



Ethics, Liability and Best Practices for Elected Officials

Presented by Sam Light, CIRSA General Counsel



City Council Presentation – January 18, 2022

Introduction

Presentation Overview

- Key commitments that will enhance your effectiveness and success and as a City official – which in turn will reduce risk for the City and you individually. Topics we will touch on include:
 - The role of public official
 - The City's structure & liability
 - Transparency
 - Ethical obligations
 - Due process requirements
- Presentation is a training resource only; is not intended to address or provide legal advice on any specific, pending issues.

One: Commit to the Role of Public Official

- Being a public official means your role has changed:
 - Citizen → government official (24/7!)
 - Outsider → insider
 - Critic/proponent → representative/ambassador
- In the eyes of the community, you are always a public official!

One: Commit to the Role of Public Official

- Whatever your role may have been to the City previously, you are now all elected leaders – guardians – stewards – fiduciaries of the City.
- The protection of the City’s interests and assets is perhaps your most critical function now.
- The guiding principle in decision making should always be, “what is the right thing for the City?”
- As a Council, take the time you need—and obtain the information you need—to make decisions in service of these principles.

One: Commit to the Role of Public Official

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

Two: Commit to Supporting the City Structure

- Another role for everyone within the organization is to recognize and honor their role—it is important that everyone respect the City’s organizational structure to avoid risks of liability, including the risk of personal liability!
 - You have protection from personal liability if you are “within the scope of employment” and not acting “willfully and wantonly.”
 - Means everyone needs to know and respect their “job description.”
 - Conduct that is “outside the scope” or “willful and wanton” can result in a loss of governmental immunity and create liability, including the potential of personal liability for you. Can also result in potential loss of insurance coverage.

Two: Commit to Supporting the City Structure

- Tips to support the structure and avoid concerns around “role discipline” and “scope”:
 - Understand “job description” and stay within it. Honor the delegations of power and authority made via City charter, ordinances, etc.—they operate to serve and protect.
 - Your role is a group role in service of the Council as a body; if you are thinking of acting individually, ask whether you have authority to act (and if you don’t, don’t).
 - Recognize that Council acts primarily as a BODY and exercise responsibilities mainly by VOTING in a PUBLIC MEETING.
 - If you find yourself about to act in terms of “I” rather than “we” ...that’s a potential red flag. Another warning sign: He/she/they did what?!

Two: Commit to Supporting the City Structure

- Role discipline (and its positive impacts) requires recognition that the institution of Council is ONE COUNCIL of seven...the VOICE OF THE COUNCIL.
- This commitment sometimes requires:
 - Setting aside a personal interest or agenda when there is lack of support.
 - Accepting “the Council has spoken” though one may have preferred a different outcome.
 - Recognizing that others may look to hold you accountable for “making promises” or “assuring outcomes.”

Two: Commit to Supporting the City Structure

- Adherence to organizational structure is particularly important in reference to executive functions and employee relations. In these areas there are specific limitations.
- “The Council shall not perform any executive functions” except those assigned by Charter; the “excepted” function in the personnel arena is confirmation of Mayoral appointments.
- But, otherwise in this arena, *remember your Charter (Sec. 3-5.h)*: “The Council...shall deal with the administrative service solely through the Mayor and neither the Council nor any member thereof shall give orders to any subordinates of the Mayor either publicly or privately. Council shall not interfere in the removal of heads or directors of bureaus, departments, city employees, or Mayor-appointed boards and commissions.”
- In view of this segregation of control of personnel, don’t get individually and improperly involved in personnel issues or activities that bypass the City’s chain of command.

Two: Commit to Supporting the City Structure

- Council Powers / Roles:

- Legislative – Legislation.
- Budget approval – Appropriations.
- Goal-setting; e.g., “five-year goals and one-year objectives.” (www.pueblo.us/584/Council-Goals).
- Council-level development matters.
- Council-level contracting and corporate affairs.

- Council:

- Has one of the longest time horizons—looking down the road.
- Has the broadest interests in mind.
- Articulates vision for the City and serves to **direct – protect – enable**.

Two: Commit to Supporting the City Structure

- Mayor Powers / Role:

- Chief Executive Officer.
- Direct and control the executive branch.
- Exercise executive and administrative powers.
- Supervision and control of all executive and administrative departments and agencies.
- Prepare budget and administer Council approved budget.
- Enforcement of laws and contracts.
- Recommendations to Council on legislation, other measures and City affairs.
- Participate in Council discussions in advisory capacity.

- The Mayor serves to **lead – manage – accomplish.**

Two: Commit to Supporting the City Structure

Where Does the Council Focus its Efforts?

Ownership



Governance



Management



Supervision



Front Line Employment

Three: Honor Transparency

- Commit to the “openness” and other requirements of the Open Meetings Law (OML).
 - The “openness” clause of the OML applies to 3 or more or a quorum, whichever is less.
 - Requires discussion/action on public business to take place at a meeting open to the public.
 - And, if action will be taken or a quorum will be present, there must be timely notice—agenda posted at least 24 hours in advance.
 - A “meeting” includes any gathering to discuss public business, in person, by phone, or electronically (e-mail, etc.).

Three: Honor Transparency – Other Issues

- Using email? See CIRSA Handout; there are OML and public records issues. House Bill 21-1025 helps to clarify application of the OML to e-mails; see, <https://www.cirsa.org/news/how-the-colorado-open-meetings-law-applies-to-elected-officials-email/>).
- Be cognizant of social media risks for public officials; see <https://www.cirsa.org/wp-content/uploads/2019/06/Social-Media-Use-by-Elected-Officials.pdf>.
- While most Council meetings are open public meetings, the OML allows for executive sessions, but only for specific topics and according to specific procedures.
 - Be sure your executive sessions are conducted in compliance with the requirements of the OML and your City rules...
 - ...and that systems are in place to protect the City's confidences!
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Four: Commit to Ethical Conduct

- Ethical scandals don't happen all that often and they can be exciting to read about—when they don't involve us!
- Become familiar with the laws governing your conduct as a City official. Make the Code of Ethics (City Code Title 1, Chapter 9) your “best friend” in addressing and resolving ethics issues. Some key areas:
 - **Conflicts of Interest:** Disclose, don't vote, don't attempt to influence others.
 - **Confidential Information:** Don't disclose or use any confidential information to further substantially your personal financial interests.
 - **Gifts:** Decline any gifts that seem to be connected to your service; note the standards in your gift rules are objective tests.

Five: Commit to Providing Due Process

- Much of the time you're acting as "legislators"—making policy and general rules that apply generally—or handling Council level business matters.
- But sometimes you make a decision affecting a specific applicant's property rights. For these "quasi-judicial" matters you are essentially acting as judges. In this role you have heightened responsibilities to provide "due process" and a failure to provide due process exposes you and the City to liability.
- So, be familiar with the due process "rules of engagement" that apply to quasi-judicial matters.
- These rules have a familiar source: "No person shall be...deprived of life, liberty, or property, without due process of law."

Due Process - Tips for Quasi-Judges

- Limit your involvement to just your participation at the Council public hearing.
- Remain neutral; don't make up your mind before the hearing and don't make prejudicial pre-hearing statements.
- Don't engage with one side or the other, or with your fellow Council members, before or outside the hearing (ex parte contacts).
- Deliberations Matter. Make sure your deliberations and decision are focused and based on the relevant, existing criteria and not other factors. Use Sam's "Rule of Why."
- See these CIRSA videos: https://www.youtube.com/watch?v=mPz-P7A_qlc and <https://www.cirsa.org/wp-content/uploads/2020/05/Quasi-Judicial-Proceedings.mp4>.

Six: Embrace Wise Leadership

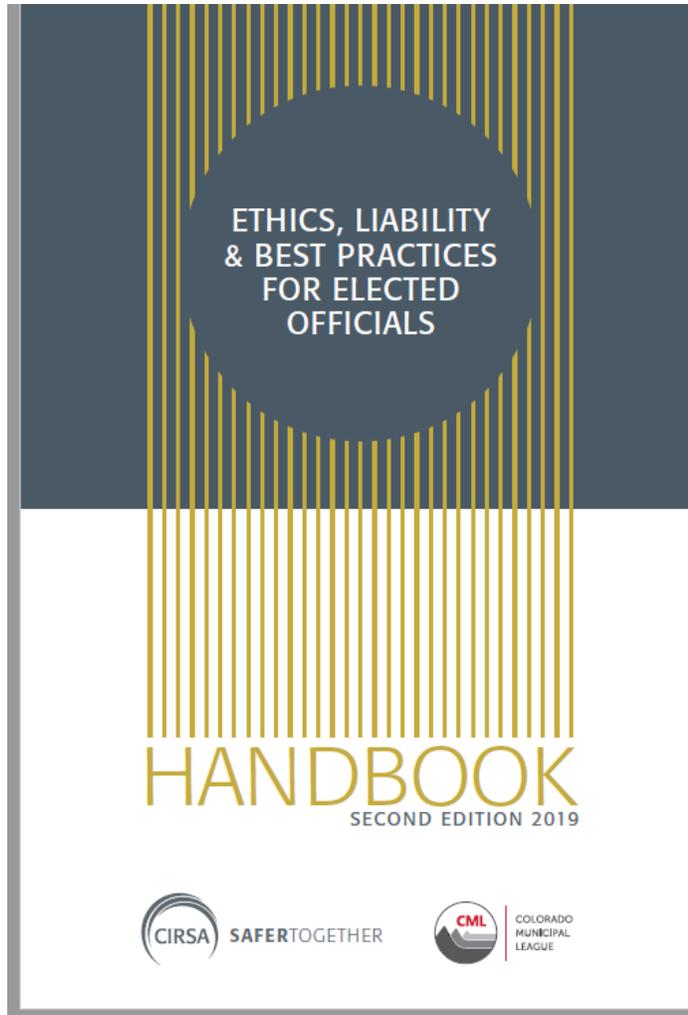
- As a body, commit to a “no surprises” approach while dealing with one another and staff.
- Deal effectively with discord. Every public body has disagreements but discord should not drive meetings, your agenda, or how you interact with the community, each other, or staff.
- Recognize that certain liability risks—in particular civil rights claims—can be exacerbated by “bad facts” that suggest (or are perceived to be based upon) retaliatory or reactive conduct. Use courtesy, tact, and diplomacy in interactions, especially in public settings.
- Recognize you set the tone for the whole organization...and always keep in mind that you are the stewards of the City’s best interests and assets.

Conclusion

Thank you for your public service!

And for the opportunity to present.

Resources



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

CIRSA Executive Director Tami Tanoue's Webinar on Ethics, Liability, and Best Practices for Elected Officials:
<https://www.cirsa.org/wp-content/uploads/2020/05/Ethics-Liability-and-Best-Practices-Webinar-2020.mp4>

Other CIRSA elected and appointed officials' resources: <https://www.cirsa.org/safety-training/elected-officials/>.

Introduction

Colorado Intergovernmental Risk Sharing Agency

- Not a commercial insurance company; CIRSA is a Colorado public entity self-insurance pool for property, liability, and workers' compensation coverages.
- Formed in 1982 by an intergovernmental agreement of 18 municipalities pursuant to CML study committee recommendations.
- Total membership today stands at 282 member municipalities & affiliated entities:
 - 278 are members of the PC pool
 - 139 are members of WC pool
- CIRSA views proactive approaches to risk management as critical member services – is a win-win.
- More information at www.cirsa.org.

Conclusion

Speaker Bio

Sam Light is General Counsel for the Colorado Intergovernmental Risk Sharing Agency (CIRSA). Previously Mr. Light was a partner with the Denver law firm of Light | Kelly, P.C., specializing in municipal and other public entity law, insurance law and defense of public entities and elected officials. Sam is a frequent speaker on municipal law and has practiced in Colorado since 1993.