to be a bona fide occupational qualification for all employees?		
7	Does the employer contact all listed personal references on application for information to verify items claimed on application?		
8	Are prior employers and references used to develop the names of persons who also know the applicant?		
9	Are these "developed" references contacted to provide information regarding the applicant?		

10	Are applicants required to disclose and discuss all prior incidents of violence in which they have been in any way involved?		
11	Are such prior violence accounts verified?		
12	Are employees required to disclose that they have ever applied for a temporary restraining order?		
13	Are employees required to disclose that they have ever been served with a temporary restraining order?		

WORKPLACE VIOLENCE THREAT ASSESSMENT & MANAGEMENT		Yes	No
1	Does employer encourage upward reporting of employee WPV concerns?		
2	Are employees notified that they are required to notify management of the following:		
	a. direct threats of harm to employees or customers?		
	b. allusions to violence made during conflict with co-workers, subordinates, or supervisors?		
	c. angry outbursts by employees or customers?		
	d. drug/alcohol use/possession on the job?		
	e. weapons in the workplace or employer-owned parking lot?		
	f. intimidation of employees at the workplace?		
	g. employee involvement in incidents of domestic violence?		
	h. employee involvement in incidents of stalking?		
	i. employee fears of harm at work from any cause?		
	j. applying for or being the subject of any temporary restraining order?		
3	Does employer use the following methods of obtaining WPV concerns information?		
	a. outside hotline?		
	b. designated senior manager for WPV concern reporting?		
	c. standard forms distributed to supervisors?		
	d. periodic discussions with employees and supervisors		
	e. outside consultants?		
	f. employee/supervisor surveys?		
	g. exit interviews?		
4	Are all supervisors trained to properly collect, document and refer reported incidents of threats of targeted violence?		
5	Is collected information reviewed by a person trained in WPV issues?		
6	Does employer have any established "Threat Management Team," or functional equivalent?		
7	Do all employees know how to access the "Threat Management Team?"		
8	Has the entire "Threat Management Team" received specific training in assessing and managing WPV?		
9	Did that training include managing scenarios that were realistic to the employer's workplace?		
10	Does the policy establishing the Team dictate that SAFETY is to be its primary guiding principle?		
11	If not SAFETY, what other primary principle is the Team mandated to use in its work?		
12	Does the Team include a Senior Management Executive who can commit the employer, and its resources, in order to undertake all necessary action?		

13	Are all employees/supervisors/managers required to cooperate with the Team in its inquiries?		
14	Is the Team immediately reachable to all employees 24 hours a day?		
15	Has the employer pre-identified the following specialists for the Team to use as necessary?		
	a. Employee Assistance Program professionals experienced in handling WPV matters?		
	b. Fitness-for-Duty assessors (psychologists/psychiatrists)		
	c. treatment professionals (psychologists/psychiatrists)		
	d. background researchers		
	e. licensed investigators		
	f. physical security consultants		
	g. outplacement/employment agencies		
	h. attorneys experienced in WPV matters		
	i. Threat Assessment and Management (TAM) Professionals		
	j. Critical Incident Stress counselors		
16	Does the Team monitor cases as necessary after immediate incidents are resolved?		
17	Has the Team fully determined law enforcement resources/responses available to the employer?		

RISK ASSESSMENTS

		Yes	No
1	Do employees frequently work during hours of darkness?		
2	Do customers visit during hours of darkness?		
3	Are customers/visitors frequently in distress/crisis during interactions with staff?		
4	Does employer dispense/serve/allow alcohol on premises?		
5	Do employees handle cash on premises?		
6	Are cash or other valuables kept on premises overnight?		
7	Are drugs dispensed/stored on premises?		
8	Are the premises in an immediate area that has experienced robberies/assaults/homicides or other violent crimes?		
9	Are employees expected to confront persons committing crimes (shoplifting, etc.?)		

ACCESS CONTROL

		Yes	No
1	Are there conspicuous signs communicating open/closed hours, prohibiting trespassing, and restricting the public to certain areas of premises?		
2	Private areas are separated by: (check all that apply)		
	a. signage		
	b. cordons		
	c. counters		
	d. partitions		
	e. fences		
	f. glass walls		
	g. walls (wallboard)		
	h. walls (masonry)		
	i. walls (ballistic resistant)		
	j. normally unlocked doors		

	k. normally locked doors		
3	Employees access private areas by:		
	a. key		
	b. combination lock (mechanical)		
	c. electronic combination keypad (shared code)		
	d. electronic combination keypad (employee-specific code)		
	e. electronic access device (card, fob, etc.)		
	f. admission by other staff only		
4	Logging of entry/exit is done for:		
	a. no one		
	b. all non-employee visitors		
	c. after-hours employees		
	d. customers/clients		
	e. vendors		
	f. deliveries		
	g. all persons and all hours		
5	Entry/exit log-ins compiled using:		
	a. manual system (sign-in sheets)		
	b. video camera recording		
	c. electronic data		
6	Entry/exit data is reviewed:		
	a. never		
	b. systematically as an assigned duty		
	c. only after incidents have occurred		
7	Visitors are controlled while on premises by:		
	a. no one (open access in all areas)		
	b. visitor badge/sticker only		
	c. escorted at all times by employees		
8	Are unauthorized persons excluded from premises?		
9	Are organization access control procedures enforced?		
10	Parking areas:		
	a. are publicly accessible at all hours without restriction		
	b. are fenced and gated		
	c. are access restricted to authorized parkers via permit		
	d. are access restricted to authorized parkers via card access/code or similar device		
	e. are access restricted to authorized parkers admitted by attendant/guard		
	f. are patrolled at least hourly by maintenance personnel		
	g. are patrolled at least hourly by security guards		
	h. are monitored via CCTV cameras		
	i. include emergency service intercom stations		
	j. are lit well during all hours.		
11	How are former employees/contractors prevented from accessing private areas?		
	a. no restrictions imposed on former employees/contractors		
	b. policy only		
	c. retrieval of keys/access devices		
	d. change of locks/combinations/codes upon separation		

	e. cancellation of computer/voicemail and electronic access code/devices upon separation		
	f. changes of combination/locks/codes whenever loss of keys/codes/combinations are reported		
	g. periodic changes of combination/locks/codes		
	h. special notice to all receptionists, security personnel or others who grant normal or after-hours access		
12	Persons at entrances are observable:		
	a. while approaching entry		
	b. while at entry		
	c. by CCTV camera system showing whole body		
	d. by CCTV camera system showing facial details sufficient for identification		
	e. through open sightline (no barriers)		
	f. through open sightline (over counter/through open window)		
	g. through closed window in/at doorway		
	h. through door viewer (peep hole)		
	i. enhanced by intercom/microphone/speaker		
13	The receptionist or others who meet with the public is visible:		
	a. from outside the premises		
	b. only within reception area		
	c. from secure areas by open space plan		
	d. from secure area through window		
	e. from secure area through video camera		
14	Sounds in the reception area can be heard:		
	a. only within reception area		
	b. from secure areas through open space plan		
	c. from secure area through window		
	d. from secure area through intercom		
15	Lighting is sufficient to observe people at a distance at all times in:		
	a. interior work areas		
	b. halls		
	c. stairways		
	d. outside building entrances		
	e. inside elevators		
	f. elevator lobbies		
	g. exterior walkways		
	h. parking areas		
	i. gates		
	j. exterior storage areas		
16	Does organization use security officers?		
17	Do security officers receive at least the same training in WPV given to all staff?		
18	Are security officers in uniforms clearly distinguishable from other employees?		
19	Do security officers receive formal classroom training in general security topics?		
20	Do security officers receive sufficient training on site to ensure full working knowledge of facility systems/procedures?		

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21	Are all security officers provided with information/pictures relative to persons deemed to pose threats?		
22	Does organization use law enforcement special duty officers during high-risks periods?		

THREAT COMMUNICATIONS

		Yes	No
1	The organization uses:		
	a. panic buttons (to on-site staff)		
	b. panic buttons (to off-site alarm company)		
	c. premises perimeter alarms (local only)		
	d. premises perimeter alarms (to off-site alarm company)		
	e. verbal code words/phrases to indicate duress		
	f. hand or other signals to indicate duress		
	g. network-wide computer duress messages		
2	Does the organization use a telephone threat form?		
3	Are the telephone threat forms:		
	a. the subject of training for all staff?		
	b. collected and filed by a central designee?		
	c. reviewed immediately by supervisors/management?		
	d. referred as appropriate to incident management team?		
	e. referred as appropriate to law enforcement?		
4	Are all exits well-marked?		
5	Are all staff familiar with all exits for workspace?		
6	Saferooms/Refuges:		
	a. there is/are designated saferooms or refuges known to staff		
	b. saferooms have solid core doors with functioning locks or heavy duty slide bolts		
	c. saferooms have telephones		
	d. saferooms have first aid kits		
	e. doors to saferooms have viewers allowing exterior views		
	f. saferooms have alternate exits		
	g. saferooms have flashlights		
	h. staff knows to remain in saferoom until removed by law enforcement personnel		

PROCEDURES/TRAINING

		Yes	No
A	<i>Pre-incident</i>		
1	Staff is trained in recognizing/reporting pre-incident indicators		
2	Management trained in pre-termination procedures:		
	a. appropriate timing		
	b. appropriate location		
	c. removing potential hazards from site		
	d. adequate management staffing		
	e. adequate security staffing		
	f. meeting scripting		
	g. maintaining employee dignity		
	h. appropriate responses to threats and intimidation		
	i. return of company property by ex-employee		
	j. return of personal property to ex-employee		

	k. termination of computer and physical access		
3	Staff is trained in dealing with anxious/defensive persons		
4	Supervisors are trained in dealing with employee arguments and fights		
5	Staff trained in robbery prevention procedures?		
6	Staff trained in company violence reaction procedures?		
B.	<i>During incident</i>		
1	Staff employs techniques to reduce the stress/anxiety/anger in anxious and frustrated individuals		
2	Staff employs team approach whenever possible		
3	Staff moves bystanders to safe areas early		
4	Staff takes immediate steps to ensure own/others' safety		
5	Staff summons required security/police/medial assistance		
6	Staff takes steps to secure or evacuate facility as indicated?		
7	Staff notifies management of situation as early as appropriate?		
C.	<i>Post-Incident</i>		
1	Medical attention provided to all injured parties		
2	Facility and personnel security re-established		
3	Post-incident stress sessions held as indicated		
4	Management information communication plan initiated (internal and external publics)		
5	Liaison/cooperation with law enforcement is maintained		
6	Area clean up accomplished as soon as appropriate		
7	Organization legal/risk/liability review conducted		
8	Victims, witnesses, and families provided on-going mental-health and other services as necessary		
9	Post-incident review conducted by management assisted by impartial outside resources (i.e., consultants, investigators, psychologist, etc.)		
	a. fact-finding completed		
	b. involved parties counseled/disciplined as appropriate		
	c. Pre-existing procedures/training examined for possible revision in view of new history		
	d. changes made to facility security as indicated		
	e. staff re-training conducted		

MISCELLANEOUS

		Yes	No
1	Are all WPV policies/plans/procedures developed with the assistance of persons who have specialized training and experience in WPV?		
2	Do those persons provide expertise in:		
	a. employment law?		
	b. physical security?		
	c. employee assistance?		
	d. threat assessment and management?		
	e. psychology?		
3	Are organization WPV policies/plans/procedures reviewed by experts on a regular basis?		
4	Do all employees receive annual rebriefings on company WPV/safety/security policies/plans/procedures?		

NOTES:

COMPILED BY:
DATE:

Provided by Safeguard Services, Inc.

GUIDELINES FOR WORKPLACE VIOLENCE PREVENTION PROGRAMS

WORKPLACE VIOLENCE CHECKLIST

Periodic inspections to identify and evaluate workplace security hazards and threats of workplace violence are performed by the following competent observer in the following areas of the workplace:

Periodic inspections are performed according to the following schedule”

1. Frequency: regular calendar schedule, every month;
2. When new, previously unidentified security hazards are recognized;
3. When occupational death, injuries, or threats of injury occur;
4. When safety, health and security program is established;
5. Whenever workplace security conditions warrant an inspection.

Periodic inspections for security hazards include identification of potential workplace security hazards and changes in employee work practices which may lead to compromising security. Most workplaces may require assessment for all three types of work place violence, that s Type I: Criminal or robbery, Type II, Assault from clients or customers, Type III, Employee, supervisor, or work related abuse. Please use the checklist to identify and evaluate workplace security hazards.

Evaluation for all of the types of workplace security hazards to include assessing the following factors. YES answers indicate a potential for serious security hazard risk.

Y N, Is the industry frequently targeted for violent behavior, i.e., robbery, assaults on staff?

Y N, Is the area in which the business is located known for regular occurrences of violence?

Y N, Have violent acts occurred in any way on the premises or in the conduct of business?

Y N, Do customers or clients assault, threaten, yell, push, or verbally abuse staff members or use of racial or sexual remarks?

Y N, Employees are not required to report incidents or threats of violence, regardless of injury, severity, to employer?

Y N, Employees have not been trained by employer to recognize and handle threatening, aggressive or violent behavior?

Y N, Is violence thought to be “part of the job” by some managers, supervisors and/or employees? (e.g., police, community health workers, psychiatric hospital workers)

Inspections for Type I workplace security hazards, (retail establishments or those who might experience a robbery or criminal activity) include assessing the following questions. NO answers indicate areas where corrective action should be taken if appropriate for the establishment.

- Y N, Is the entrance to the building easily seen from the street and free of heavy shrub growth?
- Y N, Are security cameras and mirrors placed in locations that would deter robbers or provide greater security for employees?
- Y N, Are signs posted notifying the public that limited cash, no drugs, or other valuables are kept on the premises?
- Y N, Drop safe or time access safes are utilized?
- Y N, Lighting is bright in the parking and adjacent areas?
- Y N, There is a second room in which one or more employees may be working unknown to the attacker?
- Y N, Windows and view outside and inside are clear of advertising and other obstructions
- Y N, The cash register is in plain view of customers, police cruisers, etc. to deter robberies
- Y N, Employees work with at least one other person.
- Y N, The facility is closed during the night or during the high risk hours of 9PM-6AM
- Y N, Emergency telephone numbers for law enforcement, fire and medical services are posted in areas where employees have access to a telephone with an outside line.
- Y N, Employees have been trained in the proper procedures to use for reporting suspicious persons or activities.

Inspections for Type II work place hazards (hospitals, security guards, police risk from clients/patients) include assessing the following factors. NO answers indicate the areas where corrective action should be taken if appropriate for the establishment.

- Y N, Access and freedom of movement within the workplace is restricted to only those who have a legitimate reason for being there.
- Y N, The workplace security system is adequate, such as functioning door locks, secure windows, physical barriers and container systems.
- Y N, Employees or staff members have never been assaulted, threatened, or verbally abused by recipients of service.

Y N, Medical and counseling services have been offered to employees who have been assaulted.

Y N, Alarm systems such as panic alarm buttons, or personal electronic alarm systems have been installed to provide prompt security assistance.

Y N, There is regular training provided on correct response to alarm sounding.

Y N, Alarm systems are tested on a monthly basis to assure correct function.

Y N, Security guards are employed at the workplace.

Y N, Personal protective devices are provided and must be worn and used.

Y N, Closed circuit cameras and mirrors are used to monitor dangerous areas.

Y N, Hand held or other metal detectors are available and used in the facility.

Y N, Employees have been trained in recognition and control of hostile behavior, escalating aggressive behavior, and management of assaulting behavior.

Y N, Employees do have the option of adjusting work schedules to use the "buddy system" for visits to clients in areas where they feel threatened.

Y N, Cellular phones or other communication devices are made available to field staff for requesting aid.

Y N, Vehicles are maintained on a regular basis to insure reliability and safety.

Y N, Equipment is provided that may add to the security officer's safety and ability to do the job, such as closed circuit cameras, silent alarms.

Y N, Employees work with others where assistance is not immediately present, in detention, in caregiver or other potentially hazardous work settings.

Inspections for Type III workplace security hazards including disgruntled employees, former employees or acquaintances of employees include assessing the following factors. NO answers indicate the areas where corrective action should be taken if appropriate for the establishment.

Y N, Employees, supervisors and managers have been effectively informed about the establishment's anti-violence policy.

Y N, It is known how employees feel about management treatment of employees or personal policies.

Y N, Employees, supervisors, and managers have been trained to recognize warning signs of potential workplace violence.

Y N, Access to and freedom of movement within the workplace by non-employees is restricted, including persons who have threatened employees.

Y N, Employees are never threatened by supervisors or other employees with physical or verbal abuse.

Y N, Threats of violent acts, damage or other signs of strain or pressure in the workplace are always handled effectively by management, i.e. recorded, investigated, and action taken to correct.

Y N, There is a policy to assure that employee disciplinary and discharge procedures are handled fairly and effectively, recognizing the employee's rights, and every effort's made to assist the employee in transition.

Y N, There is an Employee Assistance Program (EAP) or other mental health assistance provided for employees who may be experiencing personal problems, who may have exhibited aggressive behavior, or who have made other employees fearful of being assaulted by the employee.

When you complete this checklist, YES answers on the first seven questions indicate that there is a serious potential for violence to occur. NO answers in the remainder of the questions indicate areas in which there is a need to improve on procedures or to take corrective action to adequately prevent violence in the workplace.

Procedures to take to investigate incidents of workplace violence may include:

1. Review all previous incidents involving violence including threats and verbal abuse.
2. Visit the scene of an incident as soon as possible.
3. Interview the injured or threatened employee and witnesses.
4. Examine the workplace for security risk factors associated with the incident, including any reports of inappropriate behavior by the perpetrator.
6. Determine the cause(s) of the incident, i.e., unlawful entry, unresolved Grievance, alarm system malfunction, barriers not effective, training not provided, etc.
7. Take corrective action(s) to prevent the incident from recurring.
8. Record the findings and corrective action taken to including medical treatment or psychological counseling provided.
9. Record in OSHA Log of Injury & Illness if applicable and report to OSHA if a fatality or catastrophe occurs.

Colorado Municipal League Annual Conference
Breckenridge, Colorado
June 17 – 20, 2014

“Running Effective Meetings 201 – Point of Disorder”

Robert (Bob) Widner
Widner Michow & Cox LLP
City Attorney, City of Centennial

This session follows the earlier CML Conference session “Running Effective Meetings 101.” This second session is intended to be a more “free-form” opportunity with active participation by attendees.

I will be using some seasoned elected officials and administrative staff members who owe me a few favors to help play out and address common meeting issues. We can test out some practices and procedures, talk about what might work or not work given the issue, and you can add in your experiences to the extent the group can be benefited. Let’s try to refrain from “war stories” that will take up time but not lead to a lesson learned but, instead, let’s focus on what has worked for you in the past – or not. It is hoped that the collective group can generate the needed examples, questions, and role-playing to make this open session successful.

The proposed format is:

- A run-through of a basic meeting format that tracks many of the suggested meeting procedures from the first session.
- A few orchestrated examples of meeting problems that can arise. Session participants can help join in the fray; and
- Questions and answers on problems you have encountered during meetings.

An important disclaimer about legal advice:

These materials and the content of this conference session are for informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem. If anything you read in these materials or hear during the CML Conference presentation is inconsistent with your local attorney’s advice or counsel, your local attorney’s advice and counsel is correct.

HAPPY CITY, COLORADO

May 12, 2014
STUDY SESSION MEETING

**A -- STUDY SESSION
FLEXIBILITY**

The meeting will commence at 6:00 PM

City Council Chambers
111 E. Main Street
Happy City, Colorado 81234
www.happycityco.com

B -- WHAT TO EXPECT

AGENDA

PLEASE TURN OFF CELL PHONES; BE RESPECTFUL AND TAKE PERSONAL CONVERSATIONS INTO THE LOBBY AREA.

The Happy City City Council Meetings are audio streamed live on the City's website. Please remember to mute the volume on your laptop computers and to turn off all cell phones as they may cause interference with the microphones and audio streaming.

The public is invited to attend all regular meetings and study sessions of the City Council. Please be advised, public comment will not be taken during the study session meetings.

- A. Call to Order
- B. Roll Call
- C. Regulating the Disruption of Obnoxiously Loud Motorcycles that Seem to Continuously Travel in Front of the Mayor's Home
- D. Council Member's Use of Marijuana During Study Sessions
- E. Adjourn

HAPPY CITY, COLORADO

May 12, 2014
REGULAR CITY COUNCIL MEETING

A -- FLEXIBILITY

The meeting will commence at the end of the Study Session,
but in no event will it begin earlier than 7:00 PM

B -- WHAT TO EXPECT

City Council Chambers
111 E. Main Street
Happy City, Colorado 81234
www.happycityco.com

AGENDA

Meeting Protocols:

PLEASE TURN OFF CELL PHONES; BE RESPECTFUL AND TAKE PERSONAL CONVERSATIONS INTO THE LOBBY AREA.

The Happy City Council Meetings are audio streamed live on the City's website. Please remember to mute the volume on your laptop computers and to turn off all cell phones as they may cause interference with the microphones and audio streaming.

1. Call to Order
2. Roll Call
3. Pledge of Allegiance
4. Public Comment

C -- LIMITING PUBLIC COMMENT

The Public Comment section offers an opportunity for any citizen to express opinions or ask questions regarding City services, policies or other matters of community concern, and any agenda items that are not a part of a scheduled public hearing. Citizens will have three minutes for comments if they are speaking as an individual, or five minutes if speaking on behalf of a group or organization. These time limits were established to provide efficiency in the conduct of the meeting and to allow equal opportunity for everyone wishing to speak. An immediate response should not be expected, as issues are typically referred to City staff for follow-up or research and are then reported back to Council and the individual who initiated the comment or inquiry.

Written materials for presentation to Council may be submitted to the City Clerk as the speaker approaches the podium. The City's computer presentation equipment is not available for general public use, although applicants are permitted to display relevant illustrations and material useful in informing the Council and public of a project. The public may, however, use the document camera for visual presentation of materials, if desired.

D -- WHAT TO EXPECT

- 5. Scheduled Presentations
- 6. Consideration of Communications, Proclamations and Appointments

E -- VALUE OF "CONSENT AGENDA"

CONSENT AGENDA

The Consent Agenda can be adopted by a simple motion. The Consent Agenda will be read aloud prior to a vote on the motion. Any Consent Agenda item may be removed from the Consent Agenda at the request of a Council Member for individual consideration.

F – REMOVING CONSENT ITEM

- 7. Consideration of Ordinances on First Reading

Approval of any Ordinance on first reading by approving the consent agenda is intended only to set a public hearing for the Ordinance and does not constitute a representation that the City Council, or any member of the City Council, supports, approves, rejects, or denies the merits of the Ordinance.

G -- WHAT TO EXPECT

- a. ORDINANCE NO. 2014-O-05 AN ORDINANCE TO ALLOW FOR THE RETAIL SALE AND DISTRIBUTION OF MARIJUANA BY THE CITY ON ALL CITY-OWNED PROPERTY AND FACILITIES.

(This item is proposed for Public Hearing on April 14, 2014, therefore no public comment will be accepted at tonight's meeting.)

- 8. Consideration of Resolutions

- a. RESOLUTION NO. 2014-R-25 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAPPY CITY, COLORADO, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH BURNOUT FIRE PROTECTION DISTRICT FOR BUILDING INSPECTION OF NEW FIRE STATION SITE #4.

Consideration of Other Items

- a. Minutes (City Clerk)
 - i. Study Session May 5, 2014
 - ii. Regular Meeting May 5, 2014

H – “DOING BUSINESS”

DISCUSSION AGENDA

**I -- WHAT TO EXPECT & THE
EXPARTE CONCERN**

10. Consideration of Land Use Cases

Given the quasi-judicial nature of land use cases, applicants, members of the public and press are advised that, to ensure a fair and unbiased process, and to provide due process to the applicant and the public, the City Council is only allowed to consider communications that occur during the public hearing and matters set forth in the official record for the matter. Consequently, City Council Members cannot engage in conversations about any land use applications prior to the formal hearing.

**J – LET’S HANDLE SOME
PROBLEMS**

- a. ORDINANCE NO. 2014-O-11 AN ORDINANCE TO REZONE PROPERTY LOCATED AT 123 QUIET ROAD FROM THE R-1 ZONE DISTRICT TO THE NB ZONE DISTRICT TO PERMIT THE OPERATION OF A “LOCAL NEIGHBORHOOD BAR”

11. Consideration of Other Ordinances

- a. ORDINANCE NO. 2014-O-07 AN ORDINANCE TO REQUIRE THE LICENSING OF ALL CATS WITHIN THE CITY AND IMPOSING A MINIMUM \$2650 FINE FOR ANY CAT FOUND OFF LEASH WITHIN THE CITY WITHOUT A GOOD EXCUSE.

12. Consideration of Resolutions

13. Consideration of Other Items

GENERAL BUSINESS

14. Other Matters as May Come Before Council
15. Reports
 - a. City Manager
 - b. City Attorney
 - c. City Clerk
 - d. Council Members
16. Mayor's Report and Comments
17. Executive Session
 - a. Executive Session Pursuant to C.R.S. 24-6-402(4)(e) to Devise Negotiation Strategy and Instruct Negotiators Regarding Proposed Annexations
18. Adjourn

**K – A FEW COMMENTS ON
EXECUTIVE SESSIONS**





CML's 92nd Annual Conference
June 17 - 20, 2014
Breckenridge, Colorado

The contents of this presentation reflect the view of the presenter, not of CML.




**Improvement Districts for Colorado
 Cities and Towns**

Rick Kron
Spencer Fane Britt & Browne LLP

Dee Wisor
Butler Snow LLP


The contents of this presentation reflect the view of the presenter, not of CML.



Introduction

- Acronyms SID, GID, BID, URA, and DDA refer to types of “districts” that may be used by Colorado cities and towns to finance many types of public infrastructure or to provide services.
- In Counties-LID and PID are similar to the SID and GID.
- Title 32 districts, including metropolitan districts are another option.

The contents of this presentation reflect the view of the presenter, not of CML.



SIDs and LIDs What Are They?

- SID:
 - Special Improvement District which is organized by a city or town. 31-25-501, *et seq.* Some charters refer to LID
- LID:
 - Local Improvement District which is organized by a county. 30-20-601, *et seq.*

The contents of this presentation reflect the view of the presenter, not of CML.



SIDs and LIDs What Are They?

- Sometimes referred to as “Assessment Districts.”
- Not separate political subdivisions and do not have an independent corporate existence.

The contents of this presentation reflect the view of the presenter, not of CML.



SIDs and LIDs What Are They?

- Merely geographical areas within which improvements are constructed and assessments levied.
- No board of directors.
- The governing body of the municipality or county makes all decisions.


The contents of this presentation reflect the view of the presenter, not of CML.



SIDs and LIDs
Revenue Raising Power

- Raise revenue primarily through the special assessment process.
- Do not levy property taxes.
- Special assessments are charges applied to individual properties in the amount of the “special benefit” conferred on such property by the improvements.
- Counties may levy a sales tax in an LID.


The contents of this presentation reflect the view of the presenter, not of CML.



SIDs and LIDs
Types of Improvements

- Any public improvement that the municipality or county may provide.
- Must confer special benefits upon the property charged with assessments.
- Most likely candidates include:
 - Roads
 - Sidewalks
 - Water lines
 - Sewer lines


The contents of this presentation reflect the view of the presenter, not of CML.



SIDs and LIDs
Special Benefits

- Special assessments must be in an amount not greater than the special benefit conferred on such property by the improvements.
 - the method by which the assessments are distributed over the benefitted properties, must be formulated so as to equitably distribute such assessments based upon such benefit.

The contents of this presentation reflect the view of the presenter, not of CML.



SIDs and LIDs Special Benefits

- Common methods of assessment include the front-foot method, area method, and the per-lot method.
- Other methods may be used so long as they reasonably allocate the burden of the assessment upon the benefitted properties.

The contents of this presentation reflect the view of the presenter, not of CML.



SIDs and LIDs Special Benefits

- In development context, usually the case that the property owner is requesting the government to create the district and impose the assessments.
 - The developer often signs an agreement establishing the method of assessment and consent to the particular formula used.

The contents of this presentation reflect the view of the presenter, not of CML.



SIDs and LIDs Special Benefits

- Assessments constitute a lien on the benefitted property, which lien may be foreclosed upon generally in the same manner as foreclosures for property taxes.
- Property taxes constitute a lien superior to that of the assessments.

The contents of this presentation reflect the view of the presenter, not of CML.



SIDs and LIDs

Financing

- Special assessment bonds for the purpose of financing the improvements.
- With a few exceptions, special assessment bonds are payable solely from the special assessments levied upon the benefitted property.

The contents of this presentation reflect the view of the presenter, not of CML.



SIDs and LIDs

TABOR

- Prior to adoption of TABOR, special assessment bonds were issued without an election.
- Issuance of special assessment bonds now requires holding a TABOR election to approve the multiple-fiscal year financial obligation represented by the special assessment bonds.

The contents of this presentation reflect the view of the presenter, not of CML.



SIDs and LIDs

TABOR

- Elections must be held on one of the TABOR dates, which are every November, and every biennial election date of the issuer (i.e., the municipality).
- Statutes provide that if the government so determines, the election may be held solely among the eligible electors of the district, rather than among all of the voters in the municipality or county.
 - But if the security for bonds from the municipality or county is more than the SID's assessments, the election must be among all voters of the municipality or county.

The contents of this presentation reflect the view of the presenter, not of CML.



SIDs and LIDs TABOR

- For an election in the SID, the Eligible Electors are any person registered to vote in Colorado who
 - Is resident of district, or
 - Owns, or whose spouse, owns taxable real or personal property in the SID.
- If an owner of property is not a natural person, the owner may designate a natural person to vote.
- Note that HB 14-1164, did not make the civil union partner change to the SID law-only LID.

The contents of this presentation reflect the view of the presenter, not of CML.



SIDs and LIDs Organizational Procedure

- Procedure for the creation of a SID or LID is generally as follows:
 - Government adopts a resolution of intent to create the district, either on its own initiative or in response to a petition from property owners in the proposed district.
 - After notice, a hearing is held on the creation of the district, after which the government may adopt an ordinance or resolution organizing the district. At or prior to this hearing, property owners in the proposed district may veto the district through a protest petition.

The contents of this presentation reflect the view of the presenter, not of CML.



SIDs and LIDs Organizational Procedure - Continued

- After notice, another public hearing is held on the levy of the assessments, at which point the government puts on evidence supporting the assessments. After the hearing, the government adopts an ordinance or resolution imposing the assessments.
 - Must demonstrate special benefit to the assessed properties.
- After a successful TABOR election, special assessment bonds are issued payable from the assessments and the project is constructed.
- The government collects the assessments (usually through the county property tax process) and pays the bonds. Assessments are payable over a term of years and the property owner has the option of pre-paying at any time.


The contents of this presentation reflect the view of the presenter, not of CML.



Questions on SIDs or LIDs?

Hearing None, Onward . . .

The contents of this presentation reflect the view of the presenter, not of CML.




GIDs and PIDs
What Are They?

- **GID:**
 - A General Improvement District organized by a city or town. 31-25-601, *et seq.*

- **PID:**
 - A Public Improvement District organized by a county. 30-20-501 , *et seq.*


The contents of this presentation reflect the view of the presenter, not of CML.



GIDs and PIDs
What Are They?

- Primary difference is that GIDs are created by municipalities and PIDs are created by counties.
- Unlike assessment districts, GIDs and PIDs are separate political subdivisions, with their own board of directors, powers, and duties.
- In both cases the governing body of the organizing government (city council, board of trustees, or board of county commissioners) is the *ex officio* board of directors of a GID or PID.
 - No provision for independent board.


The contents of this presentation reflect the view of the presenter, not of CML.



GIDs and PIDs
Revenue Raising Power

- May levy a property tax imposed on the property within the district.
- May levy special assessments on benefitted property within the district.
- May impose fees, tolls and charges for revenue-producing services or facilities.


The contents of this presentation reflect the view of the presenter, not of CML.



GIDs and PIDs
Types of Improvements

- May construct and operate any improvement or provide any service which the county, city, or town, as the case may be, which created them is statutorily authorized to provide.
 - Cannot generally provide solid waste disposal sites and transfer stations and trash collection.


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GIDs and PIDs
Organizational Requirements of GIDs and PIDs

- Petition must be signed by 30% or 200, whichever is less, of the property owners within the proposed district.
- After a public hearing, organized by adoption of a resolution or ordinance.
- If the petition is signed by 100% of the owners, the governing body may waive the requirements for notice, publication, and a hearing on the proposed district.

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GIDs and PIDs

Organizational Requirements of GIDs and PIDs

- One of the following must be true:
 - The boundaries of the proposed district include at least one hundred eligible electors;
 - The boundaries of the proposed district include at least one eligible elector for each five acres of land included within the proposed district; or
 - The petition is signed by one hundred percent of the owners of taxable real property to be included in the proposed district.

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GIDs and PIDs

Organizational Requirements of GIDs and PIDs

- Eligible Electors
 - Person registered to vote in Colorado who
 - Is resident of district, or
 - Owns, or spouse, owns taxable real or personal property.
 - If an owner of property is not a natural person, the owner may designate a natural person to vote.
 - Note that HB 14-1164, did not make the civil union partner change to the GID law-only PID.

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GIDs and PIDs

Financing

- May issue general obligation bonds.
- May also issue revenue bonds.
- May also issue special assessment bonds.

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GIDs and PIDs TABOR

- Issuance of bonds (unless for an enterprise) requires the holding of a TABOR election in the GID or PID.
- Election must be held on one of the TABOR dates in November.
- Operating revenues of a GID or PID do not constitute revenues of the government which created them, for purposes of TABOR's revenue limitations, because GIDs and PIDs are separate political subdivisions.
 - But GID or PID is subject to TABOR revenue limits unless a debrucing election is passed.

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Questions on GIDs/PIDs?

Moving on . . .

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BIDs What are they?

- BID: A business improvement district organized by a municipality. 31-25-1201 *et seq.*

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BIDs
What are they?

- A BID is an entity designed for public improvements, economic development, and business-related services such as marketing.
- It is a separate political subdivision under state law, and it may exercise a variety of powers.

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BIDs
What are they?

- A BID may be organized only within a municipality, and its boundaries may include only commercial property.
- It may have a service area that is broader than its boundaries and that service area may be made subject to the revenue raising powers of the BID only when it becomes commercial property and is later included in the boundaries.


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BIDs
What are they?

- The "service area" is defined so that no less than 50% of the area must have been developed and used as commercial property prior to the adoption of the ordinance creating the district and, at the time of the adoption of such ordinance, must be used primarily as commercial property.
- Or, the municipality may designate the area as a location for future commercial development.

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BIDs Petition Process

- The creation of a BID is initiated by a petition which must be signed by persons who own real or personal property in the service area of the proposed district having a valuation for assessment of not less than 50% or such greater amount as the city or town may provide by ordinance.
- After notice and hearing, a BID is created by ordinance.



BIDs Governing Body

- A BID may have any of four different forms of governing body:
 - **Ex Officio Board** – City council or town board of trustees acts as the *ex officio* board of directors. This is the case unless the city or town acts by ordinance to provide otherwise.
 - **Appointed Board** – If the city or town adopts an ordinance so providing, board members of the district may be electors of the district who are appointed by the city or town.



BIDs Governing Body

- **Overlap with other entities** – If more than one-half of the property located within the district is also located within an urban renewal area, a downtown development authority, or a general improvement district, the city or town may provide by ordinance that the governing body of the urban renewal authority, downtown development authority, or general improvement district created by the municipality shall constitute *ex officio* the board of directors of the district.
- **Elected Board** – If the organization petition or a subsequent petition so requests, the city or town may provide that the members of the district board are to be elected by the electors of the district.



BIDs Electors

- Elector – A natural person who is a citizen of the United States and a resident of the State of Colorado, who is eighteen years of age or older, and who:
 - Makes his primary dwelling place in the district; or
 - Owns taxable real or personal property within the boundaries of the district; or
 - Is the holder of a leasehold interest in taxable or personal property within the boundaries of the district; or
 - Is the natural person designated by an owner or lessee of taxable real or personal property in the district which is not a natural person to vote for such owner or lessee. Such designation must be in writing and filed with the secretary of the district. Only one such person may be designated by an owner or lessee.

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BIDs Financial Powers

- May levy ad valorem taxes and issue general obligation bonds.
- May levy special assessments on benefitted property and issue special assessment bonds.
- May impose rates, fees and charges and issue revenue bonds.

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BIDs Type of Improvements and Services

- The BID statute is very broad as to the types of public improvements that may be built and maintained. It includes:
 - Public improvements, including but not limited to streets, sidewalks, curbs, gutters, pedestrian malls, streetlights, drainage facilities, landscaping, decorative structures, statuaries, fountains, identification signs, traffic safety devices, bicycle paths, off-street parking facilities, benches, rest rooms, information booths, public meeting facilities, and all necessary, incidental, and appurtenant structures and improvements. "Improvements" also includes the relocation and improvement of existing utility lines.

The contents of this presentation reflect the view of the presenter, not of CML.




BIDs

Types of Improvements and Services

- A BID has specific powers relating to business and economic development, such as:
 1. Consulting with respect to planning or managing development activities;
 2. Promotion or marketing of district activity;
 3. Organization, promotion, marketing, and management of public events;
 4. Activities in support of business recruitment, management, and development;
 5. Security for businesses and public areas located within the district;
 6. Providing zoning assistance.

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BIDs

TABOR

- Issuance of bonds (other than for an enterprise) by a BID requires the holding of a TABOR election.
- The operating revenues of a BID do not constitute revenues of the body which created it, for purposes of TABOR's revenue limitations, because a BID is a separate political subdivision.


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Questions on BID?

If not, proceed . . .


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DDAs
What are they?

- DDA: A downtown development authority organized by a municipality. 31-25-801 *et seq.*


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DDAs
What are they?

- A DDA is an entity specifically designed to halt or prevent the deterioration of central business districts.
 - "Central business district" means the area in a municipality which is and traditionally has been the location of the principal business, commercial, financial, service, and governmental center, zoned and used accordingly.
 - "Downtown" means a specifically defined area of the municipality in the central business district, established by the governing body of the municipality.


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DDAs
What are they?

- It is declared to be a body corporate under state law, and it exercises a variety of powers.
- A DDA may be organized only within a municipality.
- Boundaries appear to be limited to the downtown.

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DDAs Organization

- The creation of a DDA is initiated by ordinance of the governing body of the municipality which submits the question of organization to the qualified electors.

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DDAs Electors

- Qualified Elector – A resident, landowner or lessee:
 - "Resident" means one who is a citizen of the United States and a resident of the state of Colorado, eighteen years of age or older, who makes his primary dwelling place within the district.
 - "Landowner" means the owner in fee of any undivided interest in real property or any improvement permanently affixed thereto within the district. "Owner in fee" includes a contract purchaser obligated to pay general taxes, an heir, and a devisee under a will admitted to probate and does not include a contract seller of property with respect to which the contract purchaser is deemed to be the owner in fee.
 - "Lessee" means the holder of a leasehold interest in real property within the district. "Leasehold interest" does not include a license or mere contract right to use real property within the district.

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DDAs Electors

- Any landowner or lessee which is not a natural person may vote only if it designates by some official action a representative thereof to cast its ballot. This shall not be construed so as to permit any qualified elector to cast more than one vote, even though any person qualified or lawfully designated may be entitled to cast the vote of more than one qualified elector.

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DDAs Governing Body

- A DDA's governing body is appointed by the governing body of the municipality:
 - 5 to 11 members.
 - One member must be a member of the governing body of the municipality.
 - All others must be a resident, business lessee or property owner in the downtown development district.
 - A majority must reside or own property in the downtown development district.

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DDAs Plan of Development

- No development project may be undertaken until plan of development is approved by governing body of municipality.
 - Notice and public hearing and submittal to planning board required.
 - School district has advisory role on including a TIF provision in the plan.
 - Following hearing, governing body must determine by resolution that there is a need to halt or prevent deterioration of property values or structures or to halt or prevent the growth of blight.

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DDAs Financial Powers

- A DDA's main financing source is property and/or sales tax increment.
 - may only be used pursuant to the plan of development approved by governing body of municipality.
 - TIF provision lasts for 30 years-with possible extension for another 20.
 - Sales tax TIF is only for all or a portion of municipal sales tax.

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DDAs Financial Powers

- May levy an ad valorem tax of up to five mills.
- Any debt which is issued payable from the TIF is issued by the municipality, not the DDA.
 - Debt must be approved by qualified electors of the DDA.
- May fix rates, fees, tolls, rents and charges for use of property of DDA.

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DDAs Types of Improvements and Services

- May provide public facilities which include, but are not limited to, any streets, parks, plazas, parking facilities, playgrounds, pedestrian malls, rights-of-way, structures, waterways, bridges, lakes, ponds, canals, utility lines or pipes, and buildings, including access routes to any of the foregoing, designed for use by the public generally or used by any public agency.

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DDAs Types of Improvements and Services

- May propose and implement any plan of development for development of public facilities and other improvements to public or private property, including removal, site preparation, renovation, repair, remodeling, reconstruction, or other changes in existing buildings

The contents of this presentation reflect the view of the presenter, not of CML.



DDAs TABOR

- Issuance of bonds or levy of taxes by a DDA requires the holding of a TABOR election in the DDA.
- Has its own TABOR revenue limit.

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Questions on DDA?

Press on . . .

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URAs What are they?

- URA: An urban renewal authority organized by a municipality. 31-25-101 *et seq.*


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URAs
What are they?

- A URA is an entity specifically designed to halt or prevent slums or blight.
- It is declared to be a body corporate and politic under state law, and it exercises a variety of powers.


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URAs
What are they?

- A URA may be organized only within a municipality.
- Boundary of URA is the same as municipal boundary.
 - But an urban renewal plan may include unincorporated property with county consent.


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URAs
Organization

- The creation of a URA is initiated by a petition signed by at least 25 registered electors of municipality.
- Notice and hearing required.
- Municipal governing body must find by resolution that that one or more slum or blighted areas exist in the municipality, and finds that the acquisition, clearance, rehabilitation, conservation, development, or redevelopment, or a combination thereof of such area is necessary in the interest of the public health, safety, morals, or welfare of the residents of the municipality, and declares it to be in the public interest that the urban renewal authority be created.

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URAs Governing Body

- A URAs governing body is either:
 - appointed by the mayor with the consent of the governing body of the municipality:
 - 5 to 11 members.
 - No qualifications.
 - May be municipal governing body.
 - Change from appointed to governing body requires a vote at the municipal election.
 - No express authority to transfer from governing body to appointed.

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URAs Important Concepts

- There is only one urban renewal authority in a municipality.
- There may be more than one urban renewal project area within the municipality.
- There is an urban renewal plan for each urban renewal project area.

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URAs Urban Renewal Project

- Urban renewal project: undertakings and activities for the elimination and for the prevention of the development or spread of slums and blight and may involve slum clearance and redevelopment, or rehabilitation, or conservation, or any combination or part thereof, in accordance with an urban renewal plan.


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URAs
Urban Renewal Project

- Such undertakings and activities may include:
 - Acquisition of a slum area or a blighted area or portion thereof;
 - Demolition and removal of buildings and improvements;
 - Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements in accordance with the urban renewal plan;


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URAs
Urban Renewal Project

- Disposition of any property acquired or held by the authority as a part of its undertaking of the urban renewal project for the urban renewal area (including sale, initial leasing, or temporary retention by the authority itself) at the fair value of such property for uses in accordance with the urban renewal plan;
- Carrying out plans for a program through voluntary action and the regulatory process for the repair, alteration, and rehabilitation of buildings or other improvements in accordance with the urban renewal plan; and


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URAs
Urban Renewal Project

- Acquisition of any other property where necessary to eliminate unhealthful, unsanitary, or unsafe conditions, lessen density, eliminate obsolete or other uses detrimental to the public welfare, or otherwise remove or prevent the spread of blight or deterioration or to provide land for needed public facilities.

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URAs Urban Renewal Plans

- No urban renewal project may be undertaken until an urban renewal plan is approved by governing body of municipality.
 - Within 30 days of commissioning blight study, notice to owners.
 - Notice to public and public hearing and submittal to planning commission required.
 - Submittal to county with impact report required. No veto.
 - Following hearing, governing body must determine by resolution that urban renewal area includes a slum, blighted area or both.

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URAs Urban Renewal Plans

- There are 11 blight factors, 4 of which must exist to support a finding that blight exists (except as noted below on slide 70):
 - “Blighted area” means an area that, in its present condition and use and, by reason of the presence of at least four of the following factors, substantially impairs or arrests the sound growth of the municipality, retards the provision of housing accommodations, or constitutes an economic or social liability, and is a menace to the public health, safety, morals, or welfare:
 - Slum, deteriorated, or deteriorating structures;
 - Predominance of defective or inadequate street layout;
 - Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
 - Unsanitary or unsafe conditions;

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URAs Urban Renewal Plans

- Blight
 - Deterioration of site or other improvements;
 - Unusual topography or inadequate public improvements or utilities;
 - Defective or unusual conditions of title rendering the title nonmarketable; and
 - The existence of conditions that endanger life or property by fire or other causes.


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URAs
Urban Renewal Plans

- **Blight**
 - Buildings that are unsafe or unhealthy for persons to live or work in because of building code violations, dilapidation, deterioration, defective design, physical construction, or faulty or inadequate facilities;
 - Environmental contamination of buildings or property;
 - Buildings that are unsafe or unhealthy for persons to live or work in because of building code violations, dilapidation, deterioration, defective design, physical construction, or faulty or inadequate facilities;
- If property owners or tenants do not object, only need one blight factor.


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URAs
Urban Renewal Plans

- In general, no agricultural land may be included.
- "Agricultural land" means any one parcel of land or any two or more contiguous parcels of land that, regardless of the uses for which the land has been zoned, has been classified by the county assessor as agricultural land for purposes of the levying and collection of property tax at any time during the five-year period prior to the date of adoption of an urban renewal plan or any modification of such a plan.
- Exceptions for brownfield, urban level development, enclave, and consent of taxing entities.


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URAs
Financial Powers

- Main financing source is property and/or sales tax increment.
 - may only be used pursuant to the urban renewal plan approved by governing body of municipality.
 - TIF provision lasts for 25 years.
 - Sales tax TIF is only for all or a portion of municipal sales tax.

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URAs TABOR

- Court of Appeals has held that URA's are not subject to TABOR.

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NEW DEVELOPMENTS HB14-1375

- Changes in governance:
 - The Board of a URA can have 5-13 members (formerly, an odd number from 5-11)
 - The Mayor makes the appointments (approval by council)
 - At least one member is a member of the County Board or designee appointed by the County Board residing in the municipality and

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- Changes in Funding
- Property tax TIF money remaining after the URA bonds are paid is returned to each public body.
- The % of property tax increment allocated to the URA shall not exceed the % of the municipal sales tax increment allocated to the URA, unless:

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- The taxing bodies agree otherwise on property tax.
- The % split is to apply to municipal and private entities that are to be reimbursed for prior costs.
- Applies January 1, 2015 to new URA plans and amendments to plans.


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**Questions on URAs?
Or
Project Areas?**

O.K. ahead . . .


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Special Districts
 What Are They?

- Generally formed under 32-1-101, *et seq.*
- Independent quasi-municipal corporation and political subdivision of the state.
- Board of directors of 5 to 7 members elected by eligible electors of district.

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Special Districts What Are They?

- There are single purpose districts or metropolitan districts which provide two or more services.
- Services which may be provided include:
 - Ambulance
 - Fire Protection
 - Forest Improvement
 - Health Assurance
 - Health Service
 - Mental Health Care
 - Park and Recreation


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Special Districts What Are They?

- Services which may be provided include:
 - Sanitation (sewers)
 - Solid Waste (very limited)
 - Tunnel
 - Water


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Special Districts Revenue Raising Power

- May levy a property tax imposed on the property within the district.
- May levy special assessments on benefitted property within the district.
- May impose fees, rates, tolls, charges and penalties for revenue-producing services or facilities.

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Special Districts
Organizational Requirements

- Service plan approved after notice and public hearing by board of county commissioners or, if located with municipal boundaries, the governing body.
- Petition filed with district court must be signed by 30% or 200, whichever is less, of the taxpaying electors within the proposed district.
- After hearing, court orders election on organization, board election and financial matters

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Special Districts
Organizational Requirements

- Eligible Electors
 - Person registered to vote in Colorado who
 - Is resident of district, or
 - Owns, or spouse or civil union partner, owns taxable real or personal property.
 - A person obligated to pay taxes under a contract to purchase taxable property is an owner.


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Special Districts
Financing

- General obligation bonds.
- Revenue bonds.
- Special assessment bonds.

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Special Districts TABOR

- Issuance of bonds (unless for an enterprise) or levy of taxes requires the holding of a TABOR election.
- Election must be held on one of the TABOR dates in November or in May of even-numbered years.
- Subject to TABOR revenue limits unless a debrucing election is passed.

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Special District Questions?

Overall Questions?

Thanks, we'll leave out the other 60 (or so) types of local governments

Maybe next year!

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**ETHICAL CONSIDERATIONS IN MEDIATION OF DISPUTES
INVOLVING MUNICIPALITIES**

2014 CML Annual Conference

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Breckenridge, Colorado**

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ETHICAL CONSIDERATIONS IN MEDIATION OF DISPUTES INVOLVING MUNICIPALITIES

I. Ethical and Legal Issues Unique to Municipal Mediation

Alternative dispute resolution involving municipal governments results in an interesting intermingling of ethical, legal and political considerations which are not always present in the resolution of private disputes. Municipalities and their attorneys are required to pay special heed to open meeting and open records requirements imposed at both the statewide and local levels. Additionally, because public monies and public issues are involved, political considerations frequently arise to complicate the resolution of disputes. Because mediation is specifically designed to help parties resolve their disputes privately, almost always out of the public eye, it is natural that there will be tensions between the concepts of mediation of disputes as opposed to the public resolution of that same dispute.

The existence of these tension, however, is not tantamount to creating the impossibility of resolving public entity disputes through alternative dispute resolution techniques, and specifically mediation. The aim of this presentation is to illustrate, through presenting examples of real-life mediation situations and dialogue among you, the participants at this conference session, means of achieving successful mediation of disputes involving local governments while adhering to all statutory and ethical requirements and standards.

Municipal attorneys are intimately familiar with the provisions of C.R.S. §24-72-203 (1)(a), which provides that

All public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise provided by law. . .”

In addition, municipalities have enacted a wide variety of local ordinances and regulations governing access by the public to governmental records. C.R.S. §24-72-204(1) similarly provides that

The custodian of any public records shall allow any person the right of inspection of such records or any portion thereof except on one or more of the following grounds . . . (a) such inspection would be contrary to any state statute.

Likewise the Colorado Sunshine Law, specifically C.R.S. §24-6-402(4), requires meetings of two or more members of the governing body of the municipality to be open to the public, unless one or more of the statutory exemptions found at 24-6-402(4)(a-h) are applicable. Exception (c) in that § 402(4) provides that “matters required to be kept confidential by federal or state law or rules and regulations” may be discussed in properly convened executive session, rather than in an open public meeting.

These provisions are important to our discussion because of the existence of C.R.S. §13-22-307, Confidentiality, a provision contained in the Colorado Dispute Resolution Act, Title 13, Chapter 22, Part 3, C.R.S. 2014. That section provides in its entirety:

- (1) Dispute resolution meetings may be closed at the discretion of the mediator.
- (2) Any party or the mediator or mediation organization in a mediation service proceeding or a dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any information concerning any mediation communication or any communications provided in confidence to the mediator or a mediation organization, unless and to the extent that:
 - (a) All parties to the dispute resolution proceeding and the mediator consent in writing; or
 - (b) The mediation communication reveals the intent to commit a felony, inflict bodily harm, or threaten the safety of a child under the age of eighteen years; or
 - (c) The mediation communication is required by statute to be made public; or
 - (d) Disclosure of the mediation communication is necessary and relevant to an action alleging willful or wanton misconduct of the mediator or mediation organization.
- (3) Any mediation communication that is disclosed in violation of this section shall not be admitted into evidence in any judicial or administrative proceeding.
- (4) Nothing in this section shall prevent the discovery or admissibility of any evidence that is otherwise discoverable, merely because the evidence was presented in the course of a mediation service proceeding or dispute resolution proceeding.
- (5) Nothing in this section shall prevent the gathering of information for research or educational purposes, or for the purpose of evaluating or monitoring the performance of a mediator, mediation organization, mediation service, or dispute resolution program, so long as the parties or the specific circumstances of the parties' controversy are not identified or identifiable.

It thus appears that, at the discretion of the parties, mediations involving both municipal entities and municipal employees may be conducted and concluded in private and still meet the legal requirements of both state and local open meeting and open records enactments. Whether or not the same is politically acceptable is a matter best left to the judgment of the individual participants in any individual disputes within specific jurisdictions.

Of course, decisions to actually expend public monies to resolve disputes are always required to be made in public. However, the communications exchanged during the course of the mediation between the parties which resulted in the agreement to resolve the dispute upon the terms agreed upon are required by the Dispute Resolution Act to remain confidential, absent the consent to their disclosure by all parties to the mediation proceeding.

Since municipalities regularly engage in settlement discussions which are governed by the non-disclosure of offers provisions of both the Colorado and Federal Rules of Evidence, and since settlement discussions nearly always involve less than 3 elected officials [thereby falling within the clear and valid exemption of the Sunshine Law], it appears obvious that there are no insurmountable ethical or legal prohibition against a liberal use of mediation to attempt to resolve disputes involving municipal governments.

II. Commonly Faced Ethical Dilemmas in Mediation

Mediation sessions provide a never-ending source of interesting dilemmas placed before parties to mediation and mediators. We can all learn together by sharing our thoughts and experiences as they relate to the following mediation scenarios, some of which have been faced by JAMS panelists:

SITUATION 1:

A municipal employee has filed an employment discrimination complaint. The employee's attorney is aware that the employee has a job offer at a higher salary than the employee was making in her position with the municipality. The employee is asking for damages that include front and back pay.

- Must employee's counsel disclose this information at mediation?
- What if the employee has already begun a new position at the higher rate of pay?

SITUATION 2:

A dismissed municipal employee is making a claim for future wage loss. Just prior to entering the mediation session, the former employee's counsel learns that the former employee has an unrelated terminal illness.

- Does the employee's counsel have an obligation to disclose this information?
- Bonus inquiry - Once learned, does the municipality's counsel have an obligation to inform his city manager or H.R. director of this information?

C.R.P.C. Rule 4.1. Truthfulness in statements to others:

In the course of representing a client, a lawyer shall not knowingly

(a) Make a false or misleading statement of fact or law to a third person: or

(b) Fail to disclose a material fact to a third person when disclosure is necessary to avoid a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Rule 4.1 Comment

A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. . .

SITUATION 3:

Lawyer A sets up a mediation for his client A, that was court ordered, and he and Lawyer B pick female mediator C. Client A doesn't know the gender of the mediator until they meet at the mediation. Client A in private tells Lawyer A that he will not participate in a medication with a female mediator, but he wants his feelings to remain confidential.

- What does Lawyer A do?

Rule 8-4 – Misconduct.

It is professional misconduct for a lawyer to:

(g) engage in conduct, in the representation of a client, that exhibits or is intended to appeal to or engender bias against a person on account of that person's race, gender, religion, national origin, disability, age sexual orientation, or socioeconomic state, whether that conduct is directed to other counsel, court personnel, witnesses, parties, judges, judicial officers, or any persons involved in the legal process;. . .

CONFIDENTIALITY

Confidentiality, along with development of trust in and rapport with the mediator, is perhaps the most important element of assuring the success of a mediation. Parties are often able to articulate observations and inclinations without fear of disclosure or negative repercussions outside of the mediation session. "Win-win" situations are more common than not in this scenario. However, confidentiality issues continually arise in mediation sessions, generally centered on the questions

- What should be confidential?
- Who should be able to enforce confidentiality?, and
- Against whom can confidentiality be enforced?

SITUATION 4:

Defendant's lawyer wants to call the mediator before the scheduled mediation session to point out the explosive dynamics between the parties in a sexual harassment case.

- Can the attorney call and discuss the case with the mediator before the parties meet?
- Can the mediator call either or both attorneys before the scheduled mediation session?

SITUATION 5:

A wants to mediate a substantial personal injury case against a municipality with Mediator B, but is afraid that B, being an astute mediator and former municipal attorney, will notice a glaring hole in A's case.

- Can A's attorney tell Mediator B about this glaring hole and thereby bind Mediator B to confidentiality?

SITUATION 6

During mediation of a construction claim, it becomes clear to the mediator and one party that the project engineer, who is not a party to the litigation, was likely negligent in the design he submitted.

- Can any of the parties, their attorneys or the mediator inform the engineer?

C.R.S. §13-22-307. Confidentiality

(2) Any party or the mediator . . . shall not voluntarily disclose or through compulsory process be required to disclose any information concerning any mediation communication or any communication provided in confidence . . . unless and to the extent (a) all parties . . . and the mediator consent in writing;

SITUATION 7:

Plaintiff's attorney threatened to report the City Attorney to the Office of Attorney Regulation Counsel if the City did not agree to settle the pending case along the lines offered by Plaintiff.

- What if Plaintiff's counsel threatens to file criminal charges against a municipal employee involved in the underlying situation
- Can/should any of the parties or the mediator discuss this with the attorney who threatened either to report the City Attorney or to file criminal charges?
- Can the City Attorney file a complaint with the OARC?
- If the mediator is an attorney, can or must the mediator report the offending attorney to the OARC?

C.R.P.C. Rule 4.5 Threatening Prosecution.

A lawyer shall not threaten to present criminal, administrative or disciplinary charges to obtain an advantage in a civil action. . .

C.R.C.P. 8.3 Reporting Professional Misconduct

- (a) A lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial questions as to the lawyer's honesty, trustworthiness, or fitness as a lawyer . . . shall inform the appropriate professional authority.**

SITUATION 8

During a private meeting prior to the commencement of a mediation session in a case involving the discharge of a municipal employee, at which private meeting both the discharged employee and his attorney are present with the mediator and the City Attorney, the discharged employee cycles through extreme emotional outbursts, pounding the table and threatening the City Manager, the employee's supervisor, and the Mayor.

- May or must the discharged employee's attorney or the mediator warn the plaintiff as to the potential consequences of his statements?
- Do they have a duty to warn either the City Manager, Mayor or supervisor?
- Does the City Attorney have an obligation to warn his clients of this behavior, or is it protected by confidentiality because it took place during the course of a mediation proceeding?

SITUATION 9

During a joint session at a mediation involving litigation brought by a resident of a municipality, the resident's attorney berates and belittles the City Attorney, the Mayor, and a member of the City Council. That attorney describes the three officials as working for a greedy, unethical, immoral government that purposely torments wronged parties, fails to listen to its residents, and delays and avoids reasonable settlement of disputes. The attorney said the three of them should be ashamed to represent and be part of such an evil enterprise, and in fact ought to be shot.

Comment to Rule 1.3 – Diligence

The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

CONCLUDING THE MEDIATION PROCESS

SITUATION 10

The parties reach a settlement in the mediation session. Afterwards one of the parties will not sign the final documents.

- Can the other party enforce the settlement? If so, how?
- Can the mediator be called as a witness?

***National Union v. Price*, 78 P.3d 1138 (Colo. App. 2003) (Interpreting Colorado Dispute Resolution Act)**

For a mediated settlement agreement to be enforceable by a court, the parties must reduce the agreement to a writing signed by the parties and approved by the court.

***Yaekle v. Andrews; Chotvacs v. Lish*, 195 P.3d 1101 (Colo. App. 2008) (Partially overruling *National Union*)**

Written mediated agreement only one way to arrive at a binding agreement.

Common law of contracts not abrogated.

Act provides agreement that is “enforceable as an order of court.”

SITUATION 11

Prior to entering the initial mediation meeting, Defendant tells her attorney that she “will settle for anything under \$100,000.” During the course of the mediation, Plaintiff’s attorney asks “Will the defendant pay \$90,000 to get rid of this case?”

- Is Defendant’s counsel obligated to accept the offer?
- Does the answer differ if the question is posed to the mediator as opposed to defense counsel?

SITUATION 12

The plaintiff’s attorney does not really care about three items that he is demanding, yet he is insisting the issues have value when he knows they do not.

- Are there ethical implications to plaintiff’s attorney’s demands?

Comment to Rule 2.4

Lawyers who represent clients in alternative dispute resolution processes are governed by the Rules of Professional Conduct. The lawyer's duty of candor toward both the third-party neutral and other parties is governed by Rule 4.1.

Rule 4.1 Comment

Under generally accepted conventions in negotiations, certain types of statements ordinarily are not taken as statements of fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are in this category,

SITUATION 13

A long and difficult mediation session between a municipality and an employee complaining of sexual harassment has nearly come to a successful conclusion. All economic and job separation terms have been verbally agreed to. The municipality is, and for weeks prior to the mediation had been, aware that the employee's counsel has been consulting with several other employees about their workplace concerns. Immediately prior to giving final authorization to accept the negotiated terms and conclude the settlement (subject, of course, to City Council ratification), the city manager directs the city attorney to put on the table as a final point to be included into the settlement that the employee's counsel must agree not to represent any other city employees in any action against the city.

- What ethical considerations, if any, are relevant to this demand?
- Is the City Attorney culpable if he forwards this demand?

Rule 5.6(b)

A lawyer shall not participate in offering or making an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

AND IN CLOSING . . .

Mediators hear all sorts of statements/explanations/excuses for certain client's, and especially certain lawyer's, participation in mediation or any other form of alternative dispute resolution. Some of my favorite whines (which always lead me to my favorite wines!) include:

- We are here in good faith
- We're here only because the judge told us we had to be here
- This is THE bottom line
- If they don't accept this offer, we're leaving
- I have full authority to settle this matter
- We cannot get more authority
- I can only call the supervisor once
- My client is a great witness
- We have a great case, and we're ready to go to trial

- The other side is delusional
- It sounds to me like your taking my opponent's word for everything
- Whose side are you on, anyway?
- You really want us to make a counterproposal to that?

**First Amendment Issues for Municipalities:
Peddlers, Proselytizers, Protestors, and Performers**

**Doug Marek, Greeley City Attorney
Melinda Culley, Light Kelly, P.C.**

Overview

This presentation provides a sampling of five First Amendment issues arising in our practice as municipal attorneys. Our presentation is anecdotal and is not intended to be a comprehensive discussion of the First Amendment because the subject matter is vast. Each topic is probably worthy of a separate full presentation. Our goal is to make municipal attorneys ever mindful and vigilant. No amount of careful drafting or sound legal advice will totally avoid First Amendment challenges and potential litigation. It is a trap for the unwary.

Presentation Outline

A. Municipal Regulation of Peddling, Soliciting, and Canvassing

- I. Charitable solicitation and canvassing implicate free speech that is protected by the First Amendment. City of Watseka v. Illinois Public Action Council, judgment affirmed, 479 U.S. 1048 (1987). Even when pure canvassing is intertwined with solicitation for funds, those activities remain a form of protected speech. Solicitation of contributions is a form of communication involving protected speech interests under the First Amendment. International Society for Krishna Consciousness of Houston, Inc. v. City of Houston, Texas, (5th Cir. 1982).
- II. Peddling, soliciting, and canvassing generally is subject to reasonable police regulation and licensing. Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620 (1980)(local ordinance was unconstitutionally overbroad, in violation of First Amendment).
- III. Carefully crafted registration requirements and regulation of time, place, and manner of solicitation does not violate free speech or the freedom of the press.
 - a. Restrictions may not be based on subject matter or content of commercial, political, or charitable solicitation or canvassing. Members of City Council of City of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789 (1984).
 - b. Ordinances restricting soliciting and canvassing to daytime hours are not sufficiently tailored to serve a governmental interests justifying regulation, and therefore are overbroad. Association of Community Organizations for Reform Now v. City of Frontenac, 714 F.2d 813 (8th Cir. 1983).

- IV. Municipal ordinances that impose permit requirement on political, religious, charitable, and nonprofit canvassers who asked for donations as part of their door-to-door canvassing activities, but do not impose same requirement on canvassers for organizations which did not solicit donations are invalid. New Jersey Environmental Federation v. Wayne Township, 310 F.Supp2d 681 (D.N.J. 2004).
- V. A municipality cannot by an attempted exercise of its general police power prohibit house-to-house solicitation of business, except as to householders who have in some manner indicated that the solicitation at their homes is not allowed. *See, e.g.* Castle Rock Municipal Code §5.04.60 (registered solicitors responsible for verifying residential addresses on “No Knock” list. *See also* Prior v. White, 132 Fla. 1 (1938).

B. First Amendment Rights During Special Events

- I. Traditional public fora include streets, sidewalks, parks and town squares. *See, e.g.,* Perry Educ. Ass’n v. Perry Local Educ. Ass’n, 460 U.S. 37, 44 (1983).
- II. In a traditional public forum, the government may regulate the time, place, and manner of expressive activity, so long as such restrictions are content neutral, are narrowly tailored to serve a significant governmental interest, and leave open ample alternatives for communication. Burson v. Freeman, 504 U.S. 191, 197 (1992).
- III. A number of courts have held that when a municipality issues a permit to an organization to hold a special event on a street or at a park, the streets and parks remain traditional public fora during the permitted events, and restrictions on speech during such events will be highly scrutinized.
 - a. Bays v. City of Fairborn, 668 F.3d 814 (6th Cir. 2012) (where arts club and Lions Club entered into a facility use agreement with city to hold Sweet Corn Festival, the park remained a traditional public forum during the festival; the court noted that the park remained open to the public and the city supported the festival by raising and lowering festival banners, providing picnic tables and bleachers and supplying general labor at set cost; First Amendment rights of plaintiff walking through festival wearing sandwich board that read “Jesus is the Way, the Truth and the Life” and “Are you born again of the Holy Spirit” were violated by city’s enforcement of festival organizer’s solicitation policy that prohibited sales or soliciting outside of booth spaces because policy was not narrowly tailored to a governmental interest).
 - b. Parks v. City of Columbus, 395 F.3d 643 (6th Cir. 2005) (where city issued a block permit to a private arts council to hold a festival on a public street in the city, street remained a traditional public forum during the festival; court stated: “The City cannot, however, claim that one’s constitutionally protected rights disappear because a private party is hosting an event that remained free

and open to the public;” therefore, city violated First Amendment rights of plaintiff wearing a sign bearing a religious message and distributing religious literature when off-duty police officer hired to provide security for the event approached the plaintiff, told him that the event sponsor wanted him to leave, and instructed him to move beyond the barricades or he would be arrested).

- c. Schwitzgebel v. City of Strongsville, 898 F.Supp. 1208 (N.D. Ohio 1995) (when the city issued a permit to the Strongsville Republican Organization to use the area for a presidential campaign rally, the public commons area remained a traditional public forum even though city probably intended to transform the area into a limited public forum when it issued a permit that specifically stated that the use of the commons area “shall be limited to the members of the Strongsville Republican Organization and their invitees;” the court explained that “[t]o allow the government to transform a traditionally public forum into a non-public forum is to allow the government to suspend, if only temporarily, the existence of an historically protected arena used to safeguard the communication of thoughts between free citizens”).
- d. Irish Subcommittee of the Rhode Island Heritage Comm’n v. Rhode Island Heritage Comm’n, 646 F. Supp. 347 (D. R. I. 1986) (finding that Heritage Day festival booths are a public forum and that regulation prohibiting display or distribution of political paraphernalia at state-sponsored event violated First Amendment rights of organization who was not allowed to participate in the event because it planned to distribute literature on the political situation in Northern Ireland).
- e. *But see, e.g., Rundus v. City of Dallas*, 634 F.3d 309 (5th Cir. 2011) (private non-profit corporation that ran state fair under contract with city on parcel of land it rented from city and over which it had primary control during fair season was not a state actor for purposes of Section 1983 action challenging fair’s policy not to allow individual to distribute free Bibles) and Price v. City of Fayetteville, 2013 WL 1751391 (E.D.N.C. 2013) (.

IV. Where a person’s First Amendment activities interfere with a permitted event, he or she may be lawfully excluded from the event.

- a. Startzell v. City of Philadelphia, 533 F.3d 183 (3rd Cir. 2008) (police could exclude counter-protesters from Philly Pride event where counter-protestors expressed their message with bullhorns next to main stage where musical performances were held, directly confronted a transgendered individual with derogatory terms, and blocked access to vendors; court stated: “We have already made it clear that Appellants possess a First Amendment right to communicate their message in a public forum. Yet, their rights are not superior to the First Amendment rights of Philly Pride, as permit-holder, to effectively convey the message of its event – ‘that we’re out and proud of who

we are,’ – and of the audience’s ability to receive that message and experience the entire event”).

- V. In contrast, where speech does not interfere with the event, a number of courts have held people engaging in First Amendment speech cannot be excluded from a permitted event.
- a. World Wide Street Preachers’ Fellowship v. Reed, 430 F.Supp.2d 411 (M.D. Penn. 2006) (in case involving a gay pride festival in a city park, city violated First Amendment rights of street preachers preaching about homosexuality at the entrance of the festival when police officers told them they must go across the street to engage in First Amendment activities; court found that that the street preachers’ presence at the festival entrance did not interfere with the festival and that a location across the street was not an ample alternative channel of communication when the preachers could have been standing in the park).
 - b. Gathright v. City of Portland, 439 F.3d 573 (9th Cir. 2006) (Christian evangelist who preached his message at privately-sponsored, city-permitted events challenged an ordinance allowing the city to evict people espousing messages contrary to what the permit holder wanted as part of its event; court found that the city’s policy of allowing permittees unfettered discretion to exclude private citizens on any (or no) basis was not narrowly tailored to that legitimate interest; court further found that there was no risk that the evangelist’s message, which included calling women “whores,” “sluts,” and “Jezebels” and wearing a t-shirt reading “Got AIDS Yet?” at an event celebrating tolerance of homosexuality, could be mistaken by anybody as part of the message of the events he protested).
 - c. Dietrich v. John Ascuaga’s Nugget, 548 F.3d 892 (9th Cir. 2008) (private business received a permit from the city to hold a chili cook-off in the Town square and a volunteer gathering signatures for a political petition at the event was ordered by police to leave the permitted area and move to a public sidewalk outside the event area; the court held that the city’s actions were not narrowly tailored to a government interest noting that the permitted event was open to the public and there was little chance that the public would have viewed the volunteer’s petitioning activities as endorsed by the chili cook-off).
- VI. In deciding whether permit holders may exclude certain speakers from their events, some courts have focused on whether the permit holder is a public or private entity.
- a. Reinhart v. City of Brookings, 84 F.3d 1071 (8th Cir. 1996) (city was not liable for actions of private festival committee in banning political candidate distributing business cards from festival; court dismissed the suit, explaining

the fact that the city permitted the committee to adopt rules and enforce them did not convert the private action of the committee into state action; in reaching its decision, the court found important the fact that the festival committee was a private group that did not receive any funding from the city).

C. Criminal Enforcement of Flag Desecration

- I. Colorado Revised Statutes 18-11-204 (2013) provides that mutilation indicating contempt of the flag is a criminal offense:
 - (1) *It is unlawful for any person to mutilate, deface, defile, trample upon, burn, cut, or tear any flag in public:*
 - (a) *With intent to cast contempt or ridicule upon the flag; or*
 - (b) *With intent to outrage the sensibilities of persons liable to observe or discover the action or its results; or*
 - (c) *With intent to cause a breach of the peace or incitement to riot; or*
 - (d) *Under such circumstances that it may cause a breach of the peace or incitement to riot.*
- II. Subsection (1)(a) of the Colorado Statute is unconstitutional. Making it unlawful to mutilate, deface, and defile a flag of the United States with intent to cast contempt thereupon is unconstitutional upon its face because the interests it seeks to promote are contrary to the fundamental values protected by the first amendment. People v. Vaughan, 183 Colo. 40, 514 P.2d 1318 (1973). Specific intent is a required element of the offense. Id.
- III. 47 states currently have statutes criminalizing flag desecration. Even in the aftermath of U.S. Supreme Court decisions invalidating flag desecration statutes, *e.g.* U.S. v. Eichman, 496 U.S. 310 (1990), only one state legislatively repealed its statutory prohibition of flag desecration. *See also* Texas v. Johnson, 491 U.S. 397 (1989)(Any action taken with respect to American flag is not automatically expressive; rather, in characterizing such action for First Amendment purposes, Supreme Court considers context in which conduct occurred.) According to the First Amendment Freedom Forum, 49 states legislatures have passed resolutions supporting congressional efforts to amend the U.S. Constitution to allow laws protecting against flag desecration. freedomforum.org.

D. Religion in the Municipal Workplace

- I. The four-part Pickering test generally applies to a public employee's speech.
 - a. First, we must determine whether the employee's speech involves a matter of public concern. If so, we then balance the employee's interest in commenting upon matters of public concern against the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees. Third, if the balance tips in favor of the employee, the employee then must show that the speech was a substantial factor or a

motivating factor in the detrimental employment decision. Fourth, if the plaintiff establishes that speech was such a factor, the employer may demonstrate that it would have taken the same action against the employee even in the absence of the protected speech. Finn v. New Mexico, 249 F.3d 1241, 1247 (10th Cir. 2001) (internal citations and quotations omitted).

II. Government must balance the burdens imposed by the Establishment Clause and the Free Exercise and Free Speech Clauses.

- a. Government must distinguish between *government* speech endorsing religion, which the Establishment Clause forbids, and *private* speech endorsing religion, which the Free Speech and Free Exercise Clauses protect. Rosenberg v. Rector & Visitors of the Univ. of Va., 515 U.S. 819 (1995).
- b. At times, the state's interest in avoiding an Establishment Clause violation may provide justification for infringing upon free speech or free exercise rights otherwise protected by the First Amendment. Good News Club v. Milford Cent. Sch., 533 U.S. 98, 112-113 (2001).

III. Courts have applied these principles with differing results.

- a. Tucker v. Calif. Dept. of Educ., 97 F.3d 1204 (9th Cir. 1996) (computer analyst for state department placed the phrase "Servant of the Lord Jesus Christ" and acronym "SOTLJC" after his name on label of software program he was working on; the software program was distributed within the department; as a result, the department banned written or oral religious advocacy by employees; applying the Pickering test, the court found that "the speech is religious expression and it is obviously of public concern" and the government failed to show that the broad ban on religious advocacy disrupted the workplace; court also rejected the state's Establishment Clause argument finding that what a computer analyst discusses in his cubicle or in the hallway would not appear to any reasonable person to represent the view of the state).
- b. Draper v. Logan County Public Library, 403 F. Supp. 2d 608 (W.D. Kenn. 2006) (public library employee who wore cross necklace was fired for violating library's dress code that provided: "No clothing or ornament depicting religious, political, or potentially offensive decoration is permitted;" court found that employee's wearing of cross involved expressive speech touching on a matter of public concern in that "it is an expression of her personal religious convictions and viewpoint, which is a matter of social and community concern entitled to the full protection of the First Amendment;" wearing of cross was not disruptive nor controversial and did not interfere with the library's purpose and would not be interpreted by a reasonable observer as a governmental endorsement of religion thus employee's termination violated First Amendment rights; the court acknowledged that: "A different conclusion might be justified if, for example, the library allowed

employees to actively proselytize or if it permitted religious banners or slogans to be hung from the rafters”).

- c. Daniels v. City of Arlington, Texas, 246 F.3d 500 (5th Cir. 2001) (police officer who wore small, gold cross pin on uniform was fired for violating department’s “no-pins policy;” court found that wearing the cross was intensely personal in nature did not involve public concern speech and that the authority symbolized by the police uniform runs the risk that the city may appear to endorse Daniels religious message; therefore, the no-pins policy did not violated the First Amendment).

E. Nude Dancing as Expressive Conduct Protected by the First Amendment

- I. Totally nude dancing is expressive conduct that is entitled to some measure of First Amendment protection. Farkas v. Miller, 151 F.3d 900 (8th Cir. 1998). Regulation of that expressive conduct passes constitutional scrutiny as long as a court can identify a current governmental interest that is furthered by the regulation. Id.
- II. Municipal ordinances may ban totally nude dancing in lounges and bars serving alcoholic beverages -- without proof of obscenity -- since the protection of the First Amendment does not extend to such activities except where they are a part of some larger form of expression where communication of ideas is involved. G.M. Enterprises, Inc. v. Town of St. Joseph, Wisconsin, 350 F.3d 631 (7th Cir. 2003), cert. denied, 543 U.S. 812 (2004).
- III. Ordinance imposing time and place limitations on nude dancing establishments that did not have liquor licenses was subject to intermediate level between strict scrutiny and rational basis, which requires narrow tailoring to serve substantial governmental interest in preserving character and quality of neighborhoods. 7250 Corp. v. Board of County Commissioners for Adams County, 799 P.2d 917 (Colo. 1990).
- IV. Ordinance requiring licensing of sexually oriented businesses, and precluding persons convicted of any felony from obtaining license, violated First Amendment free speech interests by exceeding scope necessary to further assert governmental interest in reducing crime and urban blight. City of Colorado Springs v. 2354 Inc., 896 P.2d. 272 (Colo. 1995).



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The contents of this presentation reflect the view of the presenter, not of CML.



First Amendment Issues for Municipalities

Doug Marek, Greeley City Attorney
Melinda Culley, Light Kelly, P.C.

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First Amendment to the U.S. Constitution

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The contents of this presentation reflect the view of the presenter, not of CML.



Scenario # 1 -- First Amendment Rights of Peddlers & Solicitors



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Scenario # 1 -- First Amendment Rights of Peddlers & Solicitors

Town ordinance requires registration of all door-to-door peddlers and solicitors unless they have a store-front business located within the town, in which case they are exempt.

Registration requires a criminal background check.

Registered peddlers and solicitors may only go door-to-door between 8:00 AM and 5:00 PM.

The contents of this presentation reflect the view of the presenter, not of CML.



Scenario # 1 -- First Amendment Rights of Peddlers & Solicitors

Can the town justify the exemption for solicitors from local store-front businesses? If so, how?

The town clerk would like to deny registration for any peddler with a prior criminal conviction. OK?

A solicitor complains that no one is home between 8:00 AM and 5:00 PM. Is the time limit justifiable?

The contents of this presentation reflect the view of the presenter, not of CML.



Scenario # 2 -- First Amendment Rights at Special Events



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Scenario # 2 -- First Amendment Rights at Special Events



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Scenario # 2 -- First Amendment Rights at Special Events

Town issues special events/street closure permit to private Arts Council for free summer concert series held in Town square. Arts Council allows vendors to set up booths in the area but has a policy to exclude religious and political organizations from the event. Arts Council asks Town police officer to instruct citizen distributing pamphlets about Christian faith to distribute the information outside the perimeter of the event. First Amendment issue?

The contents of this presentation reflect the view of the presenter, not of CML.



Scenario # 2 -- First Amendment Rights at Special Events

- What if the Art Council's restrictions on speech were content neutral (e.g., all persons wishing to distribute literature must do so from a booth)?
- What if the speech interferes with the event organizer's message?
- Does it matter if the Arts Council receives Town funding?
- What if the instructions to leave the area come from an off-duty police officer hired to provide security for the event?

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Scenario # 3 – Flag Mutilation



The contents of this presentation reflect the view of the presenter, not of CML.



Scenario # 3 – Flag Mutilation

Patriotic city resident calls the police complaining that a student apartment near the local university is displaying the Stars and Stripes upside down in a large window. Police officer calls local D.A. office to inquire whether displaying the flag improperly is a crime.

D.A. checks C.R.S. and advises "Yes."

Police officer asks students to remove flag.

The contents of this presentation reflect the view of the presenter, not of CML.



Scenario # 3 – Flag Mutilation

What happens if the students at the apartment comply with the request and remove the flag from their window?

The students complain about the police action, stating that their First Amendment rights have been violated. Is the police officer shielded from liability by the advice received from the DA?

The contents of this presentation reflect the view of the presenter, not of CML.





The contents of this presentation reflect the view of the presenter, not of CML.



Scenario # 4 – Religion in the Municipal Workplace



The contents of this presentation reflect the view of the presenter, not of CML.



Scenario # 4 – Religion in the Public Workplace

Employee in City’s IT Department regularly includes “Put Your Faith in the Lord” as part of her email sign-off. Supervisor instructs the employee to stop this practice. First Amendment issue?

The contents of this presentation reflect the view of the presenter, not of CML.



Scenario # 4 – Religion in the Public Workplace

- What if City allows other types of email sign-offs?
 - “Have a blessed day.”
 - “Be the change you want to see in the world.”
-Mahatma Gandhi
- What if the employee’s job duties include regularly sending emails to citizens (e.g., Communications Director)?
- What if fellow employees object to the emails?

The contents of this presentation reflect the view of the presenter, not of CML.



Scenario # 5 – Nude Dancing as Expressive Conduct



The contents of this presentation reflect the view of the presenter, not of CML.



Scenario # 5 – Nude Dancing as Expressive Conduct

City planners receive inquiry from business owner who wants to open an alcohol-free performing arts establishment featuring totally nude dancers.

In response, City Council asks you to draft an ordinance prohibiting such activity if possible, and if not, imposing restrictions to prevent harmful secondary effects of sexually-oriented business.

The contents of this presentation reflect the view of the presenter, not of CML.



Scenario # 5 – Nude Dancing as Expressive Conduct

You draft an ordinance that makes it unlawful for the owner or manager of a business with a sales tax permit to allow any person to remain on the premises with exposed genitals. Will it pass constitutional muster?

What if you add an exemption for businesses devoted to the arts or theatrical performances?

The contents of this presentation reflect the view of the presenter, not of CML.