



**FRUITA**  
COLORADO

**2020 City Council  
Handbook**



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# City of Fruita Handbook Introduction 2020

TO: MAYOR and CITY COUNCIL  
FROM: MIKE BENNETT, CITY MANAGER  
DATE: JANUARY 20, 2020  
RE: GENERAL CITY COUNCIL ORIENTATION INFORMATION

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## Welcome

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Congratulations and welcome to Team Fruita! Thank you for taking such an active role of service for our community. As you are aware, the community of Fruita is awesome, and working for the City is a treat with challenges as well. As elected officials, you have the responsibility and opportunity to provide important leadership that can have lasting impacts on the community. The following is a classic quote from a thought leader in the industry, Dr. John Nalbandian: ***“Experienced elected officials understand that public policy making is not about discovering right answers. It is more accurately described as forging alliances and compromises among advocates of different, often conflicting values with the goal of building and maintaining a sense of community.”***

The following is an overview of important areas to understand in order to be highly effective in your elected roles.

## Home Rule and the City Charter

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As you know, the City is a home rule municipality. Article XX, Section 6 of the Colorado Constitution grants municipalities home rule authority to create or amend Charters to govern local and municipal matters. As a home rule municipality, the City possess “all the powers possible for the City to have under the Constitution and the laws of this State.” Under a home rule form of government, matters of “local concern” are controlled by local citizens through the City’s Charter, and ordinances rather than through the General Assembly and the state statutes. This provides the citizens of Fruita freedom from the need for state legislation in matters of local concern. Thus, home rule municipalities have absolute authority over issues solely of local concern, and a home rule municipality is not inferior to the General Assembly with respect to local and municipal matters that fall within this authority.

The Charter is the City’s primary governing document, basically our City constitution. It is the set of rules and principles that dictate how the City is operated and requires the Council-Manager form of government. The Charter was last reviewed by City Council with no changes in 2016, and previously in 2010. The last update was April 6, 2004. The next mandated review is

by the end of 2022. The Charter is found on our [website](#).

Fruita's Charter, like most home-rule cities in Colorado, establishes that the City Manager is the Chief Administrative Officer of the City and the Council is responsible for policy making. This means that the Council helps determine end results related to overall vision and goals of the City and the City Manager oversees operations and leads the professional staff to implement and figure out how to get the City there.

The Council-Manager form of government is nationally recognized as the most effective form of local government, creating a healthy balance of professional expertise and representation of the citizens of the City. For example, nearly two-thirds of Moody's AAA bond rated cities operate this form of government. In addition to the City Manager, the City Council is also responsible for appointing the City Attorney and municipal court Judge. By Charter, the Manager, the Attorney and the Judge are the only employees that report to the City Council. All other employees fall under the City Manager. More information and videos on the form of government can be found [here](#) or via [www.icma.org](http://www.icma.org).

## Role of Elected Officials

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As a City Councilor of a growing and developing community, you will be faced with many challenging situations. As a Council, it is important to work through these situations in a collective and concerted fashion. The City Council is a collective body, comprised of individual members. Councilors were elected to a City Council, not to an independent seat. Constituents expect the Council to function effectively as a team. There is sometimes a perception that Council members need to be independent on every issue for fear of being seen as a "rubber stamp Councilor." This should not be the case. Each Council member should feel comfortable expressing an opinion and debating and/or discussing a point. The key is to show respect for fellow Council members, to be willing to move ahead once the issue is thoroughly discussed and to live with the vote of the Council. Members of the Council change, but the underlying responsibilities are constant. Individual members of the Council are expected to debate and raise issues at the Council meeting as items are discussed. The City Manager is also expected to weigh in on matters during these discussions. Once a decision is made by the Council, all members are expected to support that collective action, as if spoken by one voice/one Council, regardless of their personal position. The Council constitutes the legislative and governing body of the City. Therefore, collective support is warranted.

The most highly effective Council members are those that find a way to work with the fellow Council members to create a majority position. Effective Council members understand that rarely is it their job to simply find the "right" answer. The job is more accurately described as working with the entire Council, (including advocates and opponents) to find shared points of agreement and to implement solutions that are built on consensus, accord, consent and compromise that, in the end, create a great community. One of the main reasons Fruita is

viewed in the Grand Valley as the forward thinking City that gets things done is because the Council has been made up of different viewpoints and people who are comfortable to debate and seek the best solution, without pushing a personal agenda, and agreeing to move forward once a vote is final. It is truly a team effort and you will learn from one another's perspectives and the professional staff's work and recommendations.

To be effective, the Council must learn to excel at solving political problems. As opposed to technical problems, a political problem (or a policy issue) is when after all the facts are known, people can still legitimately disagree on the answer (because there are many solutions available). Generally speaking, more information is not going to help solve a political problem.

## Communication

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As a Council member, you will likely be approached about a variety of issues and hear plenty of speculation and rumors. I would simply ask that you remember there are usually at least two sides to every story. If you hear, or are informed of issues that concern you, please let me know and I can make sure the issues are addressed or at least that your questions are answered. As City Manager I work for the entire Council as a group. It is my job and responsibility to keep the entire Council well informed. As a staff team, our job is to provide objective information to the Council. Please, never hesitate to let me know if you need information on an issue or if I can be of assistance.

### ***Rules of Thumb***

In order to keep lines of communication open, there are a few rules of thumb that the Council and staff have found to be effective.

1. As City Manager, I work for the entire City Council as one body. A key responsibility of mine is to assist Council members so please don't hesitate to ask me for assistance. I am here to help and make your job easier.
2. In an effort to make sure all City Council members are equally informed, when staff distributes information, most of the time we will give it to all Council members. Occasionally, I may ask the Mayor for guidance, or if the information is very specific to one Council member or a typical question we may receive from any resident, I may just give it to the Councilor who asked. However, mostly I strive to provide all elected officials with answers equally so that everyone is operating with the same information. We believe all elected officials having the same information is crucial to keeping the lines of communication open, effective and fair.
3. Communication between Council members and Department Directors is often necessary. Individual Council members are certainly welcome to contact individual

Department Directors to gain information on specific topics. It is helpful if the City Manager is copied on the correspondence or given a heads up when possible. However, elected officials need to be careful not to make demands or assign work to any Department Directors or City staff. This would be a violation of the City Charter. The rule of thumb I ask the Department Directors to go by is this: If a Council member asks for information or makes a request of the Director that the Director would follow through with for the general public, then do it for the Council member. If the request/inquiry from the Council member is not something the Department Director would do for everyone, the Department Director should direct the Council member to the City Manager to address. Often, Council members direct all inquiries to me and I make sure coordinate with staff on responses. Council members should also be mindful of communication with staff in connection with land use matters. As more fully described below, certain land use matters are subject to quasi-judicial review by Council, and it would be inappropriate for Council to ask questions of the Community Development staff, the answers to which applicants do not have a full opportunity to respond or are otherwise made part of the public record.

4. The Colorado Open Meetings Law requires that “All meetings of a quorum, or three or more members of a local public body, whichever is fewer, at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times.” (C.R.S. § 24-6-402(2)(b)). As such, it is important to avoid inadvertently creating a public meeting via email. To avoid this, when we provide email updates to City Council (which are public records) we clarify ‘Please do not reply all’ and encourage any questions to be directed to staff and discussions to occur in noticed public meetings. This means that the City clerk will post all meetings that there is a possibility of three or more members of Council will attend and that as a Council you must not conduct any public business outside of a properly posted public meeting. Meetings may include electronic communication and are interpreted “any kind of gathering, convened to discuss public business in person, by telephone, or by other means of communication.” C.R.S. § 24-6-402(1)(b). Public meetings do not include a chance meeting of a quorum of three or more members, or social gathering of a quorum of three or more members, provided that public business is not the central purpose; however, be aware public perception may also be a factor.
5. Finally, and probably most importantly, Council members need to remember that as City Manager, I work for the City Council as a body, not seven individual elected officials. In order to be effective, the Council needs to act as a single governing body, not as seven individuals with seven different agendas. Because of that, I (or any staff) cannot always

simply “do” what one Council member wants done. In order to be fair to the Council as a whole and to do my job well, staff needs to do what the majority of the Council wants done, not individual Council members. For this reason, at Council meetings you will often hear staff clarify their understanding of direction given at the meeting, so everyone is clear on Council’s overall desires.

To be clear, this is not to say you can’t ask specific questions of me, get clarification, or ask for assistance. That is my job, so please let me know how I may assist; however, for big issues, I will require direction from the majority of the Council.

Following these few rules of thumb will hopefully keep the lines of responsibility relatively clear between my responsibility as City Manager to manage the day to day operations of the City and Council’s responsibility to set policy for the City.

### ***Weekly Information Updates***

Each week, I provide Council with an Information Update that is posted on the City’s website. A link is automatically sent to Council members via email when the update is posted to the website. The link is also emailed to all people who have subscribed to receive this notice and the media. In this update I provide a summary of information I feel is important for the Council to know in a simplified summary or bullet format that may be informative and interesting. In addition, I provide links to news stories that cover Fruita, as well as upcoming events. Please feel free to share any of this information freely with the public. Should you ever want more information regarding any issue you see in these Info Updates, please let me know.

While I will put forth a great deal of effort to ensure the Council is up to speed on City happenings, I would appreciate it if you would keep me informed of issues you are hearing about or issues that are on your mind. With so much going on, it will occasionally be the case that I may miss something or not be aware of everything in the community, so it does help me to know what you are hearing and to understand what your priorities are. I am happy to meet with you anytime that is convenient for you—please just let me know what works. It makes my job easier when I know what is on your mind.

### ***Constituency Requests***

As a Council member, community members will frequently let you know what they believe needs to be done or projects the City should be undertaking. These issues can be as simple as filling a pothole or as complicated as building a facility. If you are unfamiliar with the issues regarding the request, you should always feel welcome to have the resident contact me or any other staff member or let me know of the issue and I can get a hold of the resident and speak to you both about it. Unless you know all the facts of the situation, it is generally not a good idea to tell the person you will get something fixed (especially in enforcement issues). There may be policies, laws or other factors at play. When you have constituency requests, please let me know and I will be more than happy to help. It is completely fine to take the request and

promise a response by a staff member or yourself (however you prefer).

I do my best to keep the Council updated on the variety of issues occurring with the City. When you get asked a question to which you don't know the answer, it is absolutely okay to tell the constituent, "I don't know the answer, but I can find out and get back to you." Most people legitimately expect you to know everything, so it is very appropriate to simply tell someone you will look into it and get back to them.

### ***Email Accounts and iPads***

Each City Council member is issued a City email account. The email address is first initial last [name@fruita.org](mailto:firstname@fruita.org) (no spaces i.e. [kleonhart@fruita.org](mailto:kleonhart@fruita.org)). The City will provide each Council member with an iPad set up to receive this email account, and to be used for other Council related business such as during City Council meetings to access the Council packet. If you need a particular application for Council purposes, please work through the Deputy City clerk to have this purchased and set up. It is fine to use the iPad for personal reasons that do not cost the City any additional fees. If you already have a personal iPad that you would prefer to use, staff can set it up to receive your City email account.

It is critical that when you are sending or receiving emails related to City matters that you use this account. Most every email you write as a Council member is a public document and are open to the public for review. It does not matter whether the email is sent from your City account or a personal or business account. As such, in order to maintain the privacy of your personal or business email accounts, you should not write or receive publicly related emails from your private accounts. If you do send City-related emails from a personal or business account, such accounts may become subject to public review. By strictly using your City email account, it keeps a very clear line between private and official emails. We know it is a pain to maintain several accounts, but when public records are requested you will be happy you made the distinction. Due to Colorado Open Meeting laws it is important that Council not utilize email to have group discussion as these may be deemed open meetings requiring public notice. We utilize a policy that you may receive an update via email sent to all of City Council, but do not "reply all" and instead communicated directly with me and we can schedule any needed discussion on an upcoming Council meeting agenda abiding by the state law.

## **City Council Meetings**

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Regular (business) meetings of the City Council are on the first and third Tuesday of each month beginning at 7:00 p.m. These are the meetings where the Council can provide direction to staff and pass motions, resolutions and ordinances. These proceedings are generally governed by (a modified) Roberts Rule of order. The Deputy City Clerk takes official minutes of the meeting and prepares a vocal recording of the meeting. These minutes are typically placed on the next meeting's agenda for Council to review and approve.

Council workshops are scheduled on the fourth Tuesday of each month at 6:30 p.m. Workshops

are informal meetings of the Council where decisions cannot be made, but direction can be given to staff. Since workshops are informal informational meetings, formal minutes are not taken. At these meetings we attempt to go over upcoming issues, dive into bigger issues with more detail and hold general informational discussions.

### ***Council Meeting Agendas***

The City Manager and Deputy City Clerk prepare a formal agenda, legally post the meeting to the public and provide a Council packet the Friday prior to the meeting for the Council to review and use to prepare for the meeting. If a Council member would like to have an item placed on a Council meeting or workshop agenda, simply let me know and I will ensure it is placed on the appropriate agenda. For nearly all items placed on the agenda, staff attempts to put together a cover sheet that provides background on the item, any fiscal impacts, the item's relationship to goals and objectives, and a recommendation from staff on how to proceed. We do our best to base these recommendations on objective information and our professional opinions, not necessarily on the political realities the Council may need to consider.

Council meetings are conducted by the Mayor. In the Mayor's absence, the Mayor Pro-tem conducts the meeting. Council meetings begin with an invocation and pledge of allegiance that the Mayor invites the audience to participate in if they so choose. The next item is a call to order by the Mayor and roll call conducted by the Deputy City Clerk. The Council then acts to adopt or amend the agenda before them. The rest of the meeting has the following sections in the same order.

### ***Proclamations and Presentations***

It is common for Council to receive requests from the public, various organizations and others to consider a proclamation which recognizes a day, event or cause. These items are placed near the beginning of the agenda so that they may be read by the Mayor or a Council member, the representatives given an opportunity for brief comments, a photo with the Council and then giving the group the opportunity to leave if they do not choose to sit through the remainder of the meeting.

Similarly, presentation by various groups that would like to inform Council or make a request of Council are placed in this item of the agenda; however, Council does not typically respond, but may direct staff to look into items raised for future consideration.

### ***Public Participation***

The Council has included an agenda item at each meeting to allow public comment on issues that otherwise do not appear on the agenda. This has proven to be an effective tool to allow the public to "air out" issues of which the Council may not otherwise be aware of. Comments are limited to five minutes per the agenda.

Occasionally, this time on the agenda can also be a time for members of the public to

grandstand and use valuable Council time. When controversial topics, complaints or other similar issues are brought up, it is usually best not to try and address them immediately at the meeting or for that matter quiz the person bringing up the point. It is usually a good idea to listen to the complete issue, and then, if warranted, direct staff and/or Council members to meet with the individual to address the issue. This allows for quick action on the issue and also allows equal time to other scheduled items on the agenda.

Along these same lines, when people make comments during public hearings it is also usually not a good idea to interrogate the person making the statement, or for that matter let them interrogate the Council. Those sections of the meeting are there for people to speak their mind, not hold a speech and debate forum. It is the Mayor's job to keep these issues under control, but the Council may certainly assist.

### ***Consent Agenda***

This item is a beautiful thing. Rather than Council needing to discuss every single item individually at each meeting, routine or simple items that are straight forward, and /or are easily described in the cover sheet are placed on the consent agenda. Council may then act on all items in one action or pull select items to be considered separately. The public may request that Council pull an item for single discussion.

*The agenda contains the following description: These are items where all conditions or requirements have been agreed to or met prior to the time they come before the Council for final action. A Single Public hearing will be opened for all items on the Consent Agenda. These items will be approved by a single motion of the Council. The Mayor will ask if there is anyone present who has objection to such procedure as to certain items. Members of the Council may also ask that an item be removed from the consent section and fully discussed. All items not removed from the consent section will then be approved. A member of the Council may vote no on specific items without asking that they be removed from the consent section for full discussion. Any item that is removed from the consent agenda will be placed at the end of the regular agenda.*

### ***Public Hearings***

Public hearings are held to obtain input from the public on various items. Public hearings are either Legislative in nature or Quasi-Judicial in nature. Each is described as follows:

- **LEGISLATIVE** – Legislative public hearings are held when the City Council is considering an item that establishes legislation such as an ordinance amending or establishing laws of the City. Interactions by members of the public with the City Council or individual members is permissible on items of a legislative nature.
- **ORDINANCES – SECOND READING.** After introduction of an Ordinance (First Reading), a public hearing date is set and notice of the hearing is published in the newspaper. Staff

presents the ordinance and the hearing is opened to the public for comment. After comment from the public, the Mayor will close the hearing to the public and bring the Ordinance back to the City Council for discussion and potential action. The Council will make a motion to approve the Ordinance or take no action. In the event the ordinance is approved, it will become effective 30 days after adoption.

- **QUASI-JUDICIAL** – Quasi-judicial public hearings are held when the City Council is acting in a judicial or Judge like manner and a person with a legitimate interest is entitled to an impartial decision made based on information presented and laws in effect. Quasi-judicial hearings are commonly held for land use hearings and liquor license hearings. Since the City Council is acting in a fair and impartial manner, it is NOT permissible for City Council members to have any ex-parte communication (contact between the applicant, members of the public, or among other members of the City Council) outside of the Public Hearings and meetings on the subject application. The City Council must limit its consideration to matters which are placed into evidence and are part of the public record. Quasi-judicial hearings are held in the following manner:
  - 1) **Staff presentation** (15 minutes max) Staff will present the comments and reports received from review agencies and offer a recommendation.
  - 2) **Applicant Presentation** (15 minutes max) The petitioner is asked to present the proposal. Presentations should be brief and to the point and cover all of the main points of the project.
  - 3) **Public Input** (limit of 5 minutes per person. If two people in the audience are willing to cede their time to the speaker, that speaker may receive a total of 10 minutes, referred to as banking time). People speaking should step up to the microphone and state their name and address. Speakers should be to the point and try not to repeat the points others have made.
  - 4) **The public hearing is closed to public comments.**
  - 5) **Questions from the Council.** After a Council member is recognized by the Mayor, they may ask questions of the staff, the applicant, or the public.
  - 6) **Make a motion.** A member of the City Council will make a motion on the issue.
  - 7) **Discussion on the motion.** The City Council may discuss the motion.
  - 8) **Vote.** The City Council will then vote on the motion.

### ***Administrative Agenda***

Staff updates and recommendations to Council that do not require public hearing are placed on this section of the agenda.

### ***City Manager's Report***

This section of the agenda provides a time for the City Manager to provide general updates and reminders to Council.

## ***Council Reports and Actions***

This item provides a time for the Council and Mayor to provide general updates to each other. Typically, these updates include summaries of recent board or commission meetings Council members have attended. Occasionally, Council requests specific items for the Council to take action on and discuss that may not require a public hearing. These items are then placed on this section of the agenda accompanied by a cover sheet.

## ***Actions of the City Council***

The City Council formally acts in four ways, through: **(1)** ordinances, **(2)** resolutions, **(3)** motions, and **(4)** proclamations.

**Ordinances** are laws; therefore, all legislative enactments or other actions specified in the Charter or the Code must be in ordinance form. For example, actions required to be done by ordinance are: (a) adoption or amendment of a code, (b) setting fines or penalties, (c) conveying or leasing City property for more than a year and (d) approving franchise agreements.

**Resolutions** are for more policy-oriented issues. They are not legislative but do provide clear direction to staff and the public. Resolutions are official actions, but do not require the same level of formality as an ordinance. Resolutions are typically used for: (a) budget transfers and appropriations, (b) setting fees, (c) accepting annexation petitions and (d) adopting policies and procedures.

**Motions** are used to provide clear direction to the City Staff.

**Proclamations** are ceremonial actions used to declare special events or recognize someone for their achievement. They are generally one of the first actions taken on the agenda.

## **Quasi-Judicial Capacity vs. Legislative Capacity**

*(See memo from the City Attorney regarding this)*

Generally speaking, the City Council acts in a legislative (policy making) manner through the adoption of ordinances, resolutions and the formulation of policy. In such instances, the Council obviously expects input from the electorate and there should be free communication with members of the public concerning such legislative matters. This is the keystone to representative government.

However, often the Council is required to act in a quasi-judicial capacity. Land use hearings and liquor licenses are the most common examples. When acting as a quasi-judicial body, the Council is really acting in much the same capacity as a Judge would act in a court of law. Under these circumstances, the judicial or quasi-judicial body must limit its consideration to matters which are placed into evidence and are part of the public record.

Considerations of matters or opinions which are communicated or expressed outside of the public hearing are inappropriate for consideration and such “ex-parte communication” needs to be absolutely avoided. If they do occur, such communications destroy the credibility of the quasi-judicial process since it becomes impossible to determine whether a particular Councilperson’s decision is based upon the information submitted as part of the public record or is the result of influences or information obtained through ex-parte (or outside the public hearing process) communication.

Quasi-judicial decisions of the City Council are subject to review by the District Court under what is called a Rule 106 proceeding. In such proceedings, the Court does not substitute its judgment for that of the Council. Rather, the Court reviews the public record of the quasi-judicial hearing to determine if there is any credible evidence to support the decision of the Council. If there is, the Council’s decision will be upheld. However, if there is evidence or substantive allegation that one or more of the Council members discussed the issue with third parties or considered additional documents or information outside of the public hearing process, the decision will inevitably be overturned because of such ex-parte contacts.

If you ever have a question whether an issue before the Council is quasi-judicial or legislative, please confirm with the City Manager or the City Attorney. A good rule of thumb, however, is that if the decision is generally applicable to the public it is a legislative matter, but if the decision relates solely to one person or small group of people it is likely quasi-judicial.

## **Annual Budget**

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It is the City Manager’s responsibility to develop a budget and submit it to the Council for consideration. Budget preparation (staff’s part) usually starts mid-summer. Although this may not be the most interesting document to read (☺), it is probably the most important document the Council adopts each year. This is the document that essentially becomes the work plan for the year and sets priorities for the community. The budget is our opportunity to tie our resources to our priorities.

Once the budget is adopted by the Council for the upcoming year, then it becomes the City Manager’s job to manage it. The 2018 Annual Budget is available for review on the City’s [website](#). If you would prefer, paper versions are available.

### ***Colorado Municipal League***

The Colorado Municipal League (CML) is an organization that nearly all of the state’s municipalities belong to. For the majority of the year it acts as a clearinghouse for municipal information and provides a great deal of training for elected officials and staff. During the Legislative Session, CML acts as our representative in the legislature, basically as our lobbyist. Over the years they have proven to be very effective lobbyists for municipal issues. The Council is encouraged to attend the conferences, meetings and training sessions this organization

offers. A great way to stay up to speed with CML is to join their e-mail list. Simply send an e-mail to Deputy City Clerk Deb Woods (dwoods@fruita.org) and she can sign you up to receive plenty of CML information.

### ***Boards and Commissions/Outside Organizations***

The City has several Boards and Commissions the Council appoints to advise it on the operations of the community. A staff member is also assigned as a liaison to each City board and commission. While staff assists these boards and commissions operate, the board's and commission's role are to be advisory to the Council. It is up to the Council how to best utilize these citizen volunteers.

The City belongs to several outside organizations. In your role on Council, you may represent the City as a member of some organizations or as a board member. When attending these meetings, it is important to remember that while you are attending these meetings as a representative of the City Council, generally speaking, you cannot speak on behalf of the Council (unless of course you have clear direction from the Council). A common statement made by elected officials attending these meetings is something like, "I am only one member of the Council and can't speak on its behalf, but this is what I think....." The key issue is understanding your role as a liaison to the rest of the Council and making sure you understand your role as an individual member versus speaking for the entire board.

### ***Media Relations***

As a Council member, you will likely be approached by members of the media for comments on various matters. It is important to remember that any comments you make should reflect the overall views of the Council. If the Council has not taken a position, at a very minimum, you should state that you are speaking as an individual and not on behalf of the Council.

It is a common practice for reporters to ask Council members their individual opinions of various issues. The reporter will then have those independent opinions cumulatively published in the paper. Thus, Council members learn of everyone's various opinions in the paper, rather than through a discussion at a meeting. This has not proven to be an effective method with which to legislate. If at all possible, it is generally better to share your opinion with fellow Council members at a meeting, rather than through the paper.

Good advice for dealing with the media is to never go "off the record." Most members of the media represent the highest levels of journalistic integrity and ethics and can be trusted to keep their word, but you are never truly "off the record. One bad experience can be catastrophic. Be sure to use your words carefully. Finally, if you don't feel you have adequate information to discuss an issue, please don't feel as though you are required to comment. You can always simply let the reporter know that you will need to look into the issue. Of course, you should feel free to have the media call me as well. I often receive inquiries from the media and will either handle it myself or request a staff member to handle.

## ***Official Travel and Expenses***

Occasionally, Council members will participate in trainings or conferences, or other official travel representing the City. Most of the time this is planned ahead of time and should be coordinated through the Deputy City Clerk, who can make this easy on you and arrange for reservations and process appropriate per diem funding to cover food expenses. This funding is set by the state standard and requires no need to turn in receipts. A check is simply cut for the state amount for the particular meal and you may spend more or less on your own with no additional reimbursement. When a set fee for a function is required, it is best to work through the Deputy City Clerk to take care of the payment ahead of time. If this is not possible, please submit a receipt for allowable reimbursements.

## ***Liability Issues***

Cities are continually faced with liability issues. To help mitigate this fact, cities purchase general liability insurance and have some protection under the governmental immunity act and common law immunity. As a Council member, you are considered an agent of the City and are generally afforded the protections listed above, as long as you are working within the scope of your responsibilities.

There are certain situations in which Council members may not be covered under the governmental immunity act or common law immunity. Council members may not be covered from liability and could be held personally responsible if an act or omission resulting in claim did not occur during the performance of your municipal duties or if the act is viewed as “willful or wanton” conduct. Willful and wanton conduct can be described as conduct “purposefully committed which the actor must have realized as dangerous, done heedlessly, and recklessly, without regard to consequences, or of the rights and safety of other.”

To be safe, be sure to only take action that is appropriate to your role as a Council member. The City is a member of CIRSA who administers our liability insurance and provides a wealth of assistance and direction to numerous Colorado cities. They also provide resources directly to elected officials: <http://www.cirsa.org/elected-officials/elected-officials.html?Areald=187>.

## **City Goals & Values**

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*In building greatness, there is no single defining action, no grand program, no one killer innovation, no solitary lucky break, no miracle moment. Rather, the process resembles relentlessly pushing a giant, heavy flywheel in one direction, turn upon turn, building momentum until a point of breakthrough, and beyond. –Jim Collins, Good to Great and the Social Sectors*

Fruita is fortunate to have leadership that realizes the importance of setting specific vision and consistently aligning resources, time and efforts to achieving these goals.

2019 was filled with community engagement to update the City's Comprehensive Plan: Fruita in Motion. [www.fruitainmotion.org](http://www.fruitainmotion.org) contains a story map of the process. The plan is scheduled for Council consideration February 4, 2020.

The next two pages include the Fruita goals and values.



**WHY FRUITA?** The City of Fruita focuses on three strategic outcomes built upon a base of providing quality core services.

**Quality of Place (QP)** The City of Fruita is a community where residents and visitors love where they are. The City strives to be a bike and pedestrian friendly community by providing a system of sidewalks, trails, and bike lanes that connect our parks, schools, neighborhoods, civic facilities, and commercial areas. We value safe neighborhoods, our geographic natural resources and landscapes, top tier education and healthcare, and we collaborate to provide quality essential infrastructure and services. We are an inclusive community of doers who enjoy active and healthy lifestyles.

**Economic Health (EH)** The City of Fruita strives to be financially sustainable by enabling a stable economy and supporting a diversity of businesses that offer well-paying jobs that attract educated employees. The City works to be fiscally responsible and continuously seeks ways to allocate resources to services and projects that have the highest impact on the City's priorities. We are the innovative leader for economic development in the Grand Valley.

**Lifestyle (L)** The City of Fruita fosters a fun and funky ambiance by celebrating the local arts, farm and ranching history, unique leisure opportunities, and family-friendly events and activities. As a city, we encourage a diversity of cultural opportunities, businesses, and recreational activities. We continue to improve and enhance recreational offerings from traditional to outdoor adventure sports and youth to adult activities. We are a family-friendly community with diverse cultural opportunities, businesses and recreational amenities where visitors feel like locals and locals play like visitors.



# FRUITA COLORADO



*City of Fruita staff strive to emulate these core behaviors in everything we do in order to show gratitude for public trust, build trust and maintain trust with the public, our partner agencies and with one another.*

## **We are Fruita. We are...**

**Fun**—This is such a critical behavior that impacts everything we do. If we are not having fun, we must ask why and recalculate and adjust. We must love what we do and where we work, live and play. We are positive and put forth focused effort to have a positive attitude. We are smiling. We are friendly. We enjoy serving the public and working together. We care about the experience those who interact with us internally and externally have.

**Respectful**—We are empathetic. We take an active interest in each other, residents, businesses and visitors. We listen. We talk one at a time. We compliment and build up others. We are tough on issues and easy on people. We recognize the role of City Council, Board and Commission Members, residents, supervisors, coworkers and customers. We are kind. We treat people with dignity. We embrace diversity and make every effort to think collectively.

**United**—We are a team. We focus on purpose and work together to achieve our goals. We communicate effectively with each other. We seek consensus, agree to disagree and move forward for the greater good. We support each other. We value partnerships that help us achieve our goals. We remember we are public stewards and serve. We are inclusive. We create synergy by recognizing our strengths and weaknesses and succeeding as a team.

**Innovative**—Simplicity is our key to innovation. We consider and explore alternatives to the way we've always done it. We are open to new ideas. We welcome calculated risk-taking and learning from our mistakes. We seek continuous improvement and welcome constructive feedback. We ask why and why not. We work to continually improve.

**Transparent**—We operate as an open book. We create, over communicate and reinforce clarity in our work. We are trustworthy. We assume a positive intent from others. We work with integrity. We seek ways to increase transparency internally and externally.

**Authentic**—We are unique. We are real. We are different. We are special. We are optimistic. We are exceptional and proud of it. We are comfortable being different. We are open-minded. We are honest. We embrace and value family. We live what we speak. We create clear expectations and work hard to manage those expectations.

# Final Thoughts

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The City of Fruita provides several core services including provision of irrigation water, storm water management, wastewater collections and treatment, street maintenance, park maintenance, police services, animal control, recreation programs, parks management, planning services, code enforcement, special events management, open space protection, transit service, solid waste pick-up and many more. Our service area and population tend to grow, and costs inevitably increase. We focus heavily on being more efficient and effective with the City resources. It is important we know who we are as a community, where we are heading and why—then we tie our efforts and resources to achieving just that.

Fruita thrives because in general people are positive, welcoming, and love where they live. Ironically, this is not all too common among the thousands of communities across the country. Fruita does not need more critics, but doers, co-creators who get involved with a positive focus. Team Fruita is not cliché but proven, as we are viewed across the valley as the forward-thinking community that gets things done, that leads the way, that is the fun, cool, unique and a funky place that people like to be. We are most fortunate to live and serve in a community with such a high level of quality people and place. We are a safe community, where our children can walk to school. We are a friendly, welcoming community where newcomers and old timers can easily get involved, where tourists feel like locals. We are a community that is surrounded by some of the most amazing outdoor recreational opportunities within minutes and without traffic. We are a unique community with amazing small businesses and arts and culture. We have so much to enjoy and much potential. Remembering this and why we do what we do, you will love serving and we will have a fun time doing it while seeing tangible positive results.

As a City Council member it is your job to set the tone and the vision for our community. Your position is truly one of leadership. It is a difficult job—one that very few people outside the position understand, but it also provides great opportunities for accomplishment. You will occasionally be faced with a crowd of people at a Council meeting that do or do not want something to occur. In these situations, try to remember that your job is to lead and make good decisions for the entire community, not necessarily react to the will of the crowd of people before you. Try and remember, if 100 people showed up to a public hearing (which would be a lot of people) they would still be representing less than 1 percent of the residents of Fruita. As a Council member, one of your hardest jobs will be to base your decisions on the overall good of 100 percent of the community, not just those standing before you. This is a lot easier said than done.

# Additional Resources

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This is the section that makes the handbook seem too thick, but they are additional resources that you will find helpful, interesting and something the City Manager will refer to often.

## ***Leadership Resources***

These resources are those that I have found very helpful and will refer to often. I hope you will make time to browse and think over. I would be happy to discuss at any time.

**How Great Leaders Inspire Action (Start with Why) by Simon Sinek Overview**

**Decisive by Chip & Dan Heath WRAP Process**

**Good To Great and the Social Sectors by Jim Collins Book Review**

**Great by Choice by Jim Collins Book Review**

**The Five Dysfunctions of a Team Model**

**The advantage: Organizational Health Model**

**A Whole New Mind by Dan Pink Discussion Guide**

## ***Organizational Chart***

### ***ICMA Code of Ethics***

Your City Manager is a Credentialed Manager and member of the International City/County Manager's Association and as such subscribes to this Code of Ethics.

## ***Reference Materials for Elected Officials***

**Council-Manager Form Brochure**

**Governing Body & Staff Relations, CIRSA**

**Handling Citizen Conflicts at Governing Body Meetings**

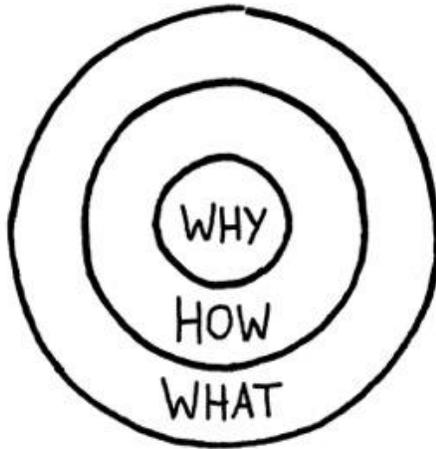
***Ex-Parte Contacts Memo from City Attorney***

***Ethics, Liability & Best Practices Handbook by CIRSA & CML***

***CML Elected Official's Starter Kit***

***City Charter***

# The Golden Circle



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## What

Every organization on the planet knows WHAT they do. These are products they sell or the services they offer.

## How

Some organizations know HOW they do it. These are the things that make them special or set them apart from their competition.

## Why

Very few organizations know WHY they do what they do. WHY is not about making money. That's a result. It's a purpose, cause or belief. It's the very reason your organization exists.

Watching the TED talk by Simon Sinek, titled "How great leaders inspire action" is well worth 18 minutes.

[https://www.ted.com/talks/simon\\_sinek\\_how\\_great\\_leaders\\_inspire\\_action?language=en](https://www.ted.com/talks/simon_sinek_how_great_leaders_inspire_action?language=en)

# DECISIVE

## THE WRAP PROCESS



To make better choices, we must avoid the most common decision-making biases. Being aware of these biases isn't sufficient to avoid them, but a process can help. The WRAP process can help us make better, bolder decisions.

### W IDEN YOUR OPTIONS

Narrow framing leads us to overlook options. (*Teenagers and executives often make "whether or not" decisions.*) We need to uncover new options and, when possible, consider them simultaneously through multitasking. (*Think AND not OR.*) Where can you find new options? Find someone who has solved your problem. Try laddering: First look for current bright spots (*local*), then best practices (*regional*) and then analogies from related domains (*distant*).

### R EALITY-TEST YOUR ASSUMPTIONS

In assessing our options, the confirmation bias leads us to collect skewed, self-serving information. To combat that bias, we can ask disconfirming questions (*What problems does the iPod have?*). We can also zoom out (*looking for base rates*) and zoom in (*seeking more texture*). And whenever possible we should ooch, conducting small experiments to teach us more. Why predict when you can know?

### A TTAIN DISTANCE BEFORE DECIDING

Short-term emotion tempts us to make choices that are bad in the long term. To avoid that, we need to attain distance by shifting perspective: What would I tell my best friend to do? Or, what would my successor do? (*Or try 10/10/10.*) When decisions are agonizing, we need to clarify our core priorities—and go on the offensive for them. (*Remember the stainless steel bolts on the Navy ship.*)

### P REPARE TO BE WRONG

We are overconfident, thinking we know how the future will unfold when we really don't. We should prepare for bad outcomes (*premortem*) as well as good ones (*preparade*). And what would make us reconsider our decisions? We can set tripwires that snap us to attention at the right moments. (*David Lee Roth's brown M&M, Zappos' \$1,000 offer*)

## Book Review

Collins, J.

Good to Great and the Social Sectors: A monograph to accompany Good to Great (why business thinking is not the answer).

Boulder, Colorado: author, 2005.

Reviewed by Raymond A. Lemay

This 35-page self-published monograph goes over the important lessons in Collins' earlier publication, *Good to Great*, and attempts to apply them to the social (human service) sectors. Its beginning premise is that social services should not adopt the business model. "Most businesses – like most of anything else in life – fall somewhere between mediocre and good. Few are great... So, then, why would we want to import the practices of mediocrity into the social sectors?" (p. 1).

The monograph, easily available through Chapters or Amazon, should be read as a concluding chapter to Collins original *Good to Great* book (Collins, 2001), that has been a remarkable best seller. The original book is the result of a very ambitious research project. The twenty-one members of Jim Collins' research team in Bolder Colorado, reviewed a huge amount of financial data and other documentation for 1, 435 companies that appeared in the 1965, 1975, 1985 and 1995 listings of the Fortune 500. The criteria for selecting the good-to-great companies were strict.

"The company shows a pattern of "good" performance punctuated by a transition point, after which it shifts to "great" performance. We define "great" performance as a cumulative total stock return of at least 3 times the general market for the period from the point of transition through fifteen years (T + 15). We define "good" performance as a cumulative total stock return no better than 1.25 times the general stock market for the fifteen years prior to the point of transition. Additionally, the ratio of the cumulative stock return for the fifteen years after the point of transition divided by the ratio of the cumulative stock return for the fifteen years prior to the point of transition must exceed 3" (p. 219).

Moreover, this great performance could not be an industry event but rather had to stand-alone; in other words, the company had to stand out not only from the general market but also relative to its particular industry category. The company also had to be ranked within the Fortune 500 in 1995, and still had to be performing according to the *great* criteria. At the end of this process, only eleven companies fit this metric, which meant less than one percent. Greatness, according to Collins' metric, was a rare event indeed. Collins and his team then analyzed this mountain of data and found 7 factors that best explained the differences between the great and the merely good.

## **1: Culture of discipline**

At the outset, the author suggests is that what the social sectors require is most probably similar to what is required in the business sector. In a nutshell, Collins calls this a *rigorous or relentless culture of discipline*, something that could be useful not only for businesses but for social services. Thus, Collins proposes a language of greatness (or we could call a language of excellence); it is something that needs to be developed. This mind set of greatness is proposed as alternative to mindless reliance on standardized processes and bureaucratic controls.

The author then goes on to the important points made in his original *Good to Great* (Collins, 2001) showing how each of these might apply to the social service sector. The author recognizes the important differences between businesses and the social sectors. The most important one concerns the metrics of success; in business, these are essentially financial whereas in the social sectors money is but an input. The outputs, of course, are services, and outcomes (a word not used by the author), or what he calls the benefits accrued to clients rather than stockholders. Another important difference between businesses and social services are diffuse power structures. Social services tend to be, according to the author, less hierarchical and less chain of command oriented.

## **2: Defining great**

In the social services sector, financial results will not be a measure of greatness. *Outputs* are the thing that Collins proposes as the metric of greatness and outputs are about what is delivered directly to clients. The author points to the problem that sometimes outputs are challenging to measure and that some of the measures will be qualitative in nature. The author points out that, in any event, all indicators are flawed whether they are qualitative or quantitative, they can never give you a picture of the whole. The important thing is to select indicators intelligently and then consistently monitor them, “and then tracking your trajectory with rigor” (p. 8). The author concludes this section by stating, “no matter how much you have achieved, *you will always be merely good relative to what you can become*. Greatness is an inherently dynamic process, not an end point” (p. 9).

If there is one thing that I would argue in this section is that the word that should be used is *outcomes* rather than *outputs*. In fact, I suspect that the author conflates these concepts and uses the expression output to include outcomes or as “result”. This little section provides interesting examples of the Cleveland orchestra, the New York Police Department as well as the Stanford athletic department as exemplars of the social sector.

## **3: Level 5 leadership within a diffuse power structure**

The author points out that at the top of the chain of command in social services, very often the CEO simply doesn't have the same power levers that a CEO has in a business. However, Level 5 leadership is not so much about using power as it is about bringing people along. Level 5 leadership is defined as humility combined with fierce resolve. It is even clearer in the social sector that authority does not come from power but rather from genuine leadership. People must

be *willing* to follow. Indeed, in a sense, there might be an argument that Level 5 leadership is particularly relevant for the social service sector. “*True leadership only exists if people follow when they have the freedom not to*. If people follow you because they have no choice, then you are not leading” (p. 13, italics in original).

#### **4: First who – getting the right people on the bus**

Having the right people in the right positions is one of the prime ingredients of greatness. The author describes the American school system as being a good example of where it would be very difficult to systematically get the right people on the bus and the wrong people off. Very simply, you have a very large and unwieldy system where no individual really has the power to do much, particularly when it comes to staff selection and ejection. The complications in the school system (in the U.S.) are long tenure, low salaries, few incentives, strong unions, and size/complexity. Here the author argues for a small is beautiful approach. Very simply, breaking down a school system or even a school into its smaller component systems, like a school department, makes good to great developmental process possible. Thus, it is not a question of transforming the school system or even a complete school but rather aiming to be good to great within one’s department. The author provides an example of how this was done in one school. It is a very illustrative example and it’s worth being read.

Then the author provides the following sobering comments, “the great companies ... focused on getting and hanging on to the right people in the first place – those who are productively neurotic, those who are *self*-motivated and *self*-disciplined, those who wake up every day, compulsively driven to do the best they can because it is simply part of their DNA. In the social sectors, when big incentives (or compensation at all, in the case of volunteers) are simply not possible, the First Who principle becomes even more important. Lack of resources is no excuse for lack of rigor – it makes selectivity all the more vital” (p. 15).

Obviously, rigor and creativity go hand in hand for this issue particularly. A good example that is provided by the author is Wendy Kopp who began the *Teach for America* program. Wendy Kopp had a vision that was to convince the best graduates from the best universities to spend the first two years of their careers “teaching low income kids in the public education system” (p. 15). She got \$26,000 from Mobil Corporation to start her venture and then she went from university to university, colleges like Yale, Harvard, Michigan and the like trying to convince graduates to work for “low pay in tough classrooms” (p. 16). The first thing she did was to tap in to people’s idealistic passions. People in fact do want to do good: “she basically said to all these overachieving college students: “If you’re really good, you might be able to join our cause”” (p. 16). She then set up a very rigorous screening process and made it actually difficult for people to volunteer. “As of 2005, more than 97,000 individuals applied to be part of Teach for America..., and only 14,100 made the cut, while revenues grew to nearly \$40 million in annual support” (p. 16).

The author points out that the social sectors have one compelling advantage over businesses, and it obviously isn’t money but rather that individuals crave for meaning in their lives. Appealing to people’s ideals is indeed powerful and it is something that the author comes back to a number of times in his book.

## 5: Facing the brutal facts

The original *Good to Great* goes on quite a bit about the importance of facing the brutal facts and that this is the only way that one can make the first step towards achieving greatness. For many organizations, one of the brutal facts is that we are not good as we think (Lemay, 2005). On the ground, where it counts, with our clients, a lot of the folks we serve do relatively poorly and we cannot claim that there are thriving. There is only one measure of success and that is to be found in the outcomes of our clients. It is on this point where I think Collins could be a little clearer. His conflation of outputs and outcomes is to my mind problematic. In the social sector, we don't monitor outputs all that well and what we do see in fact is that the people we serve could be doing a lot better. But what we hardly do at all is monitor outcomes: client benefits. Are clients able to lead good lives after they have been served by a program in the social sector? We do need to take stock and ownership of our results. To move to greatness, we need to understand how mediocre we really are to begin with. We do need to take seriously, *on a day-to-day basis*, service screw-ups and less than satisfactory results. We need *on a daily basis* to brutally face, one case at a time, the difficulties that face us; moreover, we do need to set up powerful monitoring mechanisms that allow us to gauge the extent to which we improve those results on a case by case basis and, of course, in the aggregate.

Part of the **fierce resolve** we need to develop in relation to the bad news of our current results is that getting better results, improving service outputs, and achieving greatness, will be a lot of hard work. It will take some time to get the results that we think we should be achieving.

## 6: The hedgehog concept

The author points out that hedgehog concept is best understood by considering three intersecting circles that must be responded to. "1) what you are deeply passionate about, 2) what you can be the best in the world, and 3) what best drives your economic engine" (p. 17).

Collins then goes on to adapt the hedgehog concepts: the economic engine is problematic; in some cases, it's not only about money but rather volunteers and good will. Thus, the author has changed the third circle and has renamed it the *resource engine* and he composes resources of three parts: *time, money and brand*. The author point out that brand is of importance, brand is the thing that people focus on and connect to. Indeed, there is a question of building an emotional connection to people who have trust in the organization and want to give to with either with money, time, or otherwise. Indeed, a good argument could be made that clients need to have confidence in the brand and such confidence enhances the effectiveness of the services provided under the brand name. Certainly in my mind, the whole issue of brand has been not well understood in the social services sector and here the author points out that it is one of the key component parts of the hedgehog concept that we must respond to.

On page 22, the author describes a Homelessness service in South Bend, Indiana, that developed its own distinct hedgehog concept. "They believed the Center could become the best in the world at breaking the cycle of homelessness in Bibletowns of the Midwest by challenging homeless people to take responsibility for their own lives. They soon realized that building a

resource engine primarily around government funding would run counter to the Center's Hedgehog Concept.

"Homelessness is a profound disconnectedness from self, family and community," explained Buscareno. "This insight fueled everything we did. We organized our whole organization around connecting people – homeless people, benefactors, volunteers, and staff – to self, family and community. Aggressively pursuing government money does not make any sense with this type of thinking, but aggressively connecting volunteers and local donors on a personal level with homeless people makes absolute sense" (p. 22). The author quotes Peter Drucker who admonished that "the foundation for doing good is doing well" (p. 22).

### **7: Turning the flywheel – building momentum by building the brand**

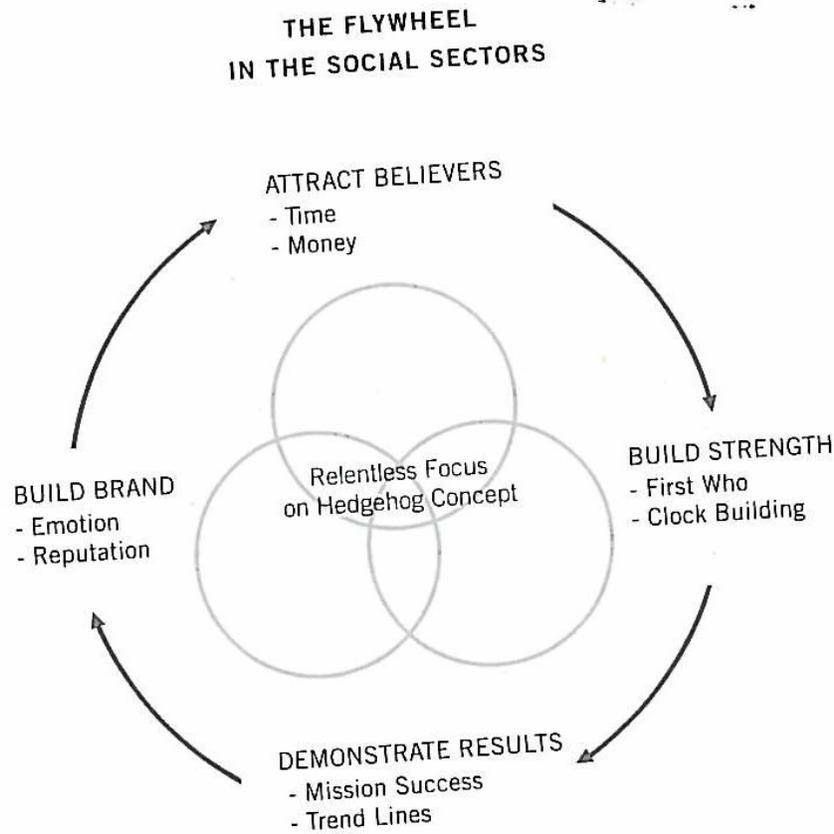
Good to great is best understood as a developmental process. The author points out that an important thing is to build momentum, at the beginning, slowly but surely but ever gathering speed. This is where the issue of brand is the most touched upon, in the business sector flywheel works very well when you have superior financial results, then people will line up to throw money at you and invest in your sector. However, when a social services agency has good financial results, run surpluses for instance, the reaction is usually the contrary: why would anybody give you any more money or new grants? However, people will give you more money if in fact you have a recognized brand that has established itself as a great organization. The author proposes a flywheel figure (next page).

At the end, the author concludes that it takes time to build greatness. It cannot be done overnight, it needs a lot of hard work, a great deal of rigor and, obviously, an obstinate belief that this is important, it needs to be done. The important thing is to embark on the journey, "it might take decades to change the entire systemic context, and you might be retired or dead by the time those changes come..." (p. 30). What the author concludes is that "greatness is not a function of circumstance. Greatness, it turns out, is largely a matter of conscious choice, and discipline" (p. 31).

### **Conclusion**

Jim Collins in his introduction suggests that *the good is the enemy of the great* in that sometimes we become fairly self-satisfied with the fact that good is good enough, thus preventing us from making the effort and the leap to greatness. This is an interesting inversion of Voltaire's aphorism that *the best is the enemy of the good*. Voltaire's point is that very often we put off action because we simply cannot do the best and the best is unavailable. General George Patton had a similar aphorism when he suggested that a good plan today is better than the best plan tomorrow.

The issue, however, is one of being satisfied with anything less than excellence. Collins's point is that one must not be satisfied with good enough, one must strive to be the best. At the end of his book, he makes an impassioned plea for leading a meaningful life and making a significant



contribution. This can probably only happen if one strives for the best. Voltaire's point, as George Patton suggests, is one of action versus inaction. Both of these aphorisms, however, are reconcilable with the notion of developmental progress. To get to great, one will have to pass through good. The key thing to remember is that one is in fact moving towards greatness. Moreover, there are times when action is required and good enough is all that is available. In such circumstances, however, good enough must be recognized for what it is: not great.

It is in fact intriguing in Collins's book which I guess is somewhat in support Patton's law that Level 5 CEOs didn't know at the outset exactly what they were going to do to achieve greatness, but they did begin to move nonetheless. They moved and took action and what they did first was selecting the right people: People undoubtedly who had a passion for greatness, who had the potential for Level 5 leadership, and who would share in the important work of developing a great organization.

This is a good companion booklet to the Good to Great book which I heartily recommend. It demonstrates quite unequivocally that good to great thinking and its component concepts are equally applicable to social services and could serve to revolutionize a program or an organization.

**Sources:**

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Lemay, R. (2001). Good Intentions and Hard Work Are Not Enough: Review of: Levy, P. F., (2001). The Nut Island Effect: When Good Teams Go Wrong. *SRV-VRS: The International Social Role Valorization Journal*, 4 (1&2), 94-97.

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Collins described attributes of companies who achieved ten times market value of their competitors. Three main behaviors include:

#### **Fanatic discipline**

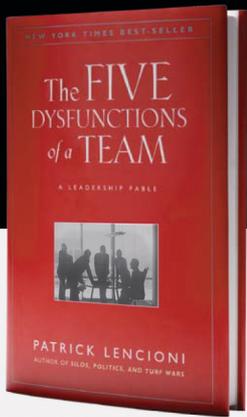
Speaks to a discipline to not go too far so as to stretch yourself thin to where you are then unprepared when unexpected things hit you. Establish a standard of performance and hold to the philosophy even in the toughest conditions. Success is based not on an average but on consistent performance. The signature of mediocrity is not in an unwillingness to change but in chronic inconsistency.

#### **Empirical creativity**

Creativity needs to be supported by empirical evidence. An analogy used was that of firing bullets to find the angle to the target so you make the most use of your gunpowder when firing the cannonball. Bet on something you know is going to work. Blend creativity and discipline. Creativity is natural, discipline is not. Discipline amplifies creativity rather than destroy it.

#### **Productive paranoia**

The only mistakes you can learn from are the ones you survive. You have to be optimistic, but there is awareness that the world is a scary place. Successful companies maintain a ratio of 3 to 10 times cash to assets, a practice started when they were small. The dedication of a financial buffer is not a luxury of size. It is what you do before you are in trouble, how you manage with discipline in good times so you can be strong when people need you the most.



# The Five Dysfunctions of a Team



## #1: Absence of Trust

The fear of being vulnerable with team members prevents the building of trust within the team.

## #2: Fear of Conflict

The desire to preserve artificial harmony stifles the occurrence of productive, ideological conflict.

## #3: Lack of Commitment

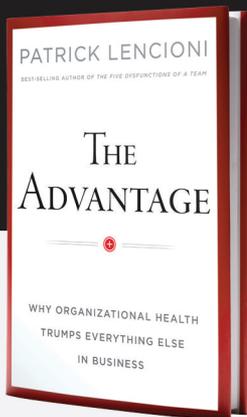
The lack of clarity or buy-in prevents team members from making decisions they will stick to.

## #4: Avoidance of Accountability

The need to avoid interpersonal discomfort prevents team members from holding one another accountable for their behaviors and performance.

## #5: Inattention to Results

The pursuit of individual goals and personal status erodes the focus on collective success.



# The Advantage: Organizational Health Model



## Discipline 1: Build a Cohesive Leadership Team

Cohesive teams build trust, eliminate politics, and increase efficiency by...

- Knowing one another's unique strengths and weaknesses
- Openly engaging in constructive ideological conflict
- Holding one another accountable for behaviors and actions
- Committing to group decisions

## Discipline 2: Create Clarity

Healthy organizations minimize the potential for confusion by clarifying...

- Why do we exist?
- How do we behave?
- What do we do?
- How will we succeed?
- What is most important, right now?
- Who must do what?

## Discipline 3: Over-Communicate Clarity

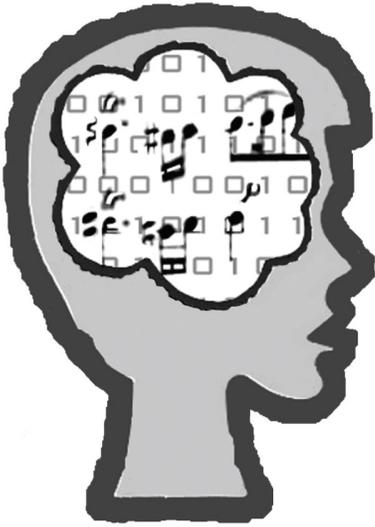
Healthy organizations align their employees around organizational clarity by communicating key messages through...

- **Repetition:** Don't be afraid to repeat the same message, again and again
- **Simplicity:** The more complicated the message, the more potential for confusion and inconsistency
- **Multiple mediums:** People react to information in many ways; use a variety of mediums
- **Cascading messages:** Leaders communicate key messages to direct reports; the cycle repeats itself until the message is heard by all

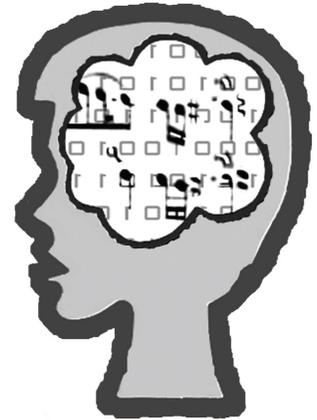
## Discipline 4: Reinforce Clarity

Organizations sustain their health by ensuring consistency in...

- Hiring
- Managing performance
- Rewards and recognition
- Employee dismissal



# A WHOLE NEW MIND DISCUSSION GUIDE



1. In what ways does your current job involve R-directed thinking? Could your organization benefit from more R-directed thinking? Less?
2. How innate are the six abilities Pink discusses (Design, Story, Symphony, Empathy, Play and Meaning)? Which of them is your strongest? Weakest? Which is most important for your current job?
3. Consider the three questions Pink poses regarding your current work: Can someone overseas do it cheaper? Can a computer do it faster? Am I offering something that satisfies the nonmaterial, transcendent desires of an abundant age? Does your work pass this three-part test?
4. How will the three forces Pink describes be affected by the economic recession?
5. Did Pink convince you of the importance of design? In what ways could you and your colleagues instill design thinking in your organization?
6. What are the implications of Pink's argument for education? Are you yourself a product of the SAT-ocracy? If so, how did it help or hurt you?
7. What role does storytelling have in your work? What role could it have? Does your organization have a story to tell? Do your clients and customers know that story?
8. How do you use symphonic thinking in your job? How could this right-brain ability benefit your organization?

9. Is empathy an important part of your work? How could empathy be used in your organization to improve your offerings? How could empathy make your organization a better place to work?

10. What role do play and humor have in your workplace? Could play or humor improve your service to clients? Do you agree with Pink that a sense of humor can make someone a better manager? Why or why not?

11. What do you think of Pink's assertion that "meaning is the new money"? How does your organization create meaning for its customers? For its employees?

12. Does your current job pass the Collins 20-10 test that Pink outlines in the portfolio section of Chapter 9: If you had \$20 million or knew that you had only 10 years to live, would you still be doing what you are doing now? What can your organization do to ensure that its employees' experiences pass this test?

13. What do you think of Pink's suggestion that spirituality should have a place in the workplace. What is your organization's approach to spirituality? Should it change?

14. Did you do any of the exercises Pink suggests in the book? Which ones would you recommend to others in your organization? Why?

15. What are some of the barriers to developing the six abilities Pink describes in your own organization?

16. How do you think workers in Asia would react to this book?

17. Pink talks about psychological androgyny and aligns R-directed thinking with one's feminine side. Do women have a comparative advantage over men in this world? Is this true in your organization? Why or why not?

18. Would you add any other abilities to Pink's list of six senses?

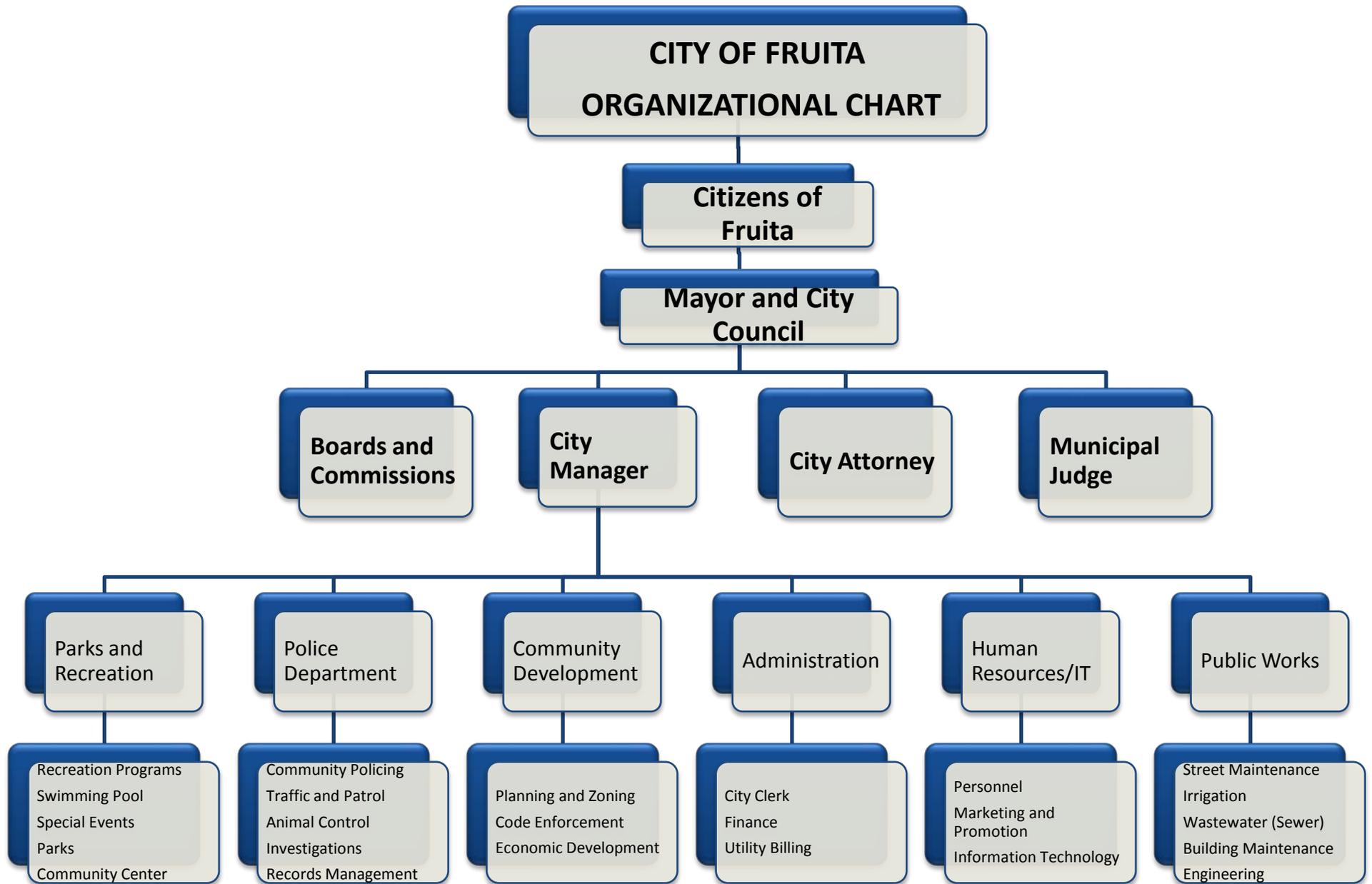
19. What in this book made you laugh? What made you angry. Why?

Your questions:

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# ICMA CODE OF ETHICS

The mission of ICMA is to create excellence in local governance by developing and fostering professional local government management worldwide. To further this mission, certain principles, as enforced by the Rules of Procedure, shall govern the conduct of every member of ICMA, who shall:

1. We believe professional management is essential to efficient and democratic local government by elected officials.
2. Affirm the dignity and worth of local government services and maintain a deep sense of social responsibility as a trusted public servant.
3. Be dedicated to the highest ideals of honor and integrity in all public and personal relationships in order that the member may merit the respect and confidence of the elected officials, of other officials and employees, and of the public.
4. Serve the best interests of the people.
5. Submit policy proposals to elected officials; provide them with facts and advice on matters of policy as a basis for making decisions and setting community goals; and uphold and implement local government policies adopted by elected officials.
6. Recognize that elected representatives of the people are entitled to the credit for the establishment of local government policies; responsibility for policy execution rests with the members.
7. Refrain from all political activities which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body.
8. Make it a duty continually to improve the member's professional ability and to develop the competence of associates in the use of management techniques.
9. Keep the community informed on local government affairs; encourage communication between the citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.
10. Resist any encroachment on professional responsibilities, believing the member should be free to carry out official policies without interference, and handle each problem without discrimination on the basis of principle and justice.
11. Handle all matters of personnel on the basis of merit so that fairness and impartiality govern a member's decisions pertaining to appointments, pay adjustments, promotions, and discipline.
12. Public office is a public trust. A member shall not leverage his or her position for personal gain or benefit.

*Adopted by the ICMA Executive Board in 1924, and most recently revised by the membership in October 2019.*



City of Tampa, Florida

## THE ROLE OF THE MAYOR OR CHIEF ELECTED OFFICIAL

Typically, the mayor or board chairperson in a council-manager community is a voting member of the governing body who may be either directly elected, as in 69 percent of council-manager communities, or who is selected by and from among their colleagues on the governing body. The mayor or chairperson is the public face of the community who presides at meetings, assigns agenda items to committees, facilitates communication and understanding between elected and appointed officials, and assists the governing body in setting goals and advocating policy decisions.

## THE ROLE OF ELECTED OFFICIALS

Under the council-manager form, the elected officials (e.g. the council or board) are the legislative body and the community's policy makers. Power is centralized in this body, which approves the budget and adopts local laws and regulations, for example. The elected officials also focus on the community's big-picture goals, such as community growth and sustainability.

The elected officials hire a professional city, town, or county manager based on that person's education, experience, skills, and abilities and NOT on their political allegiances. The elected officials supervise the manager's performance, and if that person is not responsive and effective in their role, the elected officials have the authority to remove her or him at any time.



City of Cedar Park, Texas

## THE MANAGER'S ROLE

The manager is an at-will employee who can be fired by a majority of the elected officials, consistent with local laws or any employment agreements. This person

- Prepares a budget for the governing body's consideration.
- Recruits, hires, supervises, and terminates government staff.
- Serves as the governing body's chief advisor by providing complete and objective information about local operations, discussing options, offering an assessment of the long-term consequences of decisions, and making policy recommendations.
- Carries out the policies established by the governing body.

## WHAT ROLE DO RESIDENTS PLAY?

Under council-manager government, local governments often actively engage and involve their residents in community decision making. Residents can guide their community by serving on boards and commissions, participating in visioning and strategic planning sessions, and designing community-oriented local government services.

# Council-Manager Form of Government

For more information, contact

[icma.org/contactus](https://icma.org/contactus)

@ICMA ICMAorg

To learn more about professional local government management, visit [icma.org/professional-local-government-management](https://icma.org/professional-local-government-management)

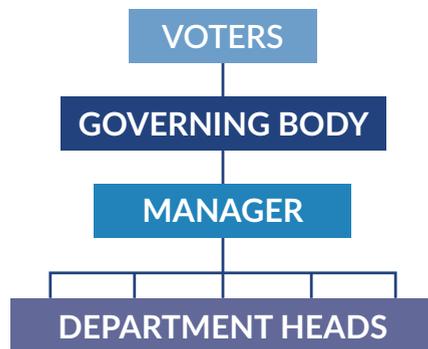


## What is the council-manager form of government?

The council-manager form is the most popular structure of government in the United States among municipalities with populations of 2,500 or more. It is one of several ways in which U.S. municipalities and counties can organize.

Under this form, residents elect a governing body—including a chief elected official, such as a mayor or board chairperson—to adopt legislation and set policy. The governing body then hires a manager or administrator with broad executive authority to carry out those policies and oversee the local government's day-to-day operations.

### The Council-Manager Form



## What's so special about the council-manager form of government?

Born out of the U.S. progressive reform movement at the turn of the 20th century, the council-manager form was created to combat corruption and unethical activity within local government by promoting nonpolitical management that is effective, transparent, responsive, and accountable.

The council-manager form of government recognizes the critical role of elected officials as policy makers, who focus on mapping out a collective vision for the community and establishing the policies that govern it. The form also recognizes the need for a highly-qualified individual who is devoted exclusively to the delivery of services to residents.

Think about the structure used by many corporations, in which the board of directors hires an experienced CEO, who is granted broad, executive authority to run the organization. While these boards establish the company's overall policy direction, the CEO oversees implementation of that policy.

## What types of communities use the council-manager form of government?

Today more than 120 million people in the U.S. live in municipalities that operate under the council-manager form. Fifty-four percent of the more than 4,300 U.S. municipalities with populations of 10,000 or more use the form, as do 59 percent of the 347 municipalities with populations greater than 100,000. More than 800 counties also employ a similar system.

## How can council-manager government benefit my community?

- **Flexibility**—The council-manager form can adapt to local needs and demands. While governing bodies in some council-manager communities are elected at large, for example, others are elected by district or by a combination of an at-large-and-by-district system to respond to local needs.
- **Clearly Defined Roles**—Under the council-manager form, there is a clear distinction between the administrative role of the manager and the political and policy roles of the governing body, lead by the mayor. The day-to-day operations of the local government organization reside with the appointed manager, allowing elected officials to devote their time and energy to policy development and the assessment of the effectiveness of those policies within the community.
- **A Roadmap for Success**—The council-manager form is the system of local government under which professional management is most likely to succeed. Under this system, professional managers can focus on service delivery, policy implementation, and performance management and can align the local government's services with the values, mission, and policy goals defined by the community and elected officials.

## How do we know that council-manager government works?

- The Equipt to Innovate Initiative—a framework of seven essential elements that define high-performance government and empower innovation—found in 2017 that top-performing cities in all but one element employed the council-manager form of government. In 2018, the study's overall top performer was also council-manager.

- Two-thirds of Moody's Aaa-bond-rated communities are run by professional local government managers, and many operate under the council-manager form of government.
- An IBM Global Business Services report titled "Smarter, Faster, Cheaper" found that cities that operate under the council-manager form of government are nearly 10 percent more efficient than those that operate under the mayor-council form.
- The National Civic League, America's oldest advocate for community democracy, has endorsed council-manager government through its *Model City Charter* since 1915.
- The majority of communities recognized since 2013 with the National Civic League's coveted All-America City Award have been council-manager.

## Does it cost more for a community to adopt the council-manager form and hire a professional manager?

Many local governments have *reduced* their overall costs after hiring a professional manager. Savings can come from decreased operating costs, increased efficiency and productivity, improved revenue collection, and effective use of technology. The economic health of the community may also benefit from the implementation of improved business development and retention strategies.

## How can my community adopt the council-manager form of government?

Methods vary from state to state, but most communities can adopt council-manager government through a charter, local ordinance, state enabling law, or by voter referendum. For information on how your community can adopt council-manager government, contact your state municipal league, state and local government association, or association of counties. You can find contact information for these organizations at [icma.org/state-localgovassns](http://icma.org/state-localgovassns) or [ncl.org/state-municipal-leagues](http://ncl.org/state-municipal-leagues).

## Once my community adopts council-manager government, how do we hire a professional manager?

The vacancy is often announced in *Leadership Matters*, ICMA's weekly e-newsletter; through the ICMA Job Center at [icma.org/job-center](http://icma.org/job-center); and through state league publications,

and qualified candidates are invited to apply. Elected officials may also hire an executive recruitment firm to assist them with the selection process. Interested parties may apply directly to the governing body or to the recruitment firm, which reviews the applications and interviews qualified candidates. *ICMA makes no recommendations regarding candidates.* Additional information on hiring a professional local government manager is available in ICMA's *Recruitment Guidelines Handbook*. Visit [icma.org/documents/recruitment-guidelines](http://icma.org/documents/recruitment-guidelines) to download a copy.

## What kind of educational and on-the-job experience do professional local government managers generally have?

Sixty-five percent of managers surveyed by ICMA indicated that they had earned a master's (usually in public administration, business, or public policy), or other advanced degree. Survey respondents also said that they had spent an average of more than 20 years working in the local government management profession.

## What is ICMA and why is membership in that organization important?

ICMA, the International City/County Management Association, is the professional and educational "home" for more than 12,000 appointed managers and administrators serving cities, towns, counties, other local governments, and regional entities in 40 countries throughout the world.

In addition to gaining access to valuable resources and lifelong professional development opportunities, appointed local government managers who are members of ICMA are bound by its Code of Ethics, which commits members to a set of ethical standards of honesty and integrity that go beyond those required by the law. This stringently enforced code specifies 12 ethical principles of personal and professional conduct, including dedication to good government. For more information, visit [icma.org/ethics](http://icma.org/ethics).

Finally, through its Voluntary Credentialing Program, ICMA recognizes individual members who are qualified by a combination of education and experience, adherence to high standards of integrity, and an assessed commitment to lifelong learning and professional development. ICMA members who meet these requirements may earn designation as an ICMA Credentialed Manager. For more information on ICMA's Voluntary Credentialing Program, visit [icma.org/voluntary-credentialing-program-overview](http://icma.org/voluntary-credentialing-program-overview).

## GOVERNING BODY AND STAFF RELATIONS

by Tami Tanoue, CIRSA Executive Director

The municipal governing body's staff, particularly your manager/administrator, is one of your key resources in carrying out the work of governance. Here are some suggestions for maximizing the use of this valuable resource while reducing the risk of liability.

### **Reduce Your Involvement In Administrative Matters**

If your municipality has a manager or administrator format in place, you are fortunate. Many municipalities are still aspiring to achieve this format. Don't squander this resource, then, by over-involving yourselves in administrative matters.

A manager/administrator format frees up the governing body to do its most important work: envisioning and creating a great future for the community. These visionary, forward-looking, long-range functions cannot be undertaken by anyone else. The more your attention is diverted to administrative details, the greater the likelihood that the "big picture" will go unattended. Focus your time and energy on the vision, the priorities, and the overall goals for the municipality, and leave the details of execution to your manager/administrator and staff.

### **Speak With One Voice**

It's a basic tenet of any well-run organization that every position should report to one boss. How is this tenet carried out for the manager/administrator position, when there are seven (or more) people to whom that position is accountable?

For the manager/administrator and the governing body relationship to be workable, the members of the governing body may discuss and debate with many voices, but must decide as one. Once a direction has been determined by the body as a whole, it's time for all members to get behind the decision, even those who may have been on the losing side of a vote. Resolve to speak with ONE voice once the discussion and debate are over.

That means the burden must be on the governing body to sort out and reconcile the goals of seven different people, and to establish a singular set of goals, priorities, and directions for the manager/administrator. Otherwise, the manager/administrator will be in the untenable position of trying to figure out a direction from a cacophony of voices.

### **Respect The Chain Of Command**

Another tenet of every effectively functioning organization is the chain of command. Ideally, the manager/administrator is the single point of contact between the governing body and the rest of the municipal staff (except for any other “direct reports” to the governing body). Each position below the level of the manager/administrator reports to a single supervisor or department head, all the way up the chain of command. Of course, in most entities, the chain of command will not be in place with military-style precision; and there may be some matters (such as harassment complaints) where strict adherence to a chain of command is not necessarily appropriate. By and large, though, this administrative structure enhances accountability and increases efficiency.

Sometimes, a breach in the chain of command occurs by the actions of one or more elected officials who choose to bypass the manager/administrator and deal directly with personnel lower in the chain of command. Other times, a breach occurs because subordinate personnel want to bypass their own supervisor or the manager/administrator and pull an elected official into their personnel issues. But either way, once the chain of command is breached, the resulting disruption to the organization can be severe and long-lasting.

If the chain of command is not respected, the manager/administrator and other supervisory personnel are disempowered. Why even have a manager/administrator if he or she can simply be bypassed? It's a step away from an administrative structure that's still coveted by many communities, and a waste of the resources that have been committed to that structure.

So respect the chain of command, particularly where personnel matters are concerned. Make sure you stick to the “big picture” issues and those issues that involve the level of your direct reports, not others below that level. Personnel matters are among the highest-risk liability areas, so empowering your staff to deal appropriately with those matters is a risk management suggestion for you!

### **Use Your Powers Wisely And Humanely**

Remember when municipal leaders used to be called the “City Fathers”? In this age, the more apt term may be the “ultimate parental authority figures of the community.” As municipal leaders, you possess both actual powers and perceived powers. In the area of perceived powers, the tone you set in your interactions, particularly in public, carries heavy weight. If your interactions with one another, the public, or the staff are distrustful, disrespectful, demeaning, negative, etc., you can be assured that that tone is permeating the entire municipality. So be very careful how you use that perceived power.

Discussion, debate, and even disagreement are a healthy part of the decision-making process. But make sure that your discussions are carried out in a respectful way. Use courtesy and tact in your interactions, particularly in public settings.

And keep in mind that your staff members are professionals, but they're humans, too! Because of the perceived power behind your statements, something that you say casually may be given great weight, or may have the power to hurt. Don't participate in or allow staff-bashing in public settings; look for ways to focus on the issue rather than people or personalities. Be mindful of the appropriate time and setting for delivering negative feedback.

### **View Your Manager/Administrator As A Resource**

This final suggestion – to view your manager/administrator as a resource to you – seems self-evident. But sometimes, an incoming group of elected officials will choose to view the manager/administrator and staff as the “enemy.” Why? Perhaps it’s because they served the outgoing elected officials loyally. But does that make them the “enemy”? Doesn’t that mean they have the ability and desire to serve the new group loyally as well? So resist the urge to “clean house” reflexively just because you’re newly elected and want to change directions.

Commit to a “no surprises” approach when working with your manager/administrator. It benefits no one to play the “gotcha” game at a public meeting. “Stump the staff” may seem like a fun sport, but it’s unproductive. There’s nothing wrong with giving a “heads up” to the manager/administrator on issues that may be of concern to you, or asking for thoughts in advance about something you may want to raise at a governing body meeting. That’s how you use the manager/administrator as a resource to help you do well, and look good while doing it... a win-win situation!

### **Conclusion**

The municipality wins when there’s a great partnership between the governing body and the manager/administrator and staff. By following these suggestions, you’ll foster an environment to create the best possible future for your community.

# HANDLING CITIZEN CONFLICTS AT GOVERNING BODY MEETINGS

by Tami Tanoue, CIRSA Executive Director

A good meeting is a thing of beauty. The governing body's running on all cylinders. All members are engaged and informed, and each member has an equal opportunity to speak. Citizens have the opportunity to participate at appropriate points in the meeting, such as during public comment and in public hearings, and arrive well-prepared with a good understanding of the norms of expected conduct. There's give-and-take as individual perspectives are aired, but discussions remain courteous and respectful. Time is used efficiently, and at no point are proceedings unnecessarily bogged down. The decisions made are wise, well-considered, even brilliant. And it's not even midnight when the meeting is adjourned!

A bad meeting is nothing but frustrating. It's chaotic and inefficient, with the same issues being rehashed over and over. Public comment period becomes a flash point for flaring tempers, rather than a constructive opportunity for citizen input. Or public comment period may go on for so long that everyone's exhausted by the time the rest of the agenda rolls around. Things may get so out of hand that law enforcement has to step in to restore order. Only the loudest members get to participate in the discussion. The end result may be ill-considered decisions or no decisions. Meetings may commonly be referred to as the "Thursday (or pick the evening of your choice) Night Fights."

Are your governing body's meetings good or bad? If they're bad, read on...these suggestions may help! If they're good, these suggestions may take you from good to great!

## **The Groundwork: Rules of Procedure**

First and foremost, rules of procedure need to be in place, and everyone needs to understand and follow the rules. If your governing body doesn't already have rules in place, gather some examples from other municipalities. Make sure you're not "borrowing" from a municipality whose legal structure is not the same as yours. Colorado municipalities come in 4 basic types: statutory mayor-council cities, statutory council-manager cities, statutory towns, and home rule municipalities (and there's one "territorial charter" municipality, Georgetown). If you "borrow" from the wrong type of municipality, you may end up with procedural requirements that aren't applicable.

Also, make sure the rules are reviewed from time to time by your municipality's legal counsel. Legal developments may make some rules legally questionable or risky. You don't want to find that out only after you've imposed them on someone!

The rules for conducting a meeting don't need to be overly complicated. Many governing bodies default to using some version of Robert's Rules of Order, but there are other rule sets out there that are less complex and more specifically suited to the needs of municipal governing bodies. For example, Colorado local government attorney Robert Widner has developed "Bob's Rules of Order."

### **Facility Issues**

The place where you meet, and how it's set up, has a big impact on meeting dynamics. Not every governing body has the luxury of a well-designed meeting room set up specifically for its meetings. But almost any space of sufficient size will work. Make sure it's set up meeting-style, though. Ideally, the dais/desks look out on the audience, perhaps in a curve so that members can also view each other.

Make sure you have a podium for citizens and other speakers. The absence of a podium creates uncertainty as to where a speaker should go in order to speak, and whether the speaker should stand up or remain sitting. A podium creates a natural way for speakers to be called on, stand, recognized and greeted, speak facing the governing body, and finally, yield the space and make way for the next speaker. The absence of a podium creates uncertainties in all of these things, and encourages disorder. Position the podium in the center of the room, if possible.

Look around the room and think about the possible ways in which disorder could break out. If things get too heated during a meeting and a recess needs to be called, do you have a quick way out of the room, or will you have to walk through a potentially angry audience? How close is the audience seated to the dais? Having some space between the dais and the audience seating can enhance security and reinforce the message that this is the governing body's meeting, not a general public gathering. If space is limited, consider placing staff tables in that space as a buffer.

There will be times when the presiding officer will need to wield and use a gavel, so be sure and have one handy at each meeting. While not always necessary, the loud rap of a gavel can sometimes quickly shift the focus of the attendees to the presiding officer, who can then restore order.

### **The Presiding Officer and Governing Body Members**

The presiding officer, typically the Mayor, plays a pivotal role in maintaining order and keeping the meeting moving forward. A great presiding officer leads by example in establishing a culture of civility during meetings. He or she makes sure that discussions don't get bogged down, that clarity is achieved, and that each member has a fair chance to speak. Difficult situations are handled with courtesy, finesse, generosity, and sometimes, humor.

Each member of the governing body likewise plays an important role in an orderly and productive meeting. Members reinforce the culture of civility, and "walk the talk" by recognizing the authority of the presiding officer, waiting to be recognized before speaking, not arguing back and forth, filibustering, or monopolizing the discussion, and staying on topic. Members can

also provide timely assistance when things start to get out of hand, by, for instance, requesting a short recess to cool things off.

Setting a good example for civil discourse on the governing body's side of the room will let everyone see and understand what the expected norms of conduct are in your council chambers or board room. On the other hand, if the behavior you model during meetings is uncivil, undisciplined, unproductively long-winded, off-topic, etc., then you can expect to see the same conduct reflected back at you from the public's side of the room.

### **Public Comment Periods**

Many governing bodies have at least one general public comment period during their meetings (in addition to any public hearings on specific agenda items requiring a hearing). Public comment periods provide a great opportunity for citizens to speak their minds and ask questions about issues of concern to them. Public comment periods are one of the reasons why municipal government can properly call itself the government that's "closest to the people," and is to be valued and treasured.

But it's easy for public comment period to turn into "public inquisition period," "public cross-examination period," or "public argument period." How does this dysfunction occur? Most of the time, the dynamics that turn public comment period dysfunctional are in the hands of you, the members of the governing body! If you allow yourself to argue back during public comment, or try to provide instantaneous responses to every question asked during public comment, then you're sowing the seeds of dysfunction.

As governing body members, you will always have the last word on every issue within the province of the governing body! So it's not necessary to argue back, or to try to have the last word during public comment. Whatever is said should simply be accepted for what it is...public comment. Don't take the bait even when inflammatory comments are made.

Also, don't set citizens up to expect an immediate response on every question that's raised during public comment. If you do, a couple of adverse consequences could result. One, you could be inserting yourselves into an ongoing discussion that your administrative staff may already be having on that very topic with that very citizen. You don't want to jump out in front of your staff in such a situation, especially if the issue is an administrative one to begin with. Second, you could end up giving a premature, incorrect, or thoughtless response.

There are times when public comment period appears to be getting out of hand. The tone may get harsh and personal. Profanity may be used. Individuals, such as staff members or even governing body members, may be singled out for harsh criticism. Objectionable topics may be raised. But keep in mind that, as the governing body, you can't suppress the *content* of public comment; that would be inconsistent with First Amendment protections. *Conduct* is another matter. So, for example, citizen conduct that is *actually disruptive* of your meeting can be regulated (but make sure that it's the citizen's conduct that is disrupting the meeting, not your reaction to that conduct). Time limits on public comment can be enforced. Times when the public may and may not speak can be established. But make sure you have rules in place so that everyone knows what your expectations are, and enforce those rules consistently and even-handedly.

And finally, it's important to accord every citizen a presumption of good faith and good intentions, and to treat each citizen with respect. You may have heard the same things over and over during public comment, and you may be sick of it. But for the citizen, this may be the first and only time that he or she has gathered the courage to come before you. That deserves respect! And if the citizen is a public comment "frequent flyer," respect is still warranted, even if you have come to feel that his or her comments have no value. If a citizen perceives that he or she is being disrespected, disregarded, or even demonized, then you'll be creating or worsening divisions, not bridging them.

### **Conclusion**

When a meeting is run well, the governing body's decisions are greater than the sum of its individual parts. There's a collective genius that happens when all members are able to bring their individual wisdom, experience, and perspective to decision-making. But this collective genius can't happen in a disorderly setting, and it can't happen unless each member commits to creating an environment of mutual respect, good faith, and trust. Make sure you have in place the elements that will make your meetings a "thing of beauty."

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**MEMORANDUM**

To: Fruita City Council  
From: Paul Wisor, City Attorney  
Re: Ex Parte Contacts  
Date: January 2020

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**I. Summary**

The following memorandum provides a brief and broad overview of Councilmembers' obligations with respect to ex parte contacts. This issue will arise on several occasions throughout your term. You should always feel free to contact me if you have any questions with respect to potential or actual ex parte contact.

**II. Quasi-Judicial Hearings and Ex Parte Contacts**

As Council is aware, Council may act three different capacities: legislative, administrative or quasi-judicial. In a legislative capacity, Council is often enacting new laws or making decisions that are generally applicable to the public as a whole. In an administrative capacity, Council is engaging in the basic operation of government, such as approving contracts. When acting in a quasi-judicial role, Council is required to make a determination of the rights, duties or obligations of specific individuals on the basis of the application of facts to existing legal standards pursuant to a hearing conducted by Council. Council most often serves in a quasi-judicial capacity with respect to land use matters.

In contrast to hearings on legislative or administrative matters, Council is required to operate as a panel of "judges" rather than legislators. In this capacity, Council must base its decision on any particular matter solely on the evidence presented at a public hearing, and, as a general matter, Councilmembers are prohibited from basing their decision on evidence gathered outside the public hearing. This prohibition extends to contacts between the applicant, proponents or opponents of a particular matter and members of the Council outside of publicly scheduled hearings or meetings. These contacts are known as ex parte contacts, and can be verbal, written or electronic.

Ex parte contacts can potentially invalidate the decision of Council if not properly addressed. Councilmembers are to remain impartial with respect to quasi-judicial hearings, and ex parte contacts can have the effect of spoiling such impartiality, thus prejudicing the rights of the applicant or the proponent or opponent of a particular

application. Ex parte contacts can also create a situation in which a Councilmember bases their decision on details upon which an applicant, proponent or opponent does not have the opportunity to provide their side or the story or otherwise rebut. In the event it is revealed Council conducted a quasi-judicial hearing where ex parte contacts occurred, a losing party could appeal the Council's decision. While it may be difficult to overturn quasi-judicial decisions in some situations, courts are more likely to vacate a Council decision where Council has failed to provide due process.

As such, Council should do its best to avoid ex parte contacts. The best practice for Council is not to initiate any conversation or other contact with respect to a quasi-judicial matter. To the extent someone initiates a contact with a Councilmember, it is a Councilmember's right and obligation to make clear the conversation or contact immediately needs to end, and the person initiating the contact should either express their comments to Council through participation at a public hearing or through a written comment.

In the event an ex parte contact does occur the law provides a Councilmember to cure the ex parte contact by making the contents of the communication or contact a part of the record of any relevant public hearing. Such disclosure must take place at the beginning of the public hearing on the matter. Councilmembers should be mindful of the due process rights afforded those participating in the hearing. As such, the Councilmember disclosing the ex parte contact must be sure to inform the other Councilmembers of all information obtained in the ex parte contact that may be relevant in rendering a decision on the matter. In addition, the Councilmember who engaged in the ex parte contact should participate in the public hearing and vote on the matter only if the Councilmember sincerely believes the ex parte contact did not impair their ability to impartially render a decision on the matter.

### **III. Conclusion**

Throughout the next several years you will act in a quasi-judicial capacity on numerous occasions. When doing so, it is important to remember the applicant and other interested parties are afforded certain due process rights, including an impartial tribunal. Ex parte contacts pose a significant risk to these due process rights, and Councilmembers should avoid such contacts if possible. Where ex parte contacts do occur, a Councilmember should contact the City Attorney and discuss the best way to cure the contact or otherwise preserve the integrity of the quasi-judicial hearing.

ETHICS, LIABILITY  
& BEST PRACTICES  
FOR ELECTED  
OFFICIALS

# HANDBOOK

SECOND EDITION 2019



SAFERTOGETHER



COLORADO  
MUNICIPAL  
LEAGUE

ETHICS, LIABILITY &  
BEST PRACTICES  
**HANDBOOK**  
FOR ELECTED OFFICIALS

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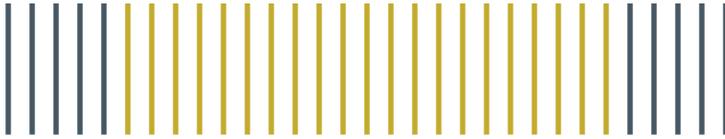
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## PREFACE

If you've stepped up to the challenges of serving as an elected official in your community, congratulations! You're dedicating your energy, wisdom, and experience towards making your city or town the best it can be. But the job of an elected official is not an easy one. Missteps can make you less effective, undermine your credibility, and even lead to liability.

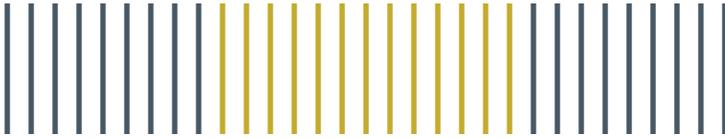
In this newly revised and expanded edition of the popular *Ethics, Liability & Best Practices Handbook for Elected Officials*, we discuss many of the issues of greatest concern to elected officials from the standpoint of maximizing excellence and effectiveness, while minimizing the risk of liability. The contributors have provided decades of service to municipalities, individually and collectively. We've tried to keep the content engaging, on-point, and light on the legalese.

At CIRSA and CML, we pride ourselves on partnering with our member local governments. CIRSA offers a wide range of risk management services, from providing property, liability, and workers' compensation coverage, to managing claims, assisting in managing your risks, providing training to elected officials and staff, and consulting on virtually every liability-related topic. Founded in 1923, CML is a nonprofit, nonpartisan organization providing services and resources to assist municipal officials in managing and serving Colorado cities and towns. CML works to empower Colorado cities and towns through legislative and legal advocacy, training, research and information, and leadership on matters of municipal interest.

We hope you will find this publication to be of value to you as you undertake the challenging and rewarding work of governing your community.

Tami A. Tanoue  
CIRSA Executive Director

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# FOREWORD

**By: William E. Bell, MPA, ICMA-CM**

**City Manager for the City of Montrose & former Executive Board President of the Colorado Municipal League (CML) and the Colorado City & County Management Association (CCCMA).**

We have all heard the old saying: “Ethics is doing the right thing when no one is watching.” Well, what about doing the right thing while everyone is watching? How refreshing it might be to sit in a nice quiet office or out on a park bench with the birds chirping in the distance, while pondering our options prior to making a decision that affects hundreds, or even thousands of people for years to come. How reassuring it might be to run all of our ideas by a panel of experts to vet the pros and cons over an extended period prior to making our next decision. Sound good? Of course it does! However, that is simply not reality for a local government official in today’s fast-paced world.

But no matter the pace or pressures, this overarching point of municipal leadership remains the same: **MAINTAINING ETHICAL INTEGRITY—AND DOING THE RIGHT THING—AT ALL TIMES IS A REQUIREMENT** for elected and appointed officials alike. Our communities are microcosms of our society, and with an ever-changing demographic we are facing ever-changing expectations as to what role we should play as local government leaders. We are all facing the unique pressures of being public servants and although it is most definitely a worthwhile and rewarding calling for most of us, it can also be frustrating, unpredictable and complicated at times.

More often than not, elected and appointed officials reach at least one point in their tenure where doubt creeps in, making them wonder about the true value of being in local government. Is it worth it? Can I handle this? Questioning oneself and our actions during times of uncertainty and chaos is normal and does not mean that we are doing anything wrong. In fact, I would argue the opposite.

In working with thousands of constituents, hundreds of employees, and dozens of elected officials during my 16 years of managing communities, it is those individuals who were interested in self-reflection and continuous improvement that I have truly admired for answering the call to public service. Theirs is an example worthy of emulation and one that safeguards public officials from ethical missteps.

We all struggle to find our place when we are new to an organization, and it is a time when we are most susceptible to outside persuasion and manipulation. During times of transition, it is especially important to rely on each other’s experience and expertise and to reach out for support and guidance whenever there is uncertainty. Here in Colorado we are lucky to have several well-versed organizations such as CIRSA and CML at our disposal to offer advice on how to handle ethical dilemmas and complex situations. However, we must be willing to tap these valuable resources prior to getting ourselves into trouble. Asking for help is not a sign of weakness, but is rather an indication of care, thoughtfulness and wisdom.

While there is no single blueprint to success for local government leaders, no recipe to follow to create the perfect outcomes, building strong and healthy relationships is the foundation of both achievement and sound ethical practice. Whether it is the idealistic vision shared between two newly elected officials, or the mutual respect and deference exhibited between a seasoned manager and his or her councilmembers; one thing is certain: the relationships connecting our local government leaders are what lay the foundation for sustainable and productive local governance in today’s society.

I hope you are able to spend some time reviewing the information in this second edition of *Ethics, Liability & Best Practices Handbook for Elected Officials* and taking to heart its content. This material offers a common ground from which all Colorado officials can work to make the communities of this great State even better.



# CHAPTER 1

## THE OATH OF OFFICE: ETHICS, LIABILITY AND BEST PRACTICES

By: Tami A. Tanoue, CIRSA Executive Director &  
Sam Light, CIRSA General Counsel

A typical oath of office might go as follows:

“I solemnly swear or affirm that I will support the Constitution and laws of the United States of America and the State of Colorado, [the Charter,] the ordinances and other laws of the City/Town, and that I will faithfully perform the duties of the office upon which I am about to enter.”

With the passage of time since you took office, does your oath have continuing meaning as an ethical commitment? This chapter examines the oath as a commitment to best practices in carrying out your responsibilities, and as a path to avoiding liability. We'll focus on four key areas: allocation of responsibilities, transparency in meetings, quasi-judicial rules of engagement, and personal conduct.

### Honoring the Allocation of Responsibilities

As in other levels of government, municipal powers and responsibilities are typically allocated among the governing body, judge, staff, and possibly others, according to charter or statutory requirements. Thus, for instance, the governing body is responsible for all legislation, the municipal judge is responsible for determining ordinance violations, and the manager/administrator and staff are responsible for administrative matters.

To the extent the charter or statutory provisions set forth a clear allocation of responsibilities, respecting that allocation is part of an elected official's oath. Inappropriate involvement in administrative matters, then, could be a violation of your oath.

Personnel matters are among those in which inappropriate involvement tends to occur. The governing body typically supervises a limited number of its own direct reports—for example, the chief administrator, judge, attorney, and perhaps a few others. As an individual elected official, if you are asked by an employee who's not one of the governing body's direct reports to become involved in an employment issue, or if you take the initiative to become involved, that could be a red flag in terms of your oath to respect the allocation of responsibilities.

From a best practices standpoint, inappropriate involvement in personnel matters can effectively destroy the chain of command. While most municipal offices are not operated according to a military-style chain of command, some version of a chain of command is critical for effective functioning no matter how large, small, formal, or informal your operations are. Once you allow inappropriate involvement to occur, you have effectively disempowered managers and supervisors throughout the organization, and sent the message that employees are free to disregard the chain of command.

Personnel matters are also a high-risk liability area. The more you're personally involved, the more likely it is that your name may some day appear on the wrong end of a lawsuit, or come up in an executive session where your fellow members are assessing the risks your conduct has created. So, you can see that honoring the allocation of responsibilities by staying out of most personnel matters is a means of avoiding or reducing liability.

## Honoring Transparency in Meetings

In local government, transparency of the governing body in its discussions and decisions is a basic expectation of the citizenry. Citizens take great interest in the goings-on of the governing body, and are quick to notice when their transparency expectations are not met. A perception that governing body members are conducting discussions secretly, that executive sessions are being held for improper purposes, or that decisions are being made in "smoke-filled back rooms," can quickly erode trust and confidence in government.

Transparency in meetings means that governing body meetings are open to the public and held only after proper public notice, that executive sessions are strictly limited to the purposes authorized by law, and that discussions of public issues take place in a meeting setting rather than by email or in hidden locations. Is this part of your oath? Most certainly! The statewide open meetings law applies to all local public bodies, including city councils and boards of trustees. If you're a home rule municipality, there may be charter provisions concerning transparency as well.

Is honoring transparency in governing body meetings a best practice? It is, if you want to maintain the public's confidence and trust! Citizens expect and appreciate your body's commitment to discussing and deciding difficult issues with full transparency. And making a commitment to transparency can also help ensure that your municipality doesn't become Exhibit A in an effort to make draconian changes to the open meetings law. You surely don't want to be held up as a bad example in the legislature. It's happened.

Is honoring transparency a liability-reducing suggestion? At CIRSA, we've seen our members become involved in litigation over their meeting practices. Based on our experience, the answer to that question is yes. There are watchdogs out there scrutinizing you, and they will pounce on you with allegations of violations and a lawsuit if your meetings practices don't pass muster under the law. CIRSA has open meetings/executive session defense cost coverage for member governing bodies, but by honoring the letter and spirit of the open meetings laws, you can avoid costly and potentially embarrassing litigation.

## Honoring the Quasi-Judicial Rules of Engagement

Governing body activities can be pigeonholed broadly into two areas: legislation and quasi-judicial decision-making. The rules of engagement differ depending on which pigeonhole fits. For legislative matters, the rules of engagement are free-wheeling. Think of the state legislature when it's in session, and the lobbying that goes on there. But for quasi-judicial matters, the rules of engagement have a basis in constitutional due process requirements: when you are making a decision that affects individual property rights, the constitution requires a properly noticed and fair hearing before a neutral decision maker—you. Thus, in quasi-judicial matters, you must conduct yourself similarly to the way a judge does in deciding a case.

No doubt your municipal attorney has discussed the quasi-judicial rules of engagement with you. The attorney is trying to protect the integrity of the hearing process, the defensibility of the outcome, and your prerogative to participate as a decision-maker. These rules of engagement include:

- You will follow the applicable legal criteria and apply those criteria to the evidence you hear at the hearing, to arrive at your decision.
- You will refrain from “ex parte” or “outside the hearing” contacts regarding a pending quasi-judicial matter.
- You will not participate in decision-making in a quasi-judicial matter in which you have a conflict of interest.

These rules flow from constitutional due process requirements, so they are most certainly a part of your oath. Following these rules is also a way to avoid or reduce liability. In quasi-judicial matters, the process by which you arrive at a decision is at least as important as the substance of the decision itself. If you've ensured that the process is letter-perfect, then you have eliminated a huge portion of the possible quarrels that could turn into a claim. And it's a best practice, because following the rules of engagement will enhance the reality and the perception that all who come before you with quasi-judicial matters will be heard and treated fairly.

## Honoring Standards of Personal Conduct

The way you conduct yourself in relation to other members of the body, staff, and the community greatly impacts your effectiveness as an elected official. No matter where you are on the political spectrum, you can probably agree that politics today are infected with divisiveness and incivility. Municipal government being non-partisan, its elected officials should, at least in theory, be able to rise above the nastiness of partisan politics!

With respect to the governing body, do all members understand that governance is a team activity? An individual elected official does not have the power to accomplish anything on his or her own. Rather, the allocation of responsibilities to the governing body is to the body as a whole. Only through collaboration and consensus-building can an individual's priority become the priority of the governing body. While the governing body is comprised of individuals and will “deliberate with many voices,” all members must recognize the governing body “acts with one voice.”

Has the governing body been able to “gel” as a team, or are members viewing one another with a sense of distrust? Are you lining up along the same divisions on every issue? Are you unable to disagree without being disagreeable? Perhaps some team building is in order if these things are happening.

With respect to staff, is an incoming council or board viewing staff as the “enemy”? A staff exists to carry out the goals set by the governing body. Sometimes, with the changing of the guard at the governing body level, there’s an assumption that there needs to be a changing of the guard at the staff level, too. But if this staff faithfully carried out the goals of the prior governing body, why wouldn’t you expect that they will be equally able and willing to carry out the goals of the new body?

With respect to the community, are public comment periods turning into “public inquisition” or “public argument” periods? Is “staff bashing” or “elected official bashing” happening at meetings? Perhaps another look at your rules of order, and your approach to meetings, would be appropriate. Certainly the public has every right to appear at meetings and make complaints. It’s a sign of faith in local government that people care enough to complain! But the manner in which those complaints are made, and the manner in which you respond, can mean the difference between a constructive, productive exchange or a nasty, embarrassing, unproductive, or morale-crushing attack.

Is the observance of personal conduct standards part of your oath? At least arguably, yes. After all, the oath implies faithfully performing a role where you must work with others. And you have a fiduciary duty to act in the best interests of your municipality. It doesn’t seem a far stretch to impute to your oath a commitment to respectful conduct towards one another and the best interests of the municipality.

Is it a best practice to observe personal conduct standards? It certainly seems so. Maintaining harmonious and productive working relationships with your fellow elected officials, staff, and the public can only increase your effectiveness. And keep in mind that harmony doesn’t mean you all have to agree all the time. Indeed, healthy discussion, debate, and disagreement are the engine for understanding issues and solving problems. But the idea of disagreeing without being disagreeable is important to keep in mind.

Does the observance of personal conduct standards help with liability reduction? We think so. In CIRSA’s experience, turmoil at the top levels of the municipality means turmoil throughout the organization. After all, you know what rolls downhill. Over and over, we’ve seen that disharmony and dysfunction at the top means claims throughout the organization. These types of claims not only cost dollars to defend, but also can sap the governing body’s energy, destroy staff morale and cause reputational harm, all with long-lasting impacts.

## Conclusion

Honoring your oath of office isn’t just something you do when you raise your right hand at the beginning of your term. You can look at just about any arena in which you operate as an elected official, and ask yourself, “What did I commit to do when I took my oath?” By asking and answering this question, you can stay on the path of best practices, and avoid or reduce personal liability.



## CHAPTER 2

# HEALING DIVISIONS ON THE GOVERNING BODY: CAN'T WE ALL JUST GET ALONG

By: Tami A. Tanoue, CIRSA Executive Director

At CIRSA, we're seeing more and more instances of governing bodies with intractable divisions that cut across virtually all of the body's decision-making. This division is affecting productivity, driving away opportunity, and undermining citizen confidence. It also lends itself to disputes and claims, with corresponding risks of liability. In this chapter, we'll explore the causes and impacts of such divisions, and explore some possible ways to break out of the patterns that cause them.

### Introduction

First, though, let's be clear about the situation we're discussing: Every governing body has disagreements, and there's nothing wrong with that. It would be strange, indeed, if all members agreed on all issues all the time. If that were the case, why would we even need five, seven, or nine members?

Sometimes, disagreements create a residue of misunderstanding or hurt feelings, but that's to be expected, too. Most governing body members are able to leave that residue behind and move on to the next matter at hand.

We're also not talking about the "outlier" issue, where one or some members of the governing body have made it their mission to separate themselves from the rest of the group, with the sole goal of embarrassing the rest and proving that they are the only "ethical," "transparent," or "responsive" (or insert description of your choice) member of the body, at least in their opinion. There are ways to address the "outlier" issue (see Chapter 3).

What we're talking about here is a governing body in a state that we can all agree is severely dysfunctional. We're talking about a body that's intractably divided, and whose every debate, discussion, and decision are characterized by lingering unresolved matters, mutual contempt, and hard feelings that calcify into hardline positions. We're talking about meetings that staff and citizens refer to as the "Thursday night fights" (or insert evening of your choice). We're talking about meetings where members regularly yell or snipe at each other, name-call, storm out, or maybe even resort to threats or fisticuffs.

And even if it's not that dramatic, meetings may still be characterized by tension, frustration, passive-aggressive behavior, an inability to see beyond the players and focus on the merits of any issue, and maybe an angry social media post or two after the meeting.

Whatever the level of dysfunction, destructive consequences can result. Once you “write off” or “demonize” your colleagues (“she’s just clueless,” “he’s completely hopeless,” “I can’t even look at the guy,” “there’s no reasoning with her, so why even bother”), there may be no coming back.

## Why Can't We All Get Along? A Look at Some Possible Causes

*“Happy families are all alike; every unhappy family is unhappy in its own way.”  
~Tolstoy*

*“Happy councils are all alike; every unhappy council is unhappy in its own way.”  
~Tanoue*

There are any number of reasons why the “marriage” of governing body members can go bad. Here are a few:

**Underlying divisions.** Underlying divisions within the community may be reflected on the governing body. Communities can have fracture lines. There may be friction between the “old timer” part of the community and more newly developed areas that are full of “newcomers.” The interests of “old timers” and “newcomers” may not always be the same. “Newcomers” may not recognize the history and traditions of the community in the same way that “old timers” do. “Old timers” may discount the concerns raised by “newcomers,” or vice versa. These differences may be reflected in the makeup of the governing body.

Members may have been swept into office as a result of a controversial issue that divided the community. Perhaps there was a recall election. Unless the slate was wiped clean, the governing body makeup may reflect the divisions that grew from the underlying issue. It may be difficult to get past that issue.

New or younger members may clash with veteran members. Sentiments that “you young ‘uns haven’t been around long enough to understand this town” or “you old timers are stuck in your ways” may cause unwarranted rifts. And expressing or acting on such sentiments can contribute to a feeling that each member isn’t being accorded an equal voice in discussion and decision-making.

That sense of inequality can also be the result of partisanship, and partisanship doesn’t necessarily have to spring from the type of political partisanship that exists at other levels of government. Of course, municipal government is avowedly and proudly non-partisan in the political sense (and by law its elections are non-partisan). But an “in crowd” and an “out crowd” based on other considerations can be a type of partisanship that’s just as problematic.

**Personalities.** Voters aren’t judging whether the individuals they elect will be compatible with each other, so it’s possible that fundamentally incompatible personalities will end up on the body. If you have some “alpha dogs” on the body who are in constant competition, friction might be a predictable result. If others then line up behind their favorite “alpha,” division can ensue. If several “alphas” dominate the meetings, resentments may arise.

Sometimes, an elected official's personality and proclivities seem to be just plain incompatible with holding elected office! Politics, at the governing body level, has to be a team sport: decision-making requires collaboration and consensus. One member's "agenda" can become the "agenda" of the body only by successful team play. A "lone wolf" who lacks the capacity or desire to be a team member is not going to be successful on the body. Add a few more "lone wolfs," and frustration and paralysis may result.

Governance is also about leadership. If the voters put someone in office who is afraid to take a stand, is perennially "on the fence," or is strictly a follower, leadership qualities may be lacking. A majority of non-leaders can create a perception of a "rubber stamp" governing body, resulting in extreme frustration for those members who are willing to stick their necks out.

**Preconceived personal agenda.** There are many good reasons why citizens run for public office. However, the workings of municipal government are not always clear until well after you're seated. So the agenda that a candidate ran on may collide with reality, and turn out not to be a workable agenda after all. Under those circumstances, clinging to the preconceived agenda is only going to sow the seeds of discord. If you have several members, each bent on pursuing only his or her own particular agenda, a fractured body can result.

I once spoke with a newly elected councilmember who said his one campaign promise was to ensure that water and sewer rates were lowered. But when he took office, he began to understand the economic realities of operating the town's water and sewer system, and he saw that demanding the lowering of rates was unrealistic and fiscally irresponsible. He said he had some explaining to do to the citizens, but he wasn't going to cling to his agenda given the realities he now understood. That's a smart elected official.

## Impacts

The impacts of severe dysfunction and discord are manifold. They include:

- **Lack of productivity.** The body's agenda may hit a standstill. Or getting through it might be slow and painful. Even if decisions are made, they may not necessarily be the best decisions.
- **Power transfer to tie-breaker.** If you're constantly split down the middle, then you may be transferring all decision-making power to the tie-breaker (often the Mayor). Is that desirable?
- **Financial consequences.** If you've developed a public reputation as a dysfunctional body, then your community may be missing out on economic opportunities. Businesses want a predictable environment. Volatility may be driving them away.
- **Public embarrassment and loss of public confidence.** If you're airing your discord for the camera, your viewership may be up, but public confidence will be down! Residents want to be confident that their elected leaders function at a high level and in their best interests.
- **Driving away the best and brightest.** I've heard people say they were reluctant to run for office because they witnessed the discord and didn't want to be a part

of it. So you may end up repelling, not attracting, potential leaders who could make great contributions to the community. Or you may lose great members to “burnout.” Likewise, if your community’s developed a reputation for governing body dysfunction, you may not be able to attract and keep the “best and brightest” for key staff positions.

## So You Think You May be Part of a Dysfunctional Governing Body?

You may have experienced some jolts of recognition in reviewing the foregoing. If so, condolences and congratulations! The condolences are self-evident, but congratulations are also due, because recognition of a problem is the first step to dealing with it! So now, what do you do? Here are some steps to consider:

- **See if you can gain a consensus that there’s a problem.** Even if you recognize it, if no one else does, you’re not going to get anywhere. If there’s a consensus, then you’re halfway to solving the problem!
- **Start by talking about “values.”** In working with CIRSA members experiencing severe governing body dysfunction, I’ve begun to realize that the “values” discussion is a critical first step. By “values,” I’m talking about the philosophical underpinnings that you want as guides for behavior in your interactions with one another. If you can agree on these values, then additional steps are possible. If you can’t, you’re going to stall out. Such values might include:
  - **Courtesy and civility towards one another, staff, and citizens?**
  - **Non-partisanship?**
  - **Equality of participation?** This would include equal opportunities to be part of the discussion and decision, and equal opportunities to gain, insofar as possible, the same information at the same time as needed for good decision-making.
  - **Acknowledgement of the role of the Mayor or presiding officer in presiding over meetings?** Every meeting needs a presiding officer, and in most communities, that’s the Mayor. The role of the presiding officer must be honored if you want to have orderly, productive, and efficient meetings. And, the presiding officer must embrace that responsibility. If there’s no acknowledgement of this fundamental need, then you won’t get anywhere.
  - **Engagement?** This includes a commitment to be prepared for meetings, to arrive on time, to stay for the whole meeting, to give your undivided attention during the meeting, to participate in decision-making, and to be absent no more than necessary.
  - **Others?**
- **Norms or rules of conduct.** If you can form a consensus around values, you’re close to the point where you can discuss (and, it’s hoped, agree upon) the norms or rules of conduct that you want for the body. The content of your norms or rules won’t be discussed here, because they’ll be specific to your community and the values that serve as the jumping-off point for them. It’s worthwhile to look at

examples from other communities around the state and nation, but it's important to develop your own norms or rules from the ground up with your values as the foundation, so there's buy-in. Why rules OR norms? It's because the level of formality to be accorded really depends on your governing body's needs and desires. If you have members whose attitude is "Rules? We don't need no stinkin' rules," then perhaps a softer approach of agreeing on "norms" of conduct may be a good starting point. On the other hand, you might see reasons to elevate the adoption process by using a resolution or even an ordinance.

## In Despair? You Can Still Help

You may feel your governing body will never come together to recognize the problem, much less move on towards seeking solutions. Should you give up? No! There are still things you can do as an individual. If enough individuals on the body do these things, then perhaps there will be an opening to go further! Suggestions for individuals include:

- **Assume good faith and best intentions on the part of everyone on the body.** Some smart person once said that we judge ourselves by our intentions, and others solely by their actions. This perceptual gap can lead to misunderstandings and unfounded assumptions. Let's give everyone the same benefit of the doubt we give ourselves, by assuming that they, too, are acting on the basis of honorable intentions.
- **Listen more than you talk.** Do your best to see and understand things from the perspective of others. Ask questions before reaching your own conclusions, and repeat back what you think you're hearing from others, so that you know you're on the same page. Listen for points of agreement, and emphasize and build on them.
- **Try to meet others more than halfway.** If everyone only goes so far to try to bridge the gaps, then you may never meet in the middle. Sometimes one person's generosity in going more than halfway is the catalyst for breaking down misunderstandings.
- **Use the postures, tone, and body language of respect and engagement.** Do this even if you're not "feeling it"; "acting as if" can be helpful in bringing a hoped-for harmony closer to reality. Make sure your body language and tone of voice aren't inadvertently communicating something you didn't intend. Keep your voice DOWN, even if others are starting to yell. Avoid the hair-trigger, knee-jerk, angry response.
- **Try some things to break down barriers.** Maybe switch up positions where you sit on the dais. Suggest a pre-meeting dinner; breaking bread together can be a way to get people talking (make sure you have a "no-business" rule in effect). Team-building, especially in a retreat setting, can be productive. An outside facilitator or mediator might be helpful in identifying issues that are hard to see from the "inside."

- **If you're an experienced member, mentor the newbies!** You have valuable experience from which newer members can benefit. Show them the ropes, teach them your own hard-earned lessons, and model the behaviors you want them to emulate. And if you're a new member, seek out mentors!
- **Acknowledge and appreciate** when you see others making the same effort.

## Conclusion: "Until Next Election Do You Part."

A governing body might be characterized as a kind of arranged marriage—a marriage arranged by the citizens. If the conditions for civil and productive discourse are lacking from the start, it's no wonder that such a "marriage" can go bad quickly. But divorce isn't an option! So start looking at ways to improve your relationships, as individuals and as a body. And take to heart the idea that, by "acting as if," your deepest hope for a strong, high-functioning team can come closer to becoming a reality.



## CHAPTER 3

# GOVERNING BODIES AND THE OUTLIER SYNDROME

By: Tami A. Tanoue, CIRSA Executive Director

Those who have been working with municipalities for an extended period have observed a phenomenon that occurs at the governing body level. Let's call this phenomenon **the Outlier Syndrome**.

The Outlier is the “lone wolf” who sits on a city council or board of trustees and steadfastly refuses to act like a member of the team. Even while isolating himself or herself as the only person on the losing side of just about every vote, the Outlier manages to create havoc with the rest of the body. The Outlier may be obstreperous and obstructionist. The Outlier may refuse to recognize and respect the norms that guide the rest of the body's conduct. The Outlier may position himself or herself as the only “ethical” or “transparent” member of the body. The Outlier's every statement and action seems to be aimed at preserving that self-assumed distinction rather than making any concrete achievements. Sometimes, a governing body is unfortunate enough to have more than one Outlier.

Have you ever experienced the Outlier Syndrome in action? We call it a syndrome because of the recognizable features or symptoms that seem to fester whenever an Outlier sits on a governing body. Do you have an Outlier on your governing body? Could you possibly be an Outlier? Should the Outlier Syndrome be viewed as an affliction or malady? And if so, what can be done? We'll explore these questions in more detail below.

## Power, Goals, and the Outlier

To understand the Outlier's impact on a governing body, let's start with the idea that elected officials can only act as part of a body – a collaborative decision-making body. You can search throughout the laws governing statutory municipalities, or just about any home rule charter, and you'll likely find no powers or duties that are to be exercised by a singular elected official (other than the mayor, who may have certain defined responsibilities). This means that, as elected officials, the only way you can get anything accomplished is to have a majority of the governing body on your side.

It's likely that each elected official has an individual list of goals, goals that those who voted for you want you to accomplish. But your goals can be accomplished only if they're part of the goals of the body as a whole. That means your success depends on creating a consensus

of the majority! And where does the Outlier fit in on a collaborative decision-making body? Why, nowhere! Perpetually being on the losing side of a vote means that the Outlier gets nowhere on his or her goals...unless, of course, he or she feels that being an Outlier is its own reward.

## Are You an Outlier?

Perhaps you've met your share of Outliers, who tend to share one or more of these characteristics:

- There is an element of the lone crusader in them. They feel they were elected to shake up the status quo in some way. Maybe they think their predecessors were too cozy with developers, not friendly enough with the business community, too close to the municipality's staff, not close enough to the municipality's staff, etc.
- They view themselves as independent thinkers. They are often highly intelligent, but not "people persons." In kindergarten, their report cards might have reflected a poor score on "plays well with others."
- They take a perverse glee in being the "outsider," relish arguments for argument's sake, and place little value on matters like courtesy and regard for the feelings of others.
- They hate having to endure "soft" discussions such as a council or board retreat, the establishment of a mission or vision statement, the development of consensus around rules of procedure or rules of conduct, a session to discuss goals and priorities, or a CIRSA liability training session.
- They feel they are always right, and everyone else is always wrong. They feel they are always ethical, and everyone else is not. They feel they are looking out for the citizens, and everyone else is not.
- Initially, they may just have been unfamiliar with the ways of local government, and needed to build the skills to work effectively in a new environment. One or more gaffes may have caused them to be pegged as Outliers and treated accordingly, initiating an unhealthy Outlier dynamic.
- There may have been some explosive moments in private or public with the Outlier's colleagues, or indeed, the colleagues may have made some attempt at an "intervention."

These observations may or may not be totally on the mark. But one characteristic of the Outlier cannot be denied: he or she is seldom on the prevailing side of a vote, and is often at loggerheads with the rest of the body.

Do you think you may be an Outlier? If so, you might examine what your goals as an elected official really are. Do you want to have a list of concrete accomplishments at the end of your term? Or will it be accomplishment enough to have been the "loyal opposition"? If the former, then your behavior may be working at cross-purposes with your goals. If the latter, really? Will the people who voted for you be satisfied with that accomplishment? Will you?

# Is the Outlier a Problem for the Rest of the Body? For the Municipality?

Most people who've had to deal with an Outlier would say that yes, the Outlier is a problem! How? Well, here are some ways:

- Anger and frustration build when a council or board has to deal with an Outlier, siphoning away energy that could be spent on more positive endeavors. This is a particular problem if tensions have built to the point that confrontations have begun to occur. No reasonable person wants to attend or view a council meeting and have a hockey game break out! It may be entertaining, but mostly, it's embarrassing to the governing body and to the community.
- Healthy teams seek to build a sense of camaraderie and cohesiveness. That's not entirely possible when there's an Outlier. It's not healthy to build a team around a shared hatred of one of its own members, and most reasonable people would prefer not to have that happen.
- The Outlier's perspective tends to be oppositional. From a liability standpoint, such a perspective is risky. If you're taking positions on an oppositional basis, are you really meeting your fiduciary duty to look out for the best interests of the entity?
- A disharmonious governing body is a dysfunctional governing body. It's been CIRSA's experience that liability claims thrive in an environment of disharmony and dysfunction.
- Your staff members are affected by the Outlier Syndrome, too. From the staff's perspective, seeing dysfunction on the governing body is a little like watching discord between one's own parents. It's unsettling, distressing, and morale-crushing.
- Most importantly, it's a shame for the governing body to lose a potentially valuable contributing member. In a worst case scenario, the Outlier becomes completely disempowered as he or she is ignored and marginalized. But this means that the body isn't running on all cylinders, and is deprived of the valuable perspectives that the Outlier might otherwise bring. Ultimately, the voters, and the community, are the losers.

## Dealing with the Outlier Syndrome

You can't cure an affliction until you recognize it. And you can't recognize what you haven't named and defined. If your municipality is afflicted with Outlier Syndrome, you've taken the first steps towards a cure by naming, defining, and recognizing it! Here are some other steps you might consider.

- Confront the issue forthrightly and compassionately in a neutral environment. A council or board meeting is likely not a neutral environment! Perhaps the matter could be discussed as one item on a retreat agenda. Be prepared with specific examples of how the Outlier has negatively impacted the body.

- Consider addressing the issue in the context of a larger discussion about governing body rules of procedure or rules of conduct. The “norms” that guide members’ interactions with one another may be obvious to some but not all, especially to newer members. Those norms could be part of the discussion, and the process of articulating them can facilitate a consensus to honor them.
- Consider bringing in an outside facilitator to assist you. A governing body is a bit like a marriage that’s been arranged for you by the citizens! There’s nothing wrong with getting some outside help for perspective and to find solutions.

If you think you might have the Outlier label pinned on you, consider these suggestions:

- First, get a reality check. Find out how you’re being perceived by your peers. It may be very different from your own perception of yourself. Ask each of your colleagues to give you a frank assessment.
- Check your motivations. If you have concrete goals you want to accomplish as an elected official, you must accept that success in your position can’t happen without collaboration and consensus building. There is nothing that you can accomplish alone. So set a goal to be on the “prevailing” side...indeed to bring others over to establish a “prevailing” side.
- If you’ve already burned some bridges, understand consensus-building can’t happen without mutual trust, respect, and a sense of cohesion. These will take time to build. Look for a retreat or other opportunities to clear the air and start fresh.
- Use staff as a resource! Your manager or administrator wants nothing more than to assist newly elected officials in learning the ropes, and understanding the best time, place, and approach to raising issues. Don’t get off on the wrong foot with blunders that might peg you as an Outlier.

What if all efforts to deal with the Outlier Syndrome fail? Well, it might be time for the rest of the governing body to cut its losses and move on. Don’t continue to agonize over the Outlier and his or her impact on the body’s functioning. Continue to accord the Outlier the same opportunities to participate in discussion and decision-making as any other member, but don’t allow the Outlier to keep pushing your buttons. Remember, arguments and confrontations require more than one participant. You may need to simply say “thank you” or move on to the next point of discussion. Ultimately, the responsibility for putting an Outlier into office rests with the citizens, so there’s only so much you can do. Try to go about your business without having the Outlier become the dysfunctional center around which the rest of you swirl.

## Conclusion

Governing body members don’t all have to be in lockstep, or think and behave in the same way. On the contrary, diversity of thinking, styles, opinions, experiences, and approaches are healthy and necessary for a collaborative decision-making body. There is truly a collective wisdom that comes forth when many diverse minds work together on common goals. But the Outlier Syndrome is detrimental to a high-functioning governing body, and therefore, to the community. If your governing body is afflicted with the Outlier Syndrome, it’s time to do something about it!



# CHAPTER 4

## LIABILITY PROTECTIONS AND YOU

By: Tami A. Tanoue, CIRSA Executive Director &  
Sam Light, CIRSA General Counsel

Are you acquainted with the protections you have through your entity's membership in the CIRSA property/casualty pool? In this chapter, we provide you with a brief introduction to the two key coverage parts of the liability policy that apply to you as elected officials of CIRSA member entities.<sup>1</sup>

### What Liability Coverages do We Have?

**General Liability and Auto Liability Coverage** applies to claims for bodily injury, property damage, and auto liability, among others. This is the coverage part that pertains to most allegations of “hard” injuries, such as an allegation of physical injury to a person or to tangible property. Thus, for instance, this coverage part would respond for an auto accident while you're driving your entity's vehicle on public entity business. This coverage part also includes law enforcement liability coverage.

**Public Officials Liability Coverage** applies to “wrongful acts” you are alleged to have committed. This coverage part applies to allegations of civil rights violations, improper activities concerning employment practices, and violations of federal and state law. Thus, for instance, this coverage part would respond when someone claims that he or she has suffered employment-related discrimination, harassment, or a violation of constitutional rights.

### Who's Covered?

“Covered Parties” under the policy include, of course, your entity as a member of CIRSA. Any elected or appointed official, trustee, director, officer, employee, volunteer, or judge of a CIRSA member is also considered a covered party. So is each governing body, board, commission, authority, or similar unit operated “by or under the jurisdiction of” a member entity. Thus, elected officials, board and commission members, appointed officials, employees, and even authorized volunteers of your entity are all considered covered parties.

## What Limits of Coverage do We Have?<sup>2</sup>

- For general liability and law enforcement liability, the coverage limit is \$10,000,000 per claim/occurrence.
- For auto liability, the coverage limit is \$5,000,000 million per claim/occurrence.
- For public officials' liability, the coverage limit is \$10,000,000 per claim/occurrence, subject to an annual per-member aggregate of \$10,000,000.

Defense costs are included in these limits. There is also a member-selected deductible that applies to each claim/occurrence. Members have chosen deductibles that vary from \$500 to as much as \$250,000 per claim/occurrence, so you should check with your own CIRSA contact to find out what your entity's deductibles are.

## What Key Exclusions do We Need to be Concerned About?

There are several exclusions of concern, and a few are highlighted here. These exclusions are universal in most liability policies.

**The “willful and wanton” exclusion** is probably the exclusion of greatest concern to elected and other public officials. This exclusion applies to both coverage parts of the liability policy, and states that coverage does not apply to any loss arising out of the actions of any elected or appointed official, trustee, director, officer, employee, volunteer or judge of a member entity when such acts or omissions are deemed to be willful and wanton. And remember, you are a “Covered Party” only while in the performance of your duties for the member entity, and acting within the scope of your authorized duties for the member entity.

As you probably know, the Colorado Governmental Immunity Act's protections are lost when you are determined to have been acting outside the “scope of employment,” that is, outside the course and scope of your authorized duties as an elected official. But such conduct has a double consequence: the loss of your liability coverages through CIRSA. This is the reason that our public officials' liability training places a heavy emphasis on the need to understand your “job description” as an elected official, and the need to stay within the parameters of that “job description.”

Staying within the “scope of employment” is also important to lessening your risks of liability where federal civil rights claims are concerned. You probably know that, under 42 U.S.C. Section 1983, you can be sued for a civil rights violation in your individual or official capacity. An individual capacity suit is one that alleges that you violated someone's constitutional or other federally protected right while acting under the auspices of your public office. (An official capacity suit, on the other hand, is a suit against the entity, rather than you individually.) A finding of individual liability in a Section 1983 suit essentially means that you've violated a clearly established constitutional or statutory right of which a reasonable person should have been aware, and that your conduct was unreasonable. Such conduct can fall within the “outside the scope” exclusion; violating someone's civil rights is likely not within the “job description.” Thus, elected officials need to be especially cautious about conduct that could be actionable as an intentional civil rights violation.

**The sexual harassment exclusion** is another exclusion that has impacts on claims based on an individual official's conduct. This exclusion to the Public Officials Liability coverage part applies to sexual harassment claims. Let's say that a sexual harassment claim is made both against the entity, for failure to deal effectively with sexual harassment in the workplace, and against the harassing employee or volunteer. Under this exclusion, the entity will probably be covered. However, with respect to the individual official, employee, or volunteer, the entity will have the option to direct CIRSA to defend or not defend the individual. Thus, if the entity so directs, the individual will be left out in the cold as to any defense of a sexual harassment claim against him or her! And in any event, even if the entity directs CIRSA to provide a defense, any liability imposed on the individual based upon a finding that harassment occurred would not be covered through CIRSA. **The sexual abuse exclusion** operates in a similar fashion.

**The punitive or exemplary damages exclusion** is also pertinent in the context of an individual official's conduct. Punitive or exemplary damages can be awarded in circumstances where an individual's conduct is willful and wanton in the disregard of someone's rights, or callously indifferent or motivated by evil intent. The purpose of punitive damages is, as the term suggests, to punish a wrongdoer for such egregious conduct. Because the punitive effect would be considerably blunted if an insurer were available to cover a punitive damages award, punitive damages are deemed uninsurable by the appellate courts of many jurisdictions, including Colorado. Consistently with this judicial position, the CIRSA liability policy contains an express exclusion for punitive or exemplary damages.

**The breach of contract exclusion** can be pertinent to the activities of governing bodies. Governing bodies approve a wide variety of contracts, and sometimes are alleged to have dishonored them. It is not the intent of a liability policy to cover the kinds of liability that can arise when someone alleges a breach of contract, so there is an exclusion for the breach of an express or implied contract. This exclusion does not apply when a claim is based upon an allegation by an official or employee of wrongful termination of employment.

**The condemnation/inverse condemnation** exclusion can be relevant to a land use action taken by a governing body. A landowner may claim that all or a portion of his or her property was "taken" by governmental action, or that vested property rights were impaired by governmental action. These types of claims, involving the value of private property, are not covered. As you can imagine, liability policies aren't suited to cover these types of claims, because they would require insurers to try to underwrite the risk of having to pay for the property values of privately owned real estate throughout the state!

**The bonds or taxes exclusion** applies to any liability based upon or arising out of the issuance of bonds, securities, or other financial obligations, or taxes, fees, or assessments, or the collection, retention, or expenditure of funds. Thus, when a claim is made of an improperly levied tax, or retention of funds in violation of the Taxpayer's Bill of Rights, or impropriety in the issuance of bonds or other financial obligations, this exclusion would apply.

## What Else Should You Know About Coverage Issues?

A lawsuit against you may involve one of several responses from CIRSA. We may determine, based on the allegations, that we owe you an unconditional duty of defense (i.e., the assignment of a defense attorney) and indemnity (i.e., covering any judgment or settlement). Or we may determine that none of the allegations invoke any duty of defense or indemnity, and send you a denial letter. Sometimes, though, a suit will contain a mixture of covered claims and uncovered/potentially uncovered claims and, in this case, we will defend you under a “reservation of rights.” A “reservation of rights” letter will be sent telling you of the areas where there may be no coverage, and reserving our right not to indemnify you, and our right to terminate your defense (and potentially seek reimbursement of legal fees paid on your behalf) should circumstances warrant.

One or more CIRSA defense counsel will be assigned in circumstances where we find that there is a duty to defend. In some cases, a single attorney can represent multiple defendants; however, in cases where defenses may be inconsistent between or among the covered parties, or other circumstances for a conflict of interest may exist in representation, we will assign multiple counsel. CIRSA-assigned defense attorneys, although paid by CIRSA, owe their duty of loyalty to you, their client.

We hope that you never have to delve into the details of these coverages in the context of an actual claim against you, but it’s a good idea to be familiar with the broad outlines of those coverages. As always, if you have questions, please contact CIRSA.

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### Footnotes:

1. This is only a summary of certain provisions of the CIRSA liability coverage documents. The language of the applicable coverage document must be reviewed for a complete and accurate understanding of the applicable coverages, and the application of the coverage document to any specific situation will require the advice of your entity’s attorney.
2. Please refer to the Declarations pages of the Liability Coverage form for more specific information on the limits and sublimits for all coverages.



## CHAPTER 5

# OPEN MEETINGS AND EXECUTIVE SESSIONS

By: Tami A. Tanoue, CIRSA Executive Director &  
Sam Light, CIRSA General Counsel

At CIRSA, we've seen a steady stream of claims against our members for alleged violations of the open meetings law in the conduct of meetings and executive sessions. These types of claims are usually excluded from most commercial insurance coverages. However, CIRSA provides some defense cost coverage for claims alleging executive session violations by governing bodies. In this chapter, we'll go over the basics of the open meetings law and summarize CIRSA's coverage for allegations of open meetings violations.

### The Open Meetings Law

Under the Colorado open meetings law, C.R.S. Section 24-6-401 *et seq.* (COML), it is “the policy of this state that *the formation of public policy* is public business and may not be conducted in secret.” Note this statement's focus on the formation of public policy. Thus, the law intends openness in the policymaking process, and councils and boards are well-served by honoring not only the letter of the COML but the spirit of this purpose statement.

The core requirement of this law is that all meetings of a local public body (a term which includes the governing body and other formally constituted bodies of a public entity), at which public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times. “Full and timely notice” must be given of all meetings. The COML deems this requirement to have been met if notice of the meeting is posted at least 24 hours prior to the holding of the meeting; however, your charter or local ordinances may require posting further in advance. The notice shall include specific agenda information where possible. No action taken at a meeting is valid unless it meets the requirements of the open meetings law. A “meeting” under the open meetings law includes “any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication.”

There are a few exceptions to this core requirement of public openness, and a properly convened executive session may be held to discuss matters that fall into those exceptions.

Some of the more commonly arising subjects that are proper matters for an executive session include:

- The purchase, acquisition, lease, transfer, or sale of any real, personal, or other property interest;
- Conferences with an attorney for the local public body for the purposes of receiving legal advice on specific legal questions;
- Certain personnel matters; and
- Determining positions on matters that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators.

The open meetings law should be reviewed in its entirety for all of the applicable legal requirements, and legal advice should be obtained on its meaning. Home rule municipalities may have their own meeting and executive session procedures established pursuant to their home rule powers; this discussion is not intended to cover the variances in local practice in home rule municipalities.

The “courts of record” of the state have jurisdiction to issue injunctions to enforce the purposes of the open meetings law. Any citizen of the state may apply for such an injunction. The open meetings law states that, in any case in which the court finds a violation of the law, the court shall award the citizen prevailing in such action his or her costs and reasonable attorney fees. In addition, a citizen may apply to the court for access to the record of an executive session; if the court determines, after listening to the record, that the local public body engaged in substantial discussion of any matters that were not proper subjects for an executive session, or took formal action while in executive session, then the record may be made accessible to the public.

## Executive Session Coverage Through CIRSA

Defense costs coverage for executive session claims is provided to CIRSA property/casualty members by way of an amendment to the “non-monetary damages, fines or penalties” exclusion in the public officials liability section of the coverage document. This coverage is subject to the following terms:

- It applies only to reasonable attorney’s fees and reasonable and necessary costs included in the defense of an action brought solely under C.R.S. Section 24-6-402(9) of the open meetings law.
- It applies only to such an action brought against the member’s governing body; subordinate boards and commissions holding executive sessions do not have this coverage.
- It does not apply to any plaintiff’s attorney fees or costs that are assessed against the member as a result of losing such an action. Such fees and costs must be borne by the member.
- There is a sublimit for this coverage that is shared with certain other non-monetary defense coverages. The sublimit is \$10,000 any one action, subject to a \$30,000 annual aggregate per member. The member deductible does not apply to this coverage.

- Submitting an executive session claim to CIRSA is optional with the member; the member may choose to defend such a claim itself. If a member wants to avail itself of this coverage, the claim must be submitted to CIRSA, for handling by CIRSA-assigned defense counsel, at the time of commencement of the action.

## A Few Suggestions

The risks of open meetings violations can be greatly reduced by favoring transparency and using caution in cases of uncertainty. After all, the courts interpret the rules and will resolve doubts in favor of openness. Toward that end, elected and appointed officials should be cognizant of when their discussions will trigger open meetings requirements, so that violations can be avoided. To avoid claims of improper notice, a full meeting agenda should be timely posted, and the body and staff alike should avoid adding substantive items to the agenda at the meeting (as claims and distrust can result from such surprises).

Of course, claims of executive session violations could be avoided entirely by never having an executive session! However, this may be an unrealistic goal because, as discussed above, there is a legitimate need for confidentiality in some matters. But consider the following:

- Hold executive sessions to the absolute minimum necessary to protect legitimately confidential matters.
- Confirm with your city or town attorney that the proposed subject of the executive session is authorized under the law. The statutory bases for having an executive session are specific and narrowly construed, and bodies should resist efforts to pound a square peg in a round hole in searching for authority where it does not exist.
- Utilize an executive session “script” to help guide you in the proper procedures for convening an executive session. CIRSA members may obtain a CIRSA sample by contacting [saml@cirsa.org](mailto:saml@cirsa.org).
- When participating in an executive session, be vigilant of yourself and others to make sure that the discussion doesn’t stray from the specific subject that was announced in the motion to go into executive session. Participants in the executive session must commit to “stay on topic” and not stray from the specific subject.
- Make sure you keep an electronic record of each executive session as required by the open meetings law. The only exception to the recording rule is an executive session for an attorney-client conference; these sessions should not be recorded.
- Stay out of the loop on personnel matters when feasible. One of the more common reasons for holding an executive session is the discussion of a personnel matter. However, if the employee who is the subject of the executive session so demands, the discussion must be done in public. Moreover, personnel matters that are not personal to a particular employee are not proper subjects for an executive session (unless some other lawful basis for holding an executive session applies). These and other complexities of the “personnel matters” basis for holding an executive session can be avoided if your personnel policies have been set up in a manner that delegates most personnel matters to your staff.

- If you have to take one of your own governing body members to the “woodshed,” don’t do it in an executive session. Some years ago, the “personnel matters” basis for holding an executive session was amended to state that executive sessions are not permitted for discussions concerning any member of the local public body or appointment of a person to fill a vacancy on the local public body. Thus, the idea that the governing body can convene in executive session to discuss one of its own members as a governing body “personnel matter,” is no longer viable.
- If the confidentiality of a matter is such that it warrants an executive session, then be sure to honor that confidentiality once the executive session is over, until and unless public discussion of the matter becomes legally permissible. Don’t act outside the scope of your legal authority as an individual member of the governing body to waive confidentiality on your own. If the executive session concerns negotiations or other matters where some information will be shared with third parties in follow up to the session, ask “Who are our spokespersons?” and “What information will we share at this time?” and honor the answers arrived at in the session.

## Conclusion

Open meetings missteps are hard to overcome in terms of maintaining your constituents’ trust in you. Further, each and every executive session your entity holds exacts a price in terms of expectations of open government and, if done improperly, can subject your entity to claims. By complying with the strict requirements of the open meetings law, keeping executive sessions to the minimum necessary, and observing all of the formalities for holding meetings and executive sessions, you can keep that price low and public confidence high.



# CHAPTER 6

## ETHICAL CONDUCT IN LOCAL GOVERNMENT

By: Robert Widner, Widner Juran LLP

### Introduction

Citizens have a right to expect ethical behavior from local government officials. In the municipal context, “ethical behavior” generally means the conduct of public business in a manner that will preserve or restore the public’s trust in government. In many instances, local government officials are unaware of the rules and guidelines governing their official behavior. This chapter outlines a basic regulatory framework for ethical behavior for local government officials and advocates on the premise that limited but enforceable local regulation is necessary to protect the public trust. The first part of this chapter focuses upon “*what*” ethical activity should be regulated at the local level. The second part focuses upon “*how*” local ethical standards should be enforced.

### Why Regulate Local Ethics?

Both media stories and national studies of local government decision-making highlight the need for regulation of ethical behavior by local government officials. Unfortunately, ethical violations do occur at all levels of government and may range from the use of a public office to help a friend secure special treatment from the government to corruption, self-dealing, or just plain poor decision-making. Although the vast majority of public officials ably conduct official business without ethical missteps, a single publicized violation can cast a cloud upon the entire government organization and raise suspicion that other public officials are engaged in similar misconduct. Simply put, ethical violations erode public trust.

Colorado state law attempts to describe appropriate standards of conduct for local government officials in Title 18, Article 24 of the Colorado Revised Statutes. The state law fails in many respects to articulate clearly the standards for ethical behavior or to define key statutory phrases, such as what constitutes “personal or private interest.” State law further fails to serve the needs of local government by delegating the enforcement of alleged local ethical violations to the local district attorney’s office. This delegation often proves ineffective as it requires district attorneys to divert their limited resources from the enforcement of criminal conduct to the investigation and enforcement of

state misdemeanor ethical misconduct. Moreover, enforcement of statutory standards of conduct against elected public officials by elected district attorneys can—fairly or unfairly—lead observers to assume that politics, rather than justice, will dictate the outcome.

In addition to state statutory law, in 2006 the Colorado voters enacted Amendment 41, a constitutional citizen initiative. Amendment 41 was codified into Article XXIX of the Colorado Constitution. The purpose of Article XXIX was to establish new statewide rules governing the receipt of gifts and other considerations by government officials. It also allows a state independent ethics commission to hear complaints, issue findings, and assess penalties in connection with ethics issues arising under Article XXIX and under any other state standards of conduct and reporting requirements. The state's independent ethics commission has proven a less than effective means of addressing ethics at the local level due to lengthy hearing timelines and the need for local officials to defend conduct in a state tribunal located in Denver using state, and not locally, created and imposed ethics regulations. Of significant importance to the creation of local ethics regulation, Article XXIX includes an explicit exemption which limits the state's independent ethics commission's jurisdiction: Home rule municipalities that have enacted local ethics codes which address the topics of Article XXIX are not subject to the jurisdiction of the independent ethics commission.

Municipalities may overcome these state statutory and constitutional shortcomings through local regulation and local enforcement of ethical behavior. Effective local regulation of public officials' ethics necessarily involves two distinct elements. The first is a set of clearly written directives identifying what constitutes unacceptable or unethical behavior. The second is a process for enforcing the written directives in a reasonable, fair, and efficient manner.<sup>1</sup>

## What Should be Regulated?

The most common problems with local rules of ethical conduct are vagueness and overbreadth. Sweeping general statements such as “city officials should comport themselves at all times in a professional manner” are too vague to help either the officials or their constituents understand what is and is not acceptable. Likewise, regulations that attempt to set standards for the officials' personal life may seem admirable, but are really beyond the scope of good ethical regulation. Consequently, any set of ethical regulations should focus on the conduct of public officials while performing their public duties and should be specific enough to clearly define what constitutes an ethical violation.

Engaging in criminal conduct while in the course of one's public responsibilities should always be an ethical violation. However, criminal acts committed by public officials outside of their official role and in their private capacity are best left to local law enforcement or, as discussed below, the public's right of recall. It may be true that a public official's criminal activity unrelated to public office can still undermine public trust, but if your ethical code provides that “any felony or misdemeanor criminal activity” committed by a public official constitutes an ethical violation, are you prepared to sanction a board or council member who receives a jaywalking ticket?

A criminal act committed by a public official in his private life will typically only call into question the qualifications of that particular public official to serve the public. To that end,

state law provides a remedy in the right of recall, a process by which the voters can decide whether that individual should continue to serve. Local ethical regulations, however, should avoid putting members of the municipal governing body in the role of overseeing and enforcing the private activities of one of their own.

It is also customary, and a good idea, for local ethics regulations to incorporate as an ethical violation any failure of the public official to adhere to important provisions of the municipal charter or ordinances, such as provisions that prohibit elected officials' interference with the city manager's supervisory role over city employees. In addition, ethics regulations should prohibit:

- the intentional disclosure of confidential governmental information;
- the acceptance of gifts of substantial value;
- the misuse of public resources or public equipment; and
- engaging in contractual relationships for the personal benefit of the public official and/or the official's relatives or any business in which the official has an interest.

In summary, local ethical regulations should prohibit the conduct that will most directly impair the public's trust in the local government organization as a whole. If drafted with appropriate attention to specificity, effective local regulation will put public officials on notice of precisely what constitutes inappropriate behavior related to their public service, and will clearly inform constituents of what is expected of their local representatives. Accompanying the regulations should be well-defined steps for disclosure and recusal in circumstances giving rise to conflicts of interest. Finally, local codes should include terms and phrases designed to avoid vagueness and ambiguity.

## How Should Ethics Codes be Enforced?

Ethics regulations effectively inform officials what conduct is permitted and prohibited in public service. However, without a means to enforce the ethical requirements, the regulations become largely meaningless.

Creating a process to enforce ethical regulations requires careful thought. Ensuring that the regulations are enforced fairly is a paramount concern. Fair enforcement is fostered when regulations clearly articulate the requirements and expectations of every step of the enforcement action. Where a step is optional, such as whether an investigation of the ethics complaint will be performed, the criteria and procedures for determining whether the step will be employed should be clearly identified and followed. The regulations should contemplate the need for issuing subpoenas for documents and compelling witness testimony and attendance.

The typical process will include a complaint, the identification of the hearing body or hearing officer, an initial review, investigation, a hearing, a decision and, if appropriate, a penalty.

## Complaint

The initiation of the process to enforce an ethical standard should require a written complaint or allegation of unethical conduct. The form of the written complaint is

important. The person charged with unethical conduct has a right to know what conduct is alleged to have violated the ethical rules.

At a minimum, the complaint should include a detailed description of the action alleged to have violated the rules and citation to the ethical rules alleged to be violated by such conduct. Requiring the complaining party to verify or certify under penalty of perjury or other sanction that the allegations are truthful may aid in preventing complaints that are merely intended to harass or which might be politically motivated. Once received, the complaint must be must formally delivered or served upon the person alleged to have violated the rules.

## Hearing Body or Officer

A critical decision for any ethical enforcement action is the selection of the appropriate hearing body or officer to hear the allegations, render a decision, and impose a penalty, if appropriate. The enforcement regulations should identify the process for selection, composition, and qualifications of the hearing body or hearing officer. The options are numerous. The hearing body might, for example, be composed of the entire governing body of the local government, a governing body subcommittee, a citizen ethics board, or an independent hearing officer. Moreover, the decision of the hearing body or officer can be considered advisory and made subject to final review and ratification by the governing body.

Each option presents advantages and disadvantages. The elected governing body is a logical selection when judging the conduct of its fellow members or public servants due to its role as representing the citizens who demand ethical action by government. However, selecting the governing body or individual members of the governing body risks injecting elements of political favoritism into the ethics process, and raises complications where other members are necessary witnesses to facts alleged in the complaint. Similarly, while citizen members have a direct interest in ethical governmental action, citizens can oftentimes be politically aligned with elected officials or lack the experience to understand the allegations in the context of public service. Individual hearing officers, while perhaps free of any political motivations, may lack accountability to the citizens.

## Initial Review

A preliminary or initial review of the complaint may be a beneficial step. A complaint may fail to assert any actions by the public servant that constitute an ethical misstep or may assert actions that are unrelated to the servant's public duties. In addition, a complaint may, on its face, be submitted for the sole purpose of harassing the public servant. At a preliminary review, the hearing body or officer can elect to dismiss the complaint, thereby saving the local government time and money in processing spurious or specious allegations. Any decision to dismiss the complaint should be made in writing and provided to the complaining party and the person against whom the allegations were raised.

## Investigation

For some but not all complaints, an investigation might be warranted. If warranted and approved by the hearing body or officer, the investigation should be undertaken by an independent and neutral party. This investigation might involve the interview of witnesses and review of the evidence, and may culminate in a written summary of disputed and undisputed facts relevant to the issues to be decided by the hearing body or officer.

## Hearing

For complaints that warrant prosecution, a hearing should be held to consider the complaint. In some circumstances, the hearing may include a preliminary stage whereby the hearing body or officer reviews the investigative report and, if appropriate, may elect to dismiss the allegations if the investigation established that the evidence does not support a finding of wrongdoing. Conducted in a manner similar to a judicial proceeding, the hearing should permit the presentation of evidence to support the allegations of unethical conduct and an opportunity to provide a defense against the allegations. The local government may employ a prosecutor to present the allegations and evidence. Any decision by the hearing body or officer should be made in writing to ensure an adequate record and formally conclude the proceeding.

## Decision and Penalty

In the event that the hearing body or officer finds a violation of the ethical standards, a penalty may be in order. Obviously, the severity of the penalty can vary depending upon the seriousness of the violation. Penalties may range from a simple letter of admonition or censure, to removal of the public servant from certain duties or responsibilities, to more drastic action including removal from elective office.

It is exceedingly rare for ethical violations to result in a monetary fine. A monetary fine or action to void a contract resulting from unethical conduct is most appropriate where the ethical violation caused probable financial harm to the community. These types of violations are best prosecuted by the district attorney under the public trust provisions of state law.

Importantly, removal from office is a power best reserved for the governing body which holds the power of removal pursuant to the charter (for home rule municipalities) or state statutes (for statutory cities and towns). Moreover, it is important to acknowledge that elected officials remain accountable to the citizens and are subject to recall from office should their constituents feel the ethical standards of their official are lacking. For that reason, removal from office should be considered only in the most egregious cases.

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### Footnote:

1. Many home rule and statutory municipalities in Colorado have adopted local ethics regulations, ranging from comprehensive charter provisions and ordinances to a few local supplements to state law. CIRSA members can obtain examples of local ethics ordinances by contacting [saml@cirsa.org](mailto:saml@cirsa.org).



# CHAPTER 7

## HARASSMENT ISSUES: WHAT ELECTED OFFICIALS NEED TO KNOW

By: Tami A. Tanoue, CIRSA Executive Director

### Introduction

Harassment allegations have been a media fixture for the past few years, as the “me too” movement spreads across the world of entertainment, media, the corporate sector, and even into federal, state, and local government.

In municipal government, many of us feel like seasoned veterans in dealing with harassment issues. At least in the employment arena, we know how to deal with harassment. We have the policies in place, and we take them seriously. We do regular training on the issues. We know how to undertake a fair and credible investigation when allegations surface, and we understand the need to impose appropriate consequences for well-founded allegations.

But now, harassment issues are surfacing at the level of governing bodies and elected officials. Like an unexpected virus variant, this permutation has left some municipalities unprepared to deal with the consequences. The results have included ineffective responses, public embarrassment, and loss of public confidence.

### Why Should You Care About Harassment Issues at Your Level?

You might be thinking that the governing body working environment is not the same as the employee workplace. You’re all co-equals, elected by and accountable only to the voters. The people “hired” you, and the people are the only ones who should be able to “fire” you. You each got into this voluntarily for the love of your municipality, and not as your livelihood, and those who can’t stand the heat should get out of the kitchen. Right?

Well, wrong! Let’s start by looking at your place in the municipal organization. You’re at the very top of the organizational chart and the chain of command. As such, you are a key influencer of the organizational climate. A recent study concludes that the organizational climate is the most potent predictor of harassment in the workplace!<sup>1</sup> You’re setting the tone for how people throughout the organization interact with one another. If the tone you set is disrespectful, inhumane, or dysfunctional, then that behavior will be modeled and replicated throughout the organization! Do you want that?

Another reason you should care: the higher up in the organization a harassment issue surfaces, the more difficult it is to deal with. Because of legal requirements and public expectations for transparency, you must necessarily conduct most of your work in public. If you think that a harassment allegation at your level can be dealt with behind closed doors, you may be disappointed.

Also, the consequence for a well-founded allegation of harassment isn't straightforward when it comes to an elected official. How is an elected official to be "disciplined" by his or her peers? Concepts such as "corrective action up to and including termination" don't necessarily translate well when applied to elected officials.

And assuming you've laid out a process for dealing such allegations, who gets involved in that process? Those in the administrative team who normally provide you with support, advice, and assistance may well say, "sorry, this is above my pay grade," requiring you to go outside your organization, at great expense, for help.

## Policies, Legal Definitions, Civil Liability Laws, and Their Limitations

The definition of "harassment" differs from policy to policy. One common factor, though, is that harassment generally must be "severe or pervasive" in order to constitute a policy violation. The "severe or pervasive" standard is consistent with the U.S. Equal Employment Opportunity Commission's (EEOC) view of offensive conduct that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, or the Americans with Disabilities Act of 1990: the conduct must be severe enough that enduring the offensive conduct "becomes a condition of continued employment"; or must be "severe or pervasive" enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.<sup>2</sup>

Thus, policies, as well as civil rights laws affording protection from harassment, set a high bar for liability. A common question, then, becomes: "well, if my conduct is short of 'severe or pervasive,' there's no problem, right?" Stated differently, if someone's behaving badly, but the behavior doesn't quite hit the high bar for a policy violation or for civil liability, does that make the conduct acceptable?

Another form of liability is criminal culpability. How often have you heard someone justifying their bad behavior in this way: "Well, I haven't committed any conduct that could be described as criminal." Does that make the conduct OK?

Let's think about this! In any other aspect of your work as a public official, is the standard for acceptable conduct this low? When it comes to ethical or conflict of interest issues, for example, would we be able to get by with a low bar like "well, just don't commit a crime," or "just don't expose yourself or our municipality to civil liability"? No! Municipal officials pride themselves in meeting the highest standards of conduct when it comes to ethical issues or conflicts of interest. So why should we set such a low bar for the way we behave towards one another?

And here's another critical issue. Harassment laws are generally aimed at employment matters: employee-employee issues, supervisor-employee relationships, employer-employee responsibilities, and the like. These laws aren't designed for issues between elected officials, who aren't employees, aren't accountable to an employer, and are beyond

the reach of common workplace remedies like termination, suspension, demotion, etc. Thus, you'll run across investigations of elected officials' conduct that might reach a conclusion along these lines: "The allegation of a hostile work environment based on sexual harassment was unfounded. This conclusion is reached because the Civil Rights Act of 1964 does not apply to elected officials." But, does that make the conduct acceptable? Should exposure to civil liability be the standard by which conduct is gauged?

Most reasonable people would not live their lives by the guideline, "I'm OK as long as I avoid civil or criminal liability." We would want to hold ourselves to a much higher standard! And, as leaders, we certainly wouldn't want to model such a low bar for the rest of the organization. So let's ditch the legal parsing. Let's focus away from the "h" word, harassment. Let's not spend too much time arguing over definitions. What we need to do is to confront and articulate the expectations we should have for ourselves, and for our colleagues, in the environment in which we operate.

## Risk Factors for Harassment

The EEOC has been doing some interesting work around harassment issues in recent years. Risk factors have been identified that, if present, increase the likelihood that there will be harassment issues in the workplace. You can view the complete list on the EEOC's website,<sup>3</sup> but some of the risk factors include:

- Homogeneity – lack of diversity, "currently only one minority among us."
- Workplaces where some employees don't conform to workplace norms – "rough and tumble" or single-sex dominated workplace culture.
- Cultural and language differences – arrival of new personnel with different cultures or nationalities; segregation of personnel with different cultures or nationalities.
- Workplaces with "high value" personnel.
- Workplaces that rely on customer service or client satisfaction.

Could any of these factors apply to your governing body? For example, if diversity in terms of gender, race, ethnicity, age, and other factors is a new phenomenon on your governing body, then one might expect misunderstandings and gaffes to occur. Certainly, elected officials are "high value" personnel within the organization; there's no one higher in the org chart than you! And most municipalities pride themselves on a high degree of customer service and customer satisfaction. These are all things to be proud of—but they are also factors for the presence of harassment issues.

## So, What Can We Do?

If you've read this far, congratulations! You're more than halfway towards dealing with these complex issues in a positive and successful way. The recent work of the EEOC includes a recognition that a "committed and engaged leadership" is one of the most important factors in preventing and addressing harassment.<sup>4</sup> So the fact that you, as an organizational leader, care about this issue is a great thing in itself.

First, take a look at the prevailing culture on the governing body. Are old ways of interacting with one another no longer working well? Or making some members feel like less than equal participants on the governing body? Have you had complaints or concerns raised about the behavior of one or some members? If so, it may be time to discuss the prevailing dynamics openly and honestly to start identifying the concerns.

Once you know what the concerns are, then you can begin discussing how to deal with them. You can identify what types of conduct are not acceptable. You can identify the values that are important to the group. You can work towards commitments about how you will communicate and interact with one another. Those commitments can form the basis for norms or standards of conduct. Not everyone may end up on the same page, but the “peer pressure” brought about by the consensus of a majority is powerful!

If you can get on the same page on norms or standards of conduct, it may be desirable to put them into a written document, perhaps a set of governing body rules of conduct. The rules can articulate the standards explicitly, so that everyone understands what is expected. A process for bringing forward concerns or complaints can be identified, as well as the manner in which such concerns or complaints will be investigated. CIRSA members can obtain an example of such rules by contacting [tami@cirsa.org](mailto:tami@cirsa.org).

And very importantly, the rules can provide consequences for violations of the standards. Those consequences may be limited by your home rule charter (for home rule municipalities) or the state statutes (for statutory cities and towns). But even if the consequences don’t necessarily include a severe consequence like expulsion from the governing body, they are still powerful! Even a “public censure” is a powerful consequence; your wayward colleague, as well as the citizens, will understand that you take your conduct standards seriously and that violations are unacceptable.

## Bystanders and Peers

It’s important to stress that we are all leaders, and we all have a role to play. Each of us is likely a supervisor, role model, or mentor to someone else. We may be part of a peer’s support system, sounding board, or confidant. We may even just be a witness. And that’s where the concept of “bystander” empowerment or intervention—another concept recently embraced by the EEOC<sup>5</sup> — comes in. Perhaps “peer” would be a better term than “bystander,” but the idea is this: that someone who doesn’t directly experience concerning behavior, but who observes it happening, can step in and make a difference.

This doesn’t necessarily mean that you, as a bystander or peer, should intervene superhero-style, to swoop in and “rescue” someone that you think may be in a problematic situation. Indeed, you don’t need to expose yourself to a situation that could escalate. But what you can do is to talk to that person away from the situation: let him or her know that you saw what was happening. Say something like, “Hey, I happened to hear what Kyle said (or did) to you, and I didn’t think it was OK. Were you OK with that?” If the person responds in the affirmative, fine; you can all move on.

But if the person indicates that the behavior to which he or she was subjected was a problem, then think of the impacts of your intervention! First, that person knows that he or she is not alone: you are a witness. Second, you are affirming that the behavior is not

acceptable. And third, you can be of help in identifying resources for further follow-up. Bystander intervention is about empowering yourself to be part of the solution.

If you're comfortable doing so, you can talk to the person engaging in the problem behavior: "That joke wasn't funny." Or, maybe the situation calls for some kind of interruption...maybe standing in proximity will extinguish the behavior. Or, perhaps, drop something on the floor and create a small diversion!

There are other ways in which a bystander or peer can positively affect a problem situation. Training on this topic is available and can provide a powerful peer-to-peer tool for communicating and reinforcing workplace values.<sup>6</sup> Although a formal complaint/follow-up process should always be available, an effective bystander or peer intervention may help resolve issues without the need to escalate them into a formal process.

## Conclusion: It's All About Respect

In the final analysis, this discussion shouldn't be about the "h" word, harassment. It should be about the "r" word, respect. A working environment where everyone's scrutinizing whether the harassment line has or hasn't been crossed in any given interaction is not a good working environment. A working environment where everyone's striving for a sense of mutual respect, trust, collegiality, and inclusion, is an environment where things are going to get done, and done well.

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### Footnotes:

1. National Academies of Sciences, Engineering, and Medicine, 2018: *Sexual Harassment of Women: Climate, Culture, and Consequences in Academic Sciences, Engineering, and Medicine*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/24994>.
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## CHAPTER 8

# ELECTED OFFICIALS' INVOLVEMENT IN PERSONNEL MATTERS

By Tami A. Tanoue, CIRSA Executive Director and  
Sam Light, CIRSA General Counsel

### Introduction

CIRSA doesn't take many member cases all the way through trial. When we do, it's usually because we expect a jury verdict in our member's favor. But one area where we've sometimes been disappointed by a jury has been in the area of employment liability.

CIRSA members' experience with employment claims in the judicial system reflects certain realities. Every juror has probably had to deal with a "bad boss" at some time in his or her working life. It's much harder to find a juror who's had to deal with "bad employees" as a manager or supervisor. So juries are naturally tilted in the employee's favor rather than the employer's.

Another reality is that employment litigation is extremely stressful. Careers and reputations are at stake. The supervisor's and manager's (and sometimes elected official's) every move is subjected to scrutiny, and the documents they've generated are nit-picked by attorneys and blown up into super-sized exhibits. One's fate is entrusted to the decision of a group of complete strangers. Sometimes, that fate is a dire one, indeed. One mayor in New Mexico (which is in the same federal circuit that encompasses Colorado) was handed a verdict in which a jury determined that his retaliatory and discriminatory conduct in an employment matter warranted a punitive damages award of \$2,250,000 against him.<sup>1</sup>

Even when the stakes aren't that high, no one who's ever been through employment litigation relishes the thought of ever going through it again. The suggestions in this chapter are intended to help you, as an elected official, to minimize the chances that you'll be caught up in employment-related litigation and, if you are, to maximize the chances of a better outcome than that faced by the New Mexico mayor.

## Establish a Structure That Allows Delegation of Personnel Functions

In a word, the single most important suggestion is: delegate! The chances that you'll be pulled into an employment claim, much less sued successfully, go way down if you've appropriately delegated the responsibility to hire, train, evaluate, supervise, manage, and discipline all but your key employee or employees. To do this, you need to have an administrative structure in place that will permit delegation, such as a manager or administrator form of government.

If your entity is fortunate enough to have a manager/administrator, the governing body should take full advantage of the organizational structure this position allows. The manager/administrator should be the **only** position (except for city/town attorney, municipal judge, and similar positions) that reports directly to the governing body. All other personnel should be accountable to the organization solely through the manager/administrator. Every organization that has more than a few employees should strive to put such a structure into place.

## Honor the Structure

Once you've achieved a manager/administrator form of government, you must honor it. These types of actions, if allowed, would violate your commitment to that form and waste the resources that you've allocated to it, and encourage dysfunction and disorder:

- Elected officials reaching down below the level of the manager/administrator to influence what goes on with personnel administration below that level.
- Elected officials reaching down below the level of manager/administrator to give orders to employees below that level on how to do their job, particularly if the orders are contrary to the established policies and/or the direction of their supervisors.
- Elected officials permitting an employee below the level of manager/administrator to bypass his/her own supervisor and take personnel issues directly to them.

Thus, for instance, if your entity has committed to a manager/administrator form, there's no call for elected officials, individually or collectively, to demand the hiring or firing of a specific employee below the level of manager/administrator. Such an action raises questions of propriety from several perspectives:

- **Do your personnel enactments reserve any such authority to the elected officials?** If you have a manager/administrator, your charter, ordinances and/or personnel handbook probably don't (and shouldn't) call for you to be involved in decisions involving subordinate employees. If you get involved in such decisions, you may be outside the scope of your authority and could get in trouble (see "Be aware of the scope of your authority" below).
- **What's the reason for doing an "end run" around the manager/administrator?** Do you have a "favorite" candidate for employment, or an employee who's on your "hit list"? Why are you championing or condemning someone rather than trusting your manager/administrator to make the right decision? Do you question his or her judgment or ability to make the right choice? If so, confront that concern;

don't skirt it with an "end run." And, if the governing body does not share your concern about the manager/administrator, don't "end run" your governing body's collective decisions on oversight of its direct reports.

- **Could what you're doing be perceived as retaliatory?** Along with all the other reasons why involvement in personnel matters can be very risky, consider the retaliation claim. Everyone is potentially in the category of persons who are legally protected from acts of retaliation. Retaliation claims are among the most difficult to defend. And, these kinds of claims can lead to massive liability.

But often, it's not the elected official who seeks, in the first instance, to become inappropriately involved in a personnel matter. Rather, there's pressure put on the official from outside. For instance, a department head may have curried disfavor with a segment of the citizenry because of the perceived manner in which a service or program is being carried out. Either way, though, such involvement is the wrong thing to do. Don't be pressured by a member of the public, for instance, to interfere in a personnel issue that's been delegated to the manager/administrator. That citizen's not going to be around to help you if you get into trouble at his or her urging!

Similarly, don't give in when a subordinate employee is trying to use you to get around his or her supervisor, or when an applicant is trying to get a leg up on employment through you. Let the process unfold the way it's meant to unfold. If you have a concern about the way the manager/administrator is handling things, address that concern directly. If you cave in to pressure to involve yourself inappropriately, though, you may be enabling someone who wants to "game the system," or unfairly disempowering a manager or supervisor.

## Be Aware of the Scope of Your Authority, and Stay Within That Scope

From a liability standpoint, one of the worst things you can do is to act outside the scope of your legal authority. An area where authority issues often arise, particularly in smaller communities, is in the "committee," "commissioner" or "liaison" format for personnel administration. In this format, an individual councilmember or trustee is in a supervisory or oversight relationship with respect to a department, department head, or employee. Thus, a town might designate a trustee as "water commissioner," "police commissioner," etc.

What's troubling about this format is that it's often not described anywhere in the community's enactments, nor is the authority of each commissioner set forth in writing. Rather, this format seems to be a relic of oral history and tradition. But the lack of written guidelines means that there are significant personal risks to the commissioner. What if the commissioner takes an adverse job action, such as seeking to terminate an employee? Under what authority is the commissioner acting?

If the commissioner can't prove that the action was within the scope of his or her authority, there may be consequences from a liability and insurance coverage standpoint. The Governmental Immunity Act, for instance, provides protections for public officials only when in the performance of their *authorized duties*. Likewise, liability coverage

protections through CIRSA only apply when a public official is acting *within* the scope and performance of official duties. Finally, even if there is authority on the books, this format in particular can lend itself to uncertainty over who does what—“Is this a decision for the board, commissioner or department head?”

Similar questions arise when an individual elected official chooses to become involved in a personnel matter in a way that isn’t authorized by the entity’s personnel enactments. Where is the authority for such involvement? If you can’t find a firm source of authority, you may be heading for trouble. An individual elected official’s inappropriate action can not only create liability exposure for the official, but put him or her crosswise with the other members of the governing body.

## Respect the Principle That Each Employee Should Have Only One Boss

This seems like an obvious principle that every organization should follow. You don’t want an employee confused by multiple directions from multiple supervisors. You also don’t want an employee playing one supervisor off against another. When elected officials become inappropriately involved in personnel matters, this basic principle is violated, and the result is chaos.

If you allow yourself to become embroiled in a personnel matter involving a subordinate employee, the employee may then feel that the word of his or her supervisor can be disregarded. You may have forever undermined that supervisor’s authority, or allowed the subordinate to do so. Likewise, if you were involved in lobbying for the hiring of a favorite applicant (even if it was for good reasons), that person may always feel that you, not his or her supervisor, are the go-to person on personnel issues.

Similar principles apply with respect to your governing body’s oversight of its manager/administrator and other direct reports. Elected officials should recognize the council/board is not a group of seven or other multiple number of bosses, but one boss. Therefore, members of the body should commit themselves to speaking with one voice to their direct reports and to exercising their oversight role—e.g. performance reviews, goal setting, etc.—as a group. Even when there are differences of opinion as to how to address an issue with the manager/administrator, the body should arrive at its position. If the governing body does not work to speak with one voice to its direct reports, it’s undermining its credibility as a board and its ability to gain accountability at the highest levels in the organization.

This is not to suggest that a militaristic chain of command is required in every workplace. In fact, flexibility in reporting relationships is desirable in some situations. For instance, you wouldn’t want to lock your employee into reporting a harassment claim only to an immediate supervisor, if the immediate supervisor is the one alleged to be engaging in the harassment. But you can maintain the needed flexibility without collapsing into the chaos that your inappropriate involvement in personnel matters will beget.

# Conclusion

There's certainly a place for elected official-level decision-making in personnel matters, but those decisions should be reserved for the high-level issues that involve the entire organization. Examples of such high-level issues could include establishing overall policies for the entity; selection, evaluation, and discipline for the council/board's few "direct reports"; salary and benefits plan for the workforce; and overall goals and priorities for departments. But when these issues begin devolving into the details of hiring, training, evaluating, supervising, managing, or disciplining particular employees below the level of your direct reports, it's time to delegate them to your manager/administrator.

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Footnote:

1. The award was later reduced to \$1,500,000 but affirmed by the 10th Circuit Court of Appeals. *Hardeman v. City of Albuquerque*, 377 F.3d 1106 (10th Cir. 2004).



## CHAPTER 9

# SOCIAL MEDIA USE BY ELECTED OFFICIALS

By: Tami A. Tanoue, CIRSA Executive Director &  
Sam Light, CIRSA General Counsel

Social media engagement has become a regular part of life. Daily, we check our emails and texts, and then probably go on to check our favorite social media sites, such as Facebook, Instagram, Twitter, and others. Local governments and their constituents are also mutually interested in connecting via social media, whether to conveniently transact business or provide timely information about everything from street closures to street festivals. So it's no wonder that elected officials, too, have integrated social media into their public lives. But if you're an elected official, you should know that, because of the powers and responsibilities conferred on you by virtue of your position, your social media use has some legal dimensions that may not apply to the rest of us. This chapter explores a few of them.

### Open Meetings Law

While Chapter 5 outlines the basics of the Colorado open meetings law (COML), it's worth examining more specifically how its requirements can extend to your social media use. Consider this scenario: You have a Facebook page for yourself under the category of "Politician." You post information about city happenings and resources, and welcome others to post there as well. One day, you post on a controversial topic that the council will be tackling at its next meeting, and two of your fellow councilmembers get wind. All three of you go back and forth posting about your respective views and how you intend to vote on the topic.

Is this a "meeting" within the meaning of the open meetings law? Well, it seems at least arguable that it is! Remember, a "meeting" under the law includes a gathering convened electronically to discuss public business. When there are three or more members of the local public body (or a quorum, whichever is less) participating in such a gathering, that can trigger the notice and "open to the public" requirements of the law. If triggered in this type of social media discussion, how do you comply with the 24-hour "timely" posting requirement in the COML when you're posting on Facebook? How do you meet the "open to the public" requirement? These are questions for which there are not clear answers, but you see the point...discussions of public business by the requisite number of governing

body members can certainly take place in an electronic forum, and then these questions (and others) may come into play.

## Constitutional Concerns

A scenario: You post about the upcoming agenda item on your Facebook page featured in the previous scenario. For some reason, the discussion on the post starts to go completely sideways, with lots of negative comments, including some hateful attacks from the citizen you defeated in the last election, and some uncalled-for memes and photos. You decide the hateful attacks aren't helpful to the discussion—keep it positive, people!—and so you “block” your prior campaign rival from posting and you start deleting some of the particularly disagreeable comments. A few days later you ultimately decide that the better part of valor is to just delete the whole darn post.

Did your act of “blocking” your rival raise free speech concerns? It may well have! Remember, the constitution provides strong protections for free speech and generally prohibits the government from censoring speech that occurs within those venues established for the open exchange of ideas on matters of public concern. These principles have raised the question of whether a public official's Facebook page or Twitter account is a public forum such that commenters cannot be blocked, or their comments removed, based on their content.

While the law in this area is still developing, a few courts have concluded that if a public official has a social media page or feed that essentially “walks and talks” like a governmental forum, then the medium is a public forum subject to the principles regulating free speech. So, for example, where an elected official designates the page as their official page as a member of an elected body, uses the page to communicate with constituents as an elected official about government events, and invites followers to use that page for discussion of any topics relating to the government, the official cannot block persons who post critical content. The takeaway? A social media site can be a great way to communicate with constituents but if that's how you use your accounts, don't block people from posting.

Also in the above scenario, if you've decided to delete the whole darn post: Are the post, and the comments, considered “public records” within the meaning of the Colorado Open Records Act (CORA)? Again, it seems at least arguable that they are! The term “public records” is defined to include “the correspondence of elected officials,” subject to certain exceptions. And public records are open for public inspection and copying. Your municipality has most likely adopted a records retention and destruction schedule that governs how long various documents, including electronic documents, must be maintained prior to destruction.

So, could someone request a copy of a post that was on your Facebook page under CORA? What if you deleted the post? Is there a record retention schedule that applied? Was that schedule violated when you deleted the post? More of those infernal questions for which there isn't a clear answer...but you see the point! If there's a chance that the posts are subject to CORA, then it might be smart to tolerate the replies you get on your post. Alternatively, make sure you have some reasonable and defensible posting rules in place so that everyone knows up front your expectations for your page.

## Quasi-Judicial Rules of Engagement

A further word of caution on social media concerns your duties as a decision-maker in quasi-judicial matters. Consider this scenario: A site-specific land use application is scheduled to be considered by the planning commission on an upcoming agenda, with the commission's recommendation to be referred to the council for final action at a later date. You consider the proposed use to be an extremely controversial one. But you're worried that it's a bit "under the radar," what with summer vacations, holidays, and all. Of course, proper notice has been given by the planning department, but you're still concerned that the proposal may get a favorable recommendation from the commission without any citizen testimony. You decide to post this on your Facebook page: "Citizens, please read this IMPORTANT NOTICE! You need to know that the planning commission is going to be considering a proposal for \_\_\_\_\_ at its upcoming meeting on \_\_\_\_\_ at 7:00 p.m. As a councilmember, I am taking no position on the proposal at this time. But if you care about our community's future, then you will want to attend this very important hearing before the planning commission."

See any problems here? You've certainly stated that you're "taking no position" at this time, right? But it may appear to others, particularly the applicant, that you are opposed to the proposal and are trying to "gin up" opposition to it! Is that congruent with the "neutral decision-maker" role that you will need to take on once this quasi-judicial proposal goes up to the council? Could the applicant take the position that it looks like you made up your mind, without evidence, long before the council hearing, and therefore, you should be recused from participation?

"But, but, all I'm doing is making sure the public knows about this proposal," you protest. Well, do you do that with EVERY proposal that comes before the planning commission, or did you just happen to pick out this one for the Facebook spotlight? The essence of procedural "due process" rights that attach to a quasi-judicial matter is notice and a fair hearing before neutral, impartial decision-makers. With a post like this you can see how, even if your intentions may have been honorable, doubts can be cast on your impartiality and neutrality. Those doubts increase if your involvement goes beyond this scenario—say, for example, that you are also posting or responding to comments about the merits of the application.

When it comes to social media buzz around quasi-judicial matters, remember that due process requires you to be impartial and base your decision upon evidence presented at your public hearing. Remember also that defensible quasi-judicial decisions are about good process. As part of that process you will ultimately hear the case and have the power to make the decision—at the time that it's ripe for your body's decision! Avoid the temptation to leap into the social media fray, as that will protect your ability to serve as a quasi-judge, and protect your governing body's decision.

## Some Suggestions

Social media use by elected officials implicates new and evolving legal issues, and this chapter only touches upon a few of them. The uncertainty is real! But you can avoid uncertainty and stay on solid ground if you follow these suggestions:

- Consider whether you really need to be on social media in your elected official capacity. If only 23 people “like” your page, it may not be worth the hassle. And keep in mind that only a fraction of those 23 people may even be seeing your posts.
- If you feel that the use of social media is a net plus and/or a service to your constituents, be extremely careful about what is posted! Stay away from discussions of items that will be or could be on your governing body’s agenda. There’s a time and place for discussion of those items, and it’s most likely not social media. Stick to public service announcements, photos and posts about things you did (“It was great to meet so many of you when I volunteered at City Cleanup Day last week”), upcoming events like “Town Halls,” re-posts of City newsletters, links to articles that tout your great city, and the like. If you’re careful about what you post, you’re not going to have to confront the uncertainties of COML, CORA, and other laws. If you stick with helpful but non-controversial posts, then there won’t be much of a need to delete posts.
- Be particularly careful to stay away from commenting on a pending quasi-judicial matter. This is where the stakes are highest! In a worst case scenario, an imprudent post could require your recusal from participating in the matter on the basis that you’ve revealed your non-neutrality, buttress someone’s constitutional claim, serve as a basis to attack the body’s decision, or all of the above.
- Check to make sure you created your page under the right category. “Politician” is more accurate than “Governmental Organization.” And don’t use the official city/town logo, to avoid any implication that yours is an “official” city/town page.



# CHAPTER 10

## APPOINTMENT AND REMOVAL OF OFFICIALS IN STATUTORY TOWNS

By: Linda Michow, Partner, and Christiana McCormick, Associate, Michow  
Cox & McAskin LLP, and Tami A. Tanoue, CIRSA Executive Director

### Introduction

Colorado law grants elected officials in statutory towns the power to appoint and remove certain municipal officials, including members of the governing body and officers such as the clerk or treasurer. If you're an elected official in a statutory town, it's important for you to have a working understanding of the rules and potential pitfalls in this area. An improper appointment or removal can not only result in disputes or claims, but also create uncertainty within the organization and a cloud over the governing body. This chapter provides information on appointment and removal of officials in statutory towns, including the filling of vacancies and guidance regarding best practices. In general, statutory cities operate under different statutes, and home rule municipalities operate under charter provisions that are likely different than the statutory requirements outlined in this chapter, and so neither are addressed here.<sup>1</sup>

### Filling Vacancies on the Town Board

A vacancy on the town board can occur under a variety of circumstances, including: resignation; inability to fulfill the duties of office; failure or refusal to take the oath of office; failure to meet residency requirements (including moving out of the ward or municipality); removal from office; a seat left unfilled after an election, or an official passing away during the term of office. Once a vacancy arises, the town board is faced with several considerations.

- **Sixty-day time frame.** First, state law provides that a vacancy on the town board may be filled either by appointment or by election. However, this option only lasts for 60 days. If the town board does not fill the vacancy by appointment or order an election within 60 days, then the board is required to order an election to fill the vacancy.
- **Resolution declaring vacancy.** The board should consider adopting a resolution that declares the vacancy, sets forth the vacancy effective date, and states whether the board chooses to fill the vacancy by appointment or by election. While such a resolution is not required for a statutory town, the board should consider this

approach, as passing a resolution declaring a vacancy provides a written record of when the statutory 60-day clock begins and makes known the intent of the town board regarding its choice on how to fill the position.

- **Special considerations for vacancy in mayor’s office.** Generally, a vacancy in the office of mayor is filled in the same manner as vacancies of other members of the town board. However, if the town board will appoint someone, it may wish to consider qualifications or circumstances unique to the position, including the mayor’s voting rights and role as presiding officer.

## Term of Office for an Appointee Filling a Vacancy

The term of office of a vacated seat filled by appointment or election only runs until the next regular election. This is true even if the original term would not be expiring at such election. There is no authority in state law for a statutory town to extend the term of office of an appointee filling a vacancy. If terms of office are four years, this rule can sometimes create confusion at the next regular election, where some seats are up for a full four-year term while another seat is on the ballot solely for purpose of electing a person to fill a vacant seat for the remainder of the term. Proper parlance can reduce the confusion—candidates running for that vacant seat aren’t running for an office having a new two- or four-year term but for a shortened, two-year term to fill the vacancy.

## Qualifications of an Appointee Filling a Vacancy

Colorado statutes do not separately mandate qualifications for an appointee who is to serve in the event of a vacancy. However, the Colorado Constitution and related statutes require that persons holding any elective office shall be qualified. To be qualified, an appointee must be: at least 18 years old as of the date of the election [or appointment]; a U.S. citizen; a resident of Colorado for at least 22 days prior to the election [or appointment]; a resident of the municipality (and ward, if applicable) for at least 12 consecutive months prior to the date of the election [or appointment]; not serving a sentence in any public prison; and registered to vote.

An appointment is void if the person appointed is not qualified. Therefore, it is important to ensure that a person appointed to fill a vacancy in an elective office has the qualifications set forth in state law, as summarized above.

Although state law does not dictate the process for selecting a qualified person to fill a vacancy, governing bodies should be mindful that appointments to elective positions, to some extent, remove the people’s opportunity to choose their own representative. Therefore, it is prudent to implement a formal process with sufficient advertisement of the vacancy to provide transparency and ample opportunity for participation. Other considerations and pitfalls to avoid include:

- Making an appointment that benefits or appears to benefit any member of the governing body personally (see chapter 6);
- Appointing someone who will create turmoil or dysfunction within the governing body or other areas of municipal government (see chapters 1 - 3); or

- Failing to provide the appointee with proper training once appointed. Like any other person serving in an elective position, an appointee should receive proper training.

## Appointment of Officers in Statutory Towns

State law requires the town board appoint or provide for the election of certain officers, including a clerk, treasurer and town attorney. The applicable statute, C.R.S. Section 31-4-304, states in pertinent part:

The board of trustees shall appoint a clerk, treasurer, and town attorney, or shall provide by ordinance for the election of such officers, and may appoint such other officers, including a town administrator, as it deems necessary for the good government of the corporation.... **[N]o appointment of any officer shall continue beyond thirty days after compliance with section 31-4-401 by the members of the succeeding board of trustees.**

In some cases, the town board fails to act within 30 days to appoint or re-appoint officers of the town. Further, in many cases, these positions are staffed with municipal employees, which can lead to uncertainty in employment when the town board fails to re-appoint an employee to one of these appointed positions. These and other circumstances raise the question: What is the impact of not making appointments within the 30-day period after the new board members are seated? In short, if the 30-day period set forth in this section passes, the term of the officer expires.

*However*, it is important to note that the expiration of the term does not necessarily or automatically oust the individual holding the office from that position and create a vacancy. Rather, absent provisions to the contrary in state law or local ordinance, the public interest requires that public offices should be filled at all times without interruption. The Colorado Constitution adheres to this principle, stating in Article XII, Section 1 that “[e]very person holding any civil office under the state or any municipality therein, shall, unless removed according to law, exercise the duties of such office until his successor is duly qualified....”

Therefore, an individual holding an appointive office in a statutory town remains in that position after his or her term has expired (i.e. holds over) until a successor properly appointed by the town board takes office. Moreover, if the incumbent is an employee, he or she would remain in their appointive position and on the town’s payroll as a holdover.

To avoid confusion and conflict regarding holdovers, when the term of an appointive office expires, the town board should timely act to either re-appoint the incumbent or appoint a new person to the office. The board should also seek advice of legal counsel before deciding to not re-appoint an incumbent appointive officer who is also an employee of the town.

## Removal from Office in Statutory Towns

The following identifies some of the key requirements pertaining to the removal of an elected official in a statutory town pursuant to a proceeding under C.R.S. Section 31-4-307. Many of these requirements are not present in the statute itself; rather, they are found in some old judicial decisions concerning the statute. Removal of an elected official by

the governing body essentially overrides the will of the people who elected the official. For this reason, it is critical that any removal proceedings take place in accordance with the guidance provided by these decisions. The advice of counsel is also critical given the potential for missteps.

While these decisions are more than a century old, they came into play more recently in the recommendation of a United States Magistrate Judge in a case involving a CIRSA member municipality.<sup>2</sup> While the Magistrate Judge's recommendation is unpublished and does not serve as precedent, it was cited with approval by the Colorado Supreme Court.<sup>3</sup> Thus, the Magistrate Judge's recommendation highlights the importance of these older decisions and may offer some good guidance to a statutory town contemplating a removal proceeding.

Given this recent resurrection of old case law, the way in which a town may have applied Section 31-4-307 in past proceedings may not serve as a sound guide to the conduct of such proceedings today. Thus, past practice should not be used as a basis to avoid compliance with the following requirements gleaned from the old but resurrected case law:

- **The basis for removal (unless the elected official has moved out of town) must be “misconduct or malfeasance in office,” as those terms are used in Article XIII, Section 3 of the Colorado Constitution.** These constitutional provisions contemplate official misconduct of such a magnitude that it affects the performance of the officer's duties, and offenses against the town “of a character directly affecting its rights and interests.”<sup>4</sup> Political or personal disagreements, or a stalemate resulting from failure to obtain a requisite number of votes on matters coming before the town board, may not be sufficient grounds to effect a removal.
- **The removal proceeding is quasi-judicial in nature, subject to the safeguards commonly found in judicial proceedings.** This means:
  - There must be a charge or charges against the official sought to be removed. The charges must be specific and stated with substantial certainty.<sup>5</sup> Vague or general charges likely will not meet this requirement.
  - There must be a hearing in support of the charges, and an opportunity to make a defense.<sup>6</sup> The charges must in the first instance be proven by testimony and evidence, with the opportunity given to the officer sought to be removed to rebut such testimony and evidence, and offer his or her own.
  - The hearing must be held under the same limitations, precautions, and sanctions as in other judicial proceedings.<sup>7</sup>

A basic requirement of judicial proceedings is that decision-makers must be neutral and impartial. This is why in most judicial proceedings, investigative, prosecutorial, and adjudicatory functions are separated. However, in removal proceedings, the adjudicatory body (the town board) may also have carried out an investigative function by establishing the charges that are the basis for the proceeding. Involvement in presenting

testimony and evidence would further diminish the separation of these functions, and the lack of separation may compromise the appearance or reality of a neutral and impartial decision-maker.

These requirements highlight one of the most difficult procedural aspects of a removal proceeding: who will present the evidence and testimony? The town board serves as the decision-maker. It would likely be problematic, from a fairness standpoint, if the decision-makers also served as witnesses. One option to address this issue is use of a hearing officer whose decision is made subject to final review and action by the town board. Another option is to limit involvement in non-adjudicatory functions to one (or at most two) members of the governing body who understand their need to then recuse themselves from the board's decision-making.

- **The decision will be subject to judicial review.**<sup>8</sup> This means that under Rule 106(a)(4) of the Colorado Rules of Civil Procedure, a transcript of the proceedings as well as the evidentiary record, will be produced to the district court for review. The standard of review will be whether the governing body's decision was "arbitrary or capricious." Constitutional due process violations may be raised, and considerations of bias may be raised to set aside a decision as well.

Other questions and issues to consider in holding the proposed removal hearing include:

- Have provisions been made for the issuance of subpoenas to compel the attendance of witnesses, the administration of oaths, the right of discovery, and the cross-examination of witnesses?
- Are rules of procedure in place, has a standard of proof been established, and will rules of evidence be followed?
- Does the officer sought to be removed have the right to be represented by counsel? Is the governing body working with the advice of counsel?
- Have adequate time and opportunity been given to the officer sought to be removed to prepare his or her case in answer to the charges? Have provisions been made for the granting of reasonable continuances?
- Has some means of recording the hearing been arranged, preferably by a stenographer who can prepare a verbatim transcript?
- Who will prepare written findings of facts, conclusions of law, and a final decision and order?

## Conclusion

A town board's powers of appointment are effective tools. They can be used to timely fill a board vacancy and appoint key staff who will help drive the town's vision and success. But, if not handled appropriately, appointments can become the source of intractable disputes and potential liability. Thus, board members should work together to understand their options, duties and obligations when it comes to making appointments, and make wise use of their appointment powers.

Likewise, a town board's power of removal is undoubtedly an important one; but, an imprudent or improper removal proceeding can be the source of significant liability. As noted, recently resurrected case law suggests the bar for exercising the removal power is high, for situations where serious misconduct or malfeasance in office can be proven. Further, the removal power should be exercised only with the procedural safeguards summarized above in place, and only with the assistance of legal counsel. Otherwise, the governing body may be taking on an unacceptable risk of liability.

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Footnotes:

1. Officials in statutory cities and home rule municipalities should obtain from their counsel and staff information on the appointment and removal requirements specific to their organization.
2. *Russell v. Buena Vista*, 2011 WL 288453 (D. Colo. 2011).
3. *Churchill v. University of Colorado*, 2012 WL 3900750 (Colo. 2012).
4. *Board of Trustees v. People ex rel. Keith*, 59 P. 72, 74 (Colo.App. 1899).
5. *Board of Alderman v. Darrow*, 22 P. 784, 787 (Colo. 1889).
6. *Darrow*, 22 P. at 787.
7. *Keith*, 59 P. at 75.
8. *Id.*



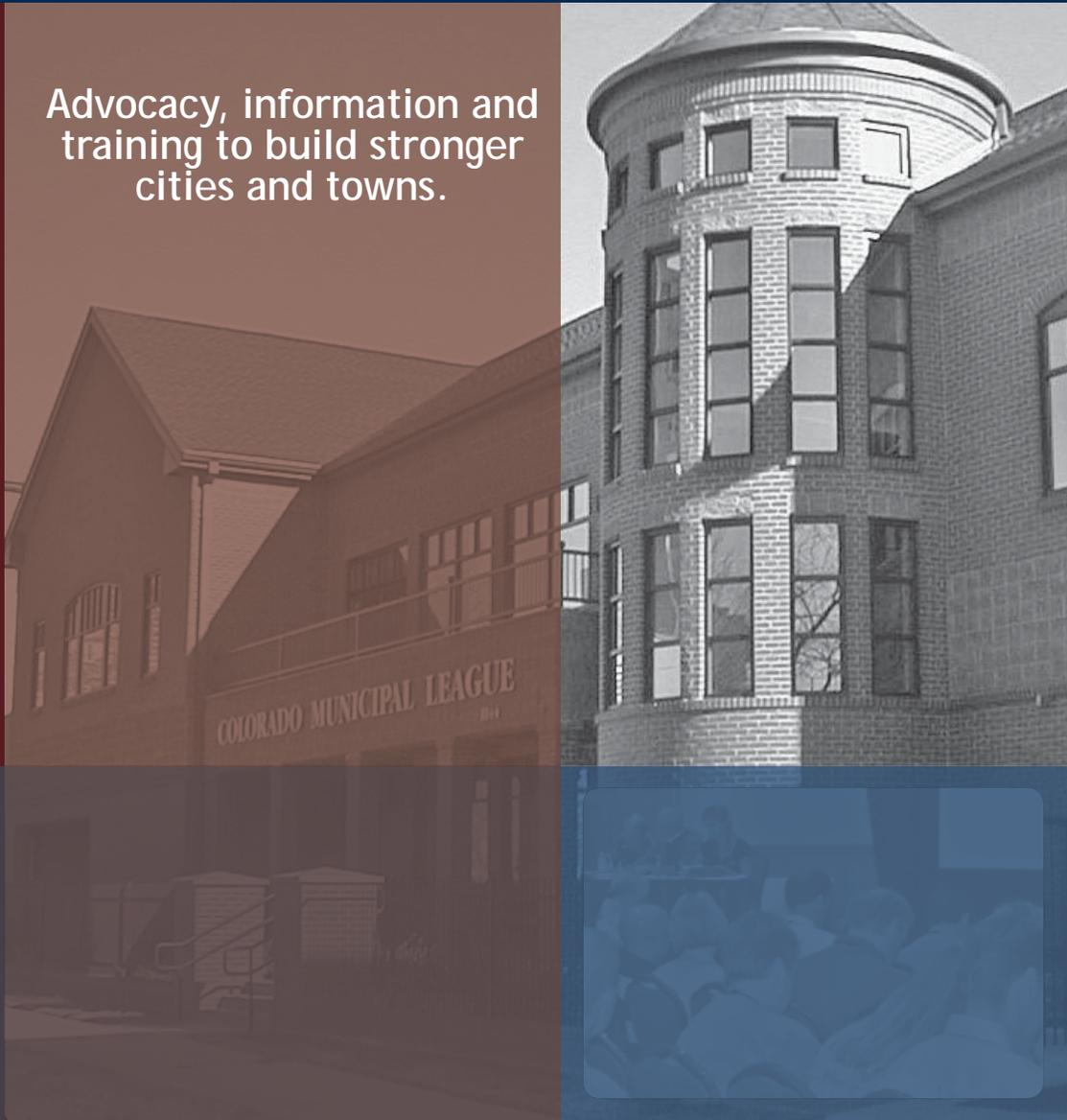
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# ELECTED OFFICIAL'S STARTER KIT

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# FOREWORD

Welcome to your new role as a municipal elected official!

For many years, the Colorado Municipal League has been the #1 resource for training for newly elected officials through our popular workshop program. These workshops have historically focused on core issues that are “mission critical,” covering topics such as liability, ethics and conflict of interest laws, roles and responsibilities, and general orientation to your new position and the relationships you now have to fellow elected officials and your municipal staff.

As times have changed, CML has recognized the need to provide training resources in formats that are affordable and accessible to our members statewide. Traveling to traditional “in-person” workshops can be costly and time-consuming, and with busy personal and professional lives, training resources need to be available in a format that you can fit into your individual schedule.

That is why we are so pleased to offer you *The Newly Elected Official’s Starter Kit*. Using the core content areas that we typically cover in our training programs, we have developed this compilation of reading material and recorded Webinar presentations to replicate in some way the training experience. While there will no doubt be many opportunities in the coming years for you to attend a CML training program (and we hope you do!), this starter kit will point you in the right direction and provide the resources and tools you need to begin your adventure as a municipal elected official.

As always, we appreciate your feedback and suggestions for ways in which we can serve you better. Remember, CML works for you!

## NOW THAT YOU ARE IN OFFICE ...

Congratulations! After many long hours, months, of campaigning, you have won. You are now an elected official. And whatever your office — mayor or councilmember — you are probably experiencing some ambivalence. On one hand, you feel very exhilarated by and looking forward to your new challenges. On the other, you feel somewhat incredulous, like you have just stepped into the Twilight Zone. It's pretty weird and you can't believe you did it. "Was I out of my mind? How'd I get myself into this? I feel like I have the whole world in my hands." Well, very simply, you declared your candidacy, vigorously courted the citizens, and you won! So, for better or for worse (hopefully, better), you are married to this office for a while, and you will do just fine.

Believe it or not, you have lots of company. There are many others just like you, and there are many veteran local elected officials who know those feelings all too well. They are more than willing to mentor you and share their experiences in getting adjusted in surviving as a newly elected official.

Several years ago, then newly-elected official Jacquelyn Gist, alderman, Carrboro, N.C., was in your shoes. But through this experience, she learned so many important lessons about herself and her new job in the small town of Carrboro that she decided to write about it. The following, "Elected to office? Your life will never be the same," is so candid and down to earth, that we thought it was worth reprinting in its entirety, to help you put things in perspective.

### **ELECTED TO OFFICE? YOUR LIFE WILL NEVER BE THE SAME** by Jacquelyne Gist

Three hours into a town board meeting — covered as always by cable TV — I ran my fingers through my hair and a pink foam rubber curler fell out. I grabbed it and shoved it in my purse. When I got home, my machine was full of messages. People reported that they had watched to see how long it was going to take me to realize that I had a curler hanging from my hair. No one mentioned the awe-inspiring decisions I made that night.

A few months ago, I ran into a local musician who told me that he and his roommates always watched our "show." They had really loved the "episode" where we talked about requiring people to put their cats on leashes. (That motion failed, by the way.)

An elected official in a small town is a public person. People watch you more closely than you would ever expect — both politically and personally. And the people who let you know today that there is a curler hanging from your hair are the same people who will come to the town hall tomorrow with recycling concerns. The musician who loved the cats-on-leashes "episode" also wanted action on the late night noise from the car wash across the street. The owner of my favorite restaurant, where I have eaten weekly for 12 years, talks to me about property he has just bought that is in the watershed protection district. The woman who has cut my hair for 10 years finds out that her new house is next to one of the sites being considered for a new landfill. One of my close friends applies to the town for a small business loan. The list goes on.

I have lived in Carrboro for almost 18 years and I know a lot of people. The people I hang out with and do business with, the people I spend my life with on a daily basis, are the same people for whom I am sworn to provide sound governmental decisions.

Sometimes I feel like the sibling who is left in charge while the parents are out for the evening. If I let everybody do whatever they please, mom and dad will ground me. If I enforce the rules, my siblings will hate me. What if I really believe, based on sound judgment and good information, that the best place for the new landfill is next to my hairdresser's house? What if it is in the best fiscal interest of the town not to grant my friend a small business loan?

Newly elected local government officials typically enjoy a wonderful honeymoon period with constituents, staff and the press. To those of you still on your honeymoon — to others who would join you — I say, “Savor it.” Pretty soon, something magical will happen. You will undergo a metamorphosis and become a “them.” No longer will you be the person who would be able to solve your community’s problems if only you were on the board. Instead, you will become the one whom people tell how they would solve the problems if they were on the board. This metamorphosis typically takes place around budget time. Life will never be the same.

## **Facing public prejudice**

Being on the Carrboro Board of Aldermen has changed my life in ways I never expected. Most perplexing is the new way people react to me publicly. To people who are not close to me, I am one of “them,” a politician. During my first four years in office, I was accused of being everything from a socialist to a conservative. It seems that lots of people have fixed ideas of who and what elected officials are, how we make decisions, and what motivates us. Suddenly, I find myself being prejudged based on the fact that I am an elected official in ways that are often funny, usually wrong, and sometimes downright insulting.

Last year at a diversity sensitivity workshop, my fellow participants and I were asked to tell about times when we felt we had been prejudged and how that had affected our lives. Without giving it any thought, I found myself talking about problems I have had that have stemmed from people’s biases against politicians — problems that had crowded out for that moment my serious concerns about problems I have faced as a woman. Even my family distrusts politicians! It is part of the job, and I guess I deal with it by working hard to serve in a way that allows me to look into the mirror without feeling ashamed. I still get mad if people accuse me of “acting like a politician,” but at least I know they are wrong.

## **Facing the demands on your time**

When I was first sworn in a little over four years ago, I got something I hadn’t counted on as I campaigned. After the high of the campaign and of being elected, the excitement of seeing my name and picture in the paper every week, after the congratulatory letters and phone calls, after the intense sense of teary eyed joy I felt the night my mother held my family Bible for me during my swearing in — after all of these intense emotional experiences had passed — I found that I had a second full-time job. It required hours of reading, long meetings, and attention to hundreds of details. It was a job that required me to be an expert on areas that I knew next to nothing about. It was a full-time job that I was supposed to do after I finished the full-time day job that paid my bills. All of a sudden, instead of working eight hours a day, I was working 10, even 18, hours a day. And by nature I am a lazy sort. The life of a local elected official? “What life? I don’t have a life; I have meetings!”

That was kind of hard to get used to — all the hours of work and the never-ending meetings. When I was first running for a seat on the Carrboro board, I believed that the job entailed one meeting a week on Tuesday nights. Wrong! Instead, I find my typical week involves two to three lunch meetings squeezed into my job schedule, one or two 5:30 meetings, and two or three 7:30 meetings, in addition to that regular board meeting.

## **Facing the demands on your professional life**

So, being an elected official has changed the rhythm of my waking hours and my perceptions of what is important in governance. It has also changed other areas of my life.

When I was first elected, I was working as a social worker in a small nonprofit advocacy organization. The agency’s work required frequent communication with human service, education, government and media organizations. After being in office a few months, I discovered that the people in these organizations would return my phone calls faster than they had before. Because of my public position, I suddenly had access to people that the agency had been trying to build relationships with. I was in a position to get public attention for the agency’s agenda, but I wasn’t even the agency’s director, although some people thought I was. And I felt uncomfortable, knowing that people were responding to my role as an alderman, not my role as a social worker, even if it was for a good cause. My newfound access to the community’s leaders strained my relationship with my boss, whose phone calls were not returned as fast as mine. I ended up changing jobs.

In my new job, I bend over backward to keep my political life and my professional life separate — and not just because I believe that I should do the job I am paid to do by my employer. It also helps to keep me sane and provides a justifiable escape from political life. It is nice to be able to tell people who call me about town business while I am at work that I am really sorry, but I will have to ask them to call me at home after work. I have found particular satisfaction in telling people who call to yell at me about things like wasting tax dollars on overpaid employees that I am sorry, but I will have to call them after I get off work because my employer doesn’t pay me to spend time dealing with town business. They have a hard time arguing with that!

I am pretty certain that I now have the ability to block out the personal and political implications of decision making. It is one of life’s harder things to do, but I try hard. I believe that my job as an elected official is to serve the best interest of my whole town, not just of those who voted for me or, even harder, not just of those who are my friends. There have been several meetings where I was shaking as I voted my conscience and then went home and cried. I remember reading

a tall tale years ago about a couple who moved to a small New England town where every year a harvest king is chosen from among the men of the town. For a year, the harvest king reigns supreme. Everyone fawns on him and all his needs are satisfied to excess. The husband decides that this looks like a pretty good deal and begins a ruthless campaign to be crowned harvest king. He is successful and very excited. On the night of the coronation, when he is to take his place as king, he shows up at the ceremony, is crowned, and then learns that his first duty is to watch the execution of his predecessor. All that work, all the honor and attention, and then they kill you! In my darker political moments, I think of that story.

But sometimes I am able to do something that has a tangible positive effect on the town that I love so much. And it is a wonderful feeling to drive through a neighborhood that is a little safer because of an action I was part of, or to see people using bike lanes and sidewalks I helped to get. It is really satisfying to know that every now and then it matters to somebody that the board took a positive action. When I was working the polls on the day I was up for re-election, people would come up to me and say things like, "I am voting for you. I don't always agree with you, but I trust you." An old-time conservative told me that in front of my mother. I felt like I was in a Norman Rockwell painting!

Being an elected official has affected me publicly, professionally, and socially, but it has also changed me privately. It has changed who I am and how I define myself as a person. My best friend — a calm, rational attorney — says that I am much tougher than I was four years ago and, in her words, much less gullible. She tells a story about something that happened when I first ran for the board. I had not been endorsed by the Home Builders Association, but I did receive a \$50 campaign donation from two builders and a lovely note saying that they had supported me and were sorry that I had not gotten the group's endorsement. I thought that this was really sweet and told my friend about it. "Sweet?" she said. "Don't you know that they are planning to build the new subdivision behind your house?"

Then there was the time that a developer looked me straight in the eye and told me that our development ordinance would not allow him to save trees or open space, even though he wanted to. I apologized for the inadequacy of our ordinance and ran off to talk to the town staff about ways to fix a horrible problem that was keeping these good people from doing the right thing. The staff informed me that they had offered the developer numerous options to preserve the woods and open space, all of them allowed in our ordinance, but that he had rejected every one. A few weeks later, when I voted against the guy's proposal, he turned to a mutual friend and asked, "Why did Jacqui vote against me?" Our friend said, "Well, you lied to her." "But I had to!" the developer replied.

After several incidents like this, I began to be less willing to just believe anything someone told me. I don't think that people lie a lot in the political arena; it's just that they only tell that part of the story that makes them look best or promotes their interest. So I have had to work toward developing a way of reserving judgment.

This runs counter to my personality, and I now find that in all areas of my life, I am not as trusting as I once was or as I would like to be. I feel that I have lost a part of me that I liked.

I am also not always very nice anymore. I used to work very hard at being nice, because it seemed like the right thing to do. After a year or so on the board, I began to get the feeling that I was sometimes being taken for a chump. Staff members, neighbors, and business people would come to me with issues or problems — they would come and tell me horrible stories and I would rush right out and try to fix them. Often I would learn later that they purposefully had been playing to my social work side and had misled me. After a few particularly blatant incidents, I stopped trying to be everybody's friend all the time and realized that providing sound, well-reasoned leadership meant that there would be many times when not everyone would like me. So, I am not so nice anymore, but I am a better alderman.

The effect has spilled over into my private life. In matters having nothing to do with town business, I am also not so concerned anymore with trying to make everyone happy all the time. I figure I work hard, try to be fair, and use my best judgment. That is what people have a right to expect. If they don't like it, it's not my problem. Four years in public office is more productive than 10 in therapy. Finally, I am no longer afraid to be wrong or to admit that I made a mistake. I have found that being willing to change your mind or reverse your stand on something doesn't really bother or offend anybody except the press, and who cares what they think? (Well, I do, but I try not to let it affect me.) The longer I am in this job, the more I learn that what is really important is getting the best possible decisions made in a manner that allows the community to have faith in the integrity of those decisions. My personal reactions or political needs are secondary. When I was first elected, I was always worrying about how I did in meetings. Now I worry about what I did — Did the meeting have the outcome I wanted it to? Sometimes getting to that point means not pleasing everybody, disagreeing with my friends, saying "no" to allies, publicly changing my mind, and admitting that I was wrong.

Recently all of this happened in the same meeting! For three years I had been going to meetings of the leadership committee of an intergovernmental task force on crime. At one particular meeting, I along with a fellow member of the board of aldermen, was to present the recommendations of a subcommittee on youth. We had worked on the recommendations for months, and my friend and I had spent weeks working out how we would present the recommendations and exactly what we wanted from the leadership committee. We needed money, legislation, and political support. This was serious stuff. Well, to start with, the meeting had been moved from its regularly scheduled 5:30 start to 5 p.m. I was so used to going at 5:30 that I hadn't bothered to check the meeting time on the agenda and

I cruised in at 5:30. Our presentation had been first on the agenda, so they had moved it back because I was late. After that embarrassment, my colleague finally made our presentation and the group began discussing it. Overall, they were supportive. Then the committee chair said, "Let's refer this to the three managers for a recommendation." The week before, after much argument, our group had decided that this was what we wanted and were hoping for just such an action by the committee. But based on my original reservation, which I had finally overcome, I automatically started arguing against it. "No," I said, "if we refer it to staff, it'll get watered down and lost." My fellow alderman stared at me, wishing, I am sure, that he were close enough to kick me. I suddenly realized what I had done, took a deep breath, and said, "I take that back. I do want it to go to staff. Sorry." People looked at me like I was crazy. But the motion carried. Later in the meeting, I also managed to inadvertently insult Chapel Hill's mayor, and then I left before the meeting was over to go teach a workshop. I felt stupid and embarrassed, but the meeting had the outcome I had hoped for. Daddy always said that life ain't easy.

The day after that weird experience, I had lunch with my mentor and friend, Sue, who is on the school board, and I said, "How on earth did this happen? How did we get to be in charge? If we mess up, there is nobody higher up to fix it. We can really do damage!" Sue replied, "Well, it took you four years, but you finally figured it out."

I ran for town council on issues of social change, but then I found out I was supposed to make decisions on sewer pipes, acres of impervious surface, transition zones, and intergovernmental fund transfers — stuff we hadn't really covered in my days at the School of Social Work. So I now find that maybe a few times a year I deal directly with the issues I first ran on. I had thought that I could march into office and say this, this, and that need to change and this is how we are going to change them — ta-da! It's all fixed! It took me about two years to learn that even my brilliant ideas weren't new and that if there were simple overnight answers to my community's problems, they would have happened long ago. This has been hard to convey to the small group of social change and environmental activists who first encouraged me to run for the board. They now accuse me of being, horror of horrors, a "moderate."

But I have learned that it is not big flashy headline-grabbing political actions that determine the quality of government in a town. It is the small details, the product of long meetings and hard work, that determine the quality of town policy. In the long run, the boring meetings on zoning, sewer, budget, and personnel have a more profound effect on social justice or environmental integrity than do a bundle of flashy resolutions.

The bulk of board work that truly affect the day-to-day lives of people goes by without much notice. I have learned that responsible stewardship for a community is the real job of an elected official.

I love Carrboro (some would say to the point of obsession) and I worry a lot about doing something that would harm it. I also love being an elected official (some would say to the point of obsession). It is the place where those two obsessions clash that I find most personally terrifying. The point where what is best for Carrboro may not be what is best for me politically. I had to face that monster in the 1993 election. There was a hotly controversial issue that came up in the late summer and early fall just as I was gearing up for my re-election campaign. I wished that it would wait until December, but it didn't. I drove my friends crazy worrying about it, but decided that my political life was less important than the welfare of the town, and I stuck by my position. October was hell, election day was tough, but I won by a large margin. At the time, I swore I would never go through that again. But I know I will.

So, to newly elected officials, I say, "Welcome to the strangest club in town." It may be hard, it may be wonderful. You may have moments when you want to just throw in the towel. But when all is said and done, it is easier to be on the council than to sit by and watch some other group of idiots mess things up. Good luck, and have fun!

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# MODERN LEADERSHIP

## FOREWORD

*Wanting to lead and believing that you can lead are only the departure points on the path to leadership. Leadership is an art, a performing art. And in the art of leadership, the artist's instrument is the self. The mastery of the art of leadership comes with the mastery of the self. Ultimately, leadership development is a process of self-development.*  
– James Kouzes and Barry Posner, *The Leadership Challenge*

### What does it take to be a good leader?

Becoming a leader is largely due to self-determination, and developing your leadership skills must be the result of a decision on your part to become a better leader. And, as a public official, you have a unique responsibility to do so. When you make the decision to run for public office, your community does, and should, expect nothing but your best efforts to be an effective leader. The good news is that most people have basic, common core competencies that provide the “raw material” for good leadership. What makes a great leader is the ability, through deliberate actions and experience, to shape and hone those core competencies to maximum benefit.

### LEADERSHIP, WHAT DOES IT LOOK LIKE?

Old leadership models were centered on the idea that strong leaders had a command-control approach. That theory worked very well for many industrial-age corporations, many of which grew into empires that exist today. However, the world we live in is remarkably different than it was for the generation before us. When this command-control leadership model dominated, the environment that many organizations were working under was highly ordered and predictable. As a local government official today, you simply need to look around your community to understand that it is anything but ordered and predictable! With the constantly changing demographics, trends and globalization, the only certain thing in today's environment is change itself. With a dynamic environment we must find and cultivate dynamic leaders.

As an elected official, you are a leader, and your community's destiny is in your hands. Will you be a command-control leader, floundering in world of change and flux, or will you be a dynamic leader, ready to learn and grow in your capacity? The good news is that you can determine what kind of leader you'd like to be and, with careful thought and reflection, you can learn the habits and traits of good leadership to emulate.

### The servant-leader

During the Iran-Contra scandal, at the conclusion of his testimony to the Senate committee, George Schultz was asked by the chairman, “Do you have any advice for the American public?” His answer? “Don't give power to people who can't live without it.” There are limits to the concept of “power” and the role of ego in elected office.

The idea of a servant-leader is a relatively new one. In the command-control leadership model, the leader dictated his/her desires to subordinates who then did what they were told. The servant-leader model turns that notion on its head by suggesting that the leader is actually working for the subordinates, providing support and resources needed to get the job done.

The servant-leader model fits well with elected office – you are, after all, a public servant. Elected officials are there to serve the community and fulfill the public trust. Officials are not there to fulfill their own egos and demonstrate how intelligent and “right” they are. An elected official defines and clarifies the problem (leader), then empowers the municipal staff to do what is necessary to solve the problem through the appropriate authorization and resources (servant) and, once

the task is complete or the problem is solved, the official acknowledges and thanks those involved in the success (leader). The servant-leader changes roles dynamically as the problem or task unfolds – first as a leader by clarifying the issue and providing direction, next as a servant providing the necessary support and, lastly, as a leader once again, crediting those involved with the success. Just as leaders should not be “those who cannot live without power,” neither should they be people who must hoard all the credit for themselves.

### **The question of ego**

When discussing aspects of “power,” the question, “Does ego have a place in the life of an elected official?” must certainly be considered. The most politically correct answer would be “no” – ego tends to imply negative connotations. For elected officials, the actual answer is “yes, but...” First, the importance of ego. Running for office is a challenge, and even at the local level, the going can get tough. Officials may not only find their opinions and views on issues attacked, but also may have their personal affairs attacked. Having a strong ego can help weather the difficult situations, not by countering the attack with assertions of being “right,” but by providing the confidence and internal strength to carry on. In elected office, ego can be equally valuable when taking harsh criticism of decisions. Some of the criticisms may be groundless, but during the times when the criticism and negative feedback is valuable, having a solid self-confidence will allow officials to check emotions at the door and actively listen to and appreciate the constructive criticism.

### **Reality check - understanding strengths and weaknesses**

Being a good leader is not as elusive as it may seem – good leaders aren’t born, they are made through careful study and deliberate development of leadership qualities. One of the most fundamental exercises in developing leadership potential is a simple analysis of strengths and weaknesses.

When taking inventory of strengths, think not only of credentials and learned abilities and knowledge, but also of natural assets. For example, a councilmember with background in engineering can lend expertise to a discussion of the new wastewater plant. The same councilmember may be an exceptional communicator and able to summarize discussions and ask clarifying questions. By identifying these traits, leaders are able to use the full range of their strengths.

Understanding weaknesses is an equally valuable exercise. There are some weaknesses that can be changed – perhaps an individual is not well versed in proper meeting management. This can be remedied through a training course or reading on the subject. Other weaknesses are more innate, part of who we are and more difficult to change. These, too, do not have to stand in the way of leadership skills. By simply identifying and acknowledging weaknesses, one can mitigate their affect on other, stronger leadership qualities.

Finally, good leaders understand the importance of being dynamic. Think of your community – chances are it has seen its fair share of change in recent years. What “worked” a few years ago probably doesn’t quite fit now. Likewise, a community’s leadership needs likely has changed as well. An individual may have brought certain leadership qualities and assets to the position a few years ago that were very useful for the community at that time. But the needs may have changed – and leaders should change, as well. Each person has many strengths to offer the community, good leaders adapt to the changing needs around them, making themselves as relevant and necessary to their communities today as they were the day they got elected.

### **Decisiveness**

A look in the dictionary under “decisiveness,” shows a variety of descriptive words: conclusive, firmness, resolute. Being decisive can be challenging as an elected official – balancing multiple interests, values, and trade-offs. Being decisive means taking a position, and when it’s a tough issue, taking a position can be very uncomfortable.

This is, unfortunately, all part of the role of an elected official. While sometimes decisions will be painful and controversial, an official could be doing the community a disservice by endlessly hemming and hawing over an issue and dragging out the final decision, thus allowing emotions, resources and discord to gain further momentum. While there is a time and place for careful consideration and weighing of all the facts (which is indeed another obligation of the elected official), there comes a time when a decision must be made and there is an equal obligation to do so. While there are no hard and fast rules determining when “decisiveness” is required, simply understanding the human inclination to avoid making tough decisions will help identify possible situations when a decision is being unnecessarily delayed.

Likewise, when considering the terms used to describe decisiveness (conclusive, firmness, resolute), being a leader means being assertive – make a decision and let there be no question that you are behind the position 100 percent. When exercising leadership in a political environment, fellow council or board members rely on each other to stand behind a decision; and citizens also expect and deserve assertive and decisive leadership.

## **SOME KEY CHARACTERISTICS OF EXCEPTIONAL LEADERS**

### **Problem-solving**

Have you ever been to a “problem-solving meeting” where many issues are addressed, but the core problem isn’t solved? This can be an immensely frustrating experience, and for an elected official, time is very limited. Good leaders understand the importance of systematic problem solving – by using logical thinking and good human relations skills, leaders can draw practical solutions. When looking at a particular problem, it is natural to think of it in a “big picture” context. For example, Main Street is riddled with potholes. An elected official naturally thinks about the problem as it relates to the budget and capital improvement plans. While this is important and has an appropriate place, it is equally important to be able to focus on the immediate problem at hand and not be overwhelmed by insurmountable obstacles. Effectively leading through a problem-solving process requires clarity and, in many cases, a clearly defined problem is a half-solved problem. Some authors have related a systematic problem-solving method to a traditional scientific method, a process that resembles the following:

1. Clearly define the problem
2. Collect the facts
3. Identify the causes of the problem
4. List the driving forces
5. List the restraining forces
6. Generate alternative solutions
7. Evaluate the alternative solutions
8. Develop a plan of action
9. Implement the plan of action
10. Follow up

Following a logical, “scientifically-based” process doesn’t guarantee a problem-solving process will be free of conflict. In fact, conflict is a natural and necessary component to achieving the best solutions. Leaders understand the necessity of conflict, of “playing the devil’s advocate” because it can reveal aspects of a problem and tangential issues that may not have otherwise surfaced if everyone was in agreement. When respectfully managed, conflict can lend tremendous creativity and thoroughness to a problem-solving process.

### **Information and networks**

Related to problem solving, good leaders understand the importance of information and networks. Information can take a variety of forms and, in today’s digital age, information is more accessible than ever. However, such availability of vast information can be a detriment – too much information can be paralyzing by clouding the problem with numerous peripheral facts and figures. Without proper application, information is just that – facts and figures. Information becomes knowledge when it is targeted and useful, and good leaders learn to sharpen their eye toward information, correctly siphoning out what information is really needed (knowledge) and knowing where to go to get it. An elected official is required to be a generalist – she/he must have a basic understanding of an enormous realm of public issues. It is unrealistic to be an expert in any one topic, therefore, officials must learn to rely on the available resources. In many cases, this will mean relying on municipal staff and their ability to find the appropriate information that is needed and to help translate that information to knowledge.

On a similar note, good leaders understand the importance of networks. The term network is often used to imply social circles, but in the context of leadership, its significance relates to resources. Think of the last time you were at a networking event involving fellow public officials. Perhaps it was something more socially-oriented, like a dinner, or perhaps it was more formal, such as a training or workshop. What information did you share with your peers? What information did they share with you? Knowing what your networks are, and who your potential sources of information and knowledge are, can help you and your colleagues be more efficient in your job. You can save yourself, your colleagues, and your municipal staff a tremendous amount of time by leveraging your networks to gain advice, knowledge and wisdom on any number of issues you face in public office.

### **Quality and achievement**

Leadership is easy when times are good – when revenues are strong, when there is good management among the municipal staff, when the community supports the local government, and projects and initiatives are progressing as planned. The mark of a good leader, however, is someone who can weather the ups and downs – not simply by retaining their position, but by ushering the community through challenging times. It’s when challenges arise that true leaders are put to the test. Good leaders have a constant emphasis on quality and achievement through it all, both in their own behavior as well as the goals they set for their community. Simply put, they seek out the positive and celebrate even the small achievements. At the same time, these leaders acknowledge and face their challenges, but draw on success stories, an established tradition of quality and achievement, to inspire solutions to the challenges facing their community. As an elected

official, this can be a difficult task. Very often, when challenges arise, officials find themselves and colleagues in the spotlight and subject to criticism. It's at these moments, though, when a community most needs clear focus on the positive accomplishments and an honest, but optimistic, acknowledgement of challenges.

## **Responsibility**

There will be times during the career of an elected official when it will be difficult to move forward on issues of importance. With so many interests and priorities to balance, there are some that simply cannot be accomplished, no matter how much you or a constituent group wants them. When things don't go your way on council, how do you explain it to others? It's tempting for those who do not succeed in getting what they want to play the victim. How easy it is to shift the attention and blame to some outside force. For example, "I tried to argue for the new skate park, but no one would listen to me," or "I think others on council already had their minds made up on this one," or "in the end, this really was just a political decision," are the excuses of someone who is a "victim." By using statements like these, they are essentially shifting attention away from themselves while undermining the collective decision of the council or board that they should be supporting.

A responsible leader would view these disappointments differently. Rather than whining and complaining, a responsible leader copes, takes full responsibility for his or her actions, and shifts the focus toward dealing with the problem rather than making excuses for why it didn't go their way.

So how do we become responsible leaders? Here are some thoughts on responsibility in action:

1. Be aware of victim behavior. Think of recent experiences and identify times when you may have acted more like a victim than a responsible leader. Think of what some more appropriate responses might have been. Simply being aware of this behavior will help minimize the times when it may sneak up on you.
2. Be dependable. Be cautious of the commitments you make – once you make a commitment, follow through. If you can't guarantee a certain outcome, don't make the commitment!
3. Understand that there will be times when you are conflicted – you'll be stuck between two equally important and valuable options. Remember, as an elected official you have a special obligation to your city or town, and there will be times when you will need to do what's best for the community, even if it involves a personal cost.
4. Know that there will be times when, no matter what you do, there will be someone in your community who will disagree with your decision. While these individuals or groups may not agree with you, they will certainly respect your accepting responsibility for your actions.

## **A FINAL NOTE**

### **Leadership and elected office**

Throughout this handbook, the discussions of leadership qualities have used very real examples of what you may experience as an elected official. In discussing different approaches to leadership, the "servant-leader" model is highly relevant to elected office. Warren Bennis, an acclaimed researcher of leadership traits in top executives, said, "leaders are people who do the right things and managers are people who do things right." Leaders, in the context of elected office, are responsible for their community's overall direction and vision. Managers, or municipal staff, are responsible for the day-to-day task of implementing the direction and vision in the most effective and efficient manner possible. For this elected official-staff relationship to operate effectively, trust must be a constant underlying theme. The public trust is your personal responsibility while in office; and you must have genuine and consistent trust in the municipal staff carrying out your vision and direction.

Maintaining this dynamic can be difficult at times, particularly in a political environment. Problems and conflict are inevitable. As an elected official, however, you are a problem-solver and, as discussed previously, conflict can be respectfully managed to enrich and bring creativity to the problem-solving process. Additionally, information and networks are important. Problems and conflict can be minimized by establishing – and actively using – your networks and trusting the expertise and knowledge of your municipal staff.

As an elected official, you are expected to facilitate your community's progress. That can be an exciting chapter during your tenure in office, but also can be wrought with additional challenges. Understanding the importance of responsibility, quality and achievement, and having an optimistic attitude toward challenges can inspire solutions during even the most difficult times. Good leaders understand that with any new endeavor, mistakes are a natural part of the learning process. Imagine if we only pursued new initiatives that were guaranteed to succeed, with no mistakes or setbacks along the way. Progress would come to a complete halt. Leaders learn to embrace mistakes and missteps as opportunities for improvement and insight, not threats to the overall success of the community or municipality. Indeed, possessing and applying only individual leadership qualities do make a good leader – it is the combination and application of numerous traits and characteristics in tandem that together create empowering leadership, creativity and progress.

To reiterate the themes introduced in the beginning of this handbook, leadership is an on-going and deliberate process of self-development. True, some people are blessed with charisma and seem to gravitate naturally into a leadership role, but

good leadership is far more multi-faceted, requiring many other skills and traits. The topics discussed in this handbook are merely highlights on some of the traits and characteristics of good leaders – through your own experience, you will likely learn and develop many more. The purpose of this handbook is to inspire confidence in yourself. As quoted by Kouzes and Posner in the opening section, “Wanting to lead and believing that you can lead are only the departure points on the path to leadership.” By entering public office, you have taken that first step toward leadership – by applying common sense, careful study and reflection, and a personal commitment to your own self-development, you are well on your way to exceptional leadership and true service to your community.

## SUGGESTIONS FOR FURTHER READING

- *An Invented Life: Reflections on Leadership and Change*, Warren Bennis
- *Art of Leadership*, George Manning
- *Building Community*, George Manning
- *Good to Great*, Jim Collins
- *Insights on Leadership: Service, Stewardship, Spirit, and Servant-Leadership*, Larry Spears
- *Leadership from the Inside Out*, Kevin Cashman
- *Leadership is an Art*, Max Depree
- *Leadership Jazz*, Max Depree
- *Leadership Without Easy Answers*, Ronald Heifetz
- *Leadership: Theory and Practice*, Peter Northouse
- *Leading Change*, Jim O’Toole
- *Leading Minds: An Anatomy of Leadership*, Howard Gardner and Emma Laskin
- *Leading With Soul*, Lee Bolman and Terrence Deal
- *Learning To Lead*, Warren Bennis and Joan Goldsmith
- *The Leader of The Future: New Visions, Strategies, and Practices For The Next Era*, Marshall Goldsmith
- *The Leadership Challenge*, James Kouzes and Barry Posner
- *The Leadership Triad: Knowledge, Trust, and Power*, Dale Zand
- *The Power Principle – Influence with Honor*, Blaine Lee

Thanks to Susan Wehrspann of Wehrspann & Associates for her help compiling this reading list.

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This chapter was compiled and written by CML Membership Services Manager Sara Reynolds.

# EFFECTIVE MEETING PROCEDURES AND TECHNIQUES

## INTRODUCTION

### Need for rules of procedure

Every legislative body should adopt a set of rules by which to operate. These rules can be simple or detailed; they can incorporate *Robert's Rules of Order Newly Revised*, or another set of prepared rules. Alternatively, the council or board may establish their own rules. The goal is to guide the council or board; make the legislative process more efficient, stable and predictable; and reduce disputes concerning correct procedure.

Rules of procedure not only protect the minority from arbitrary use of power by the majority, but they also protect the majority from the capricious use of power by the minority to thwart the wishes of the majority. Rules of procedure can help reduce interpersonal friction, result in better decisions and add to the credibility of the council or board.

In addition, there are other practices and techniques that help the council or board operate more as a team, instill confidence in the municipal government and otherwise serve the public interest. Some of these suggested practices and techniques are included in this handbook.

Regardless of procedures used by a governing body, it is important that the procedures emphasize openness to the public, scrupulous fairness to all sides of the issues presented before the council or board, and consistency. Whether the meetings are formal or informal, incorporate Robert's Rules or follow their own unique procedures, these three basic objectives should be accommodated.

Finally, it is important to note that there is no single "right" way to conduct an effective meeting and, in some cases, the items discussed in this handbook may be legally prescribed in a municipality's ordinances or charter. This handbook is intended to provide a general snapshot of procedures and information that should be relevant and useful to many municipalities. When in doubt, elected officials are advised to consult with their municipal attorney to determine what legal requirements may be in place.

## MEETING PREPARATION AND PROCEDURES

### Meeting routine

The meeting routine or the established order in which various categories of business are to be considered by the governing body differs somewhat from one municipality to another. Despite variations in arrangement, most agenda formats may be divided into two categories: (1) procedural items of business that occur at most meetings, including the roll call, opening ceremonies, reading and approval of minutes, etc.; and (2) substantive items of business that may vary from meeting to meeting and include public hearings, ordinances, resolutions, etc.

There is no single correct order of business for municipalities to follow and state law does not require any particular order. Many cities and towns, however, have prescribed an order by charter, ordinance, resolution or the body's rules of procedure.

While variations on the order of business abound, a fairly common order might look like this:

1. Call to order
2. Opening ceremonies and proclamations
3. Roll call
4. Reading and approval of minutes
5. Public comments

6. Reports from officers, boards, committees, the municipal manager and/or the municipal attorney
7. Public hearings, final reading and voting on ordinances
8. Unfinished business
9. New business
10. Extended public hearings
11. Adjournment

Some of these general categories may include:

#### **Opening ceremonies**

This is optional for municipal governing bodies, and may include an invocation and the Pledge of Allegiance. Some councils and boards follow this section with a “Ceremonies and Proclamations” section during which they present special citations and awards.

#### **Reports from officers, boards and committees**

The mayor, chair, manager, attorney, treasurer or finance office, or other department heads may have reports to present, and standing and special committees and boards report their findings or recommendations.

#### **Public hearings, final reading and voting on ordinances**

Ordinances that are before the council or board for the final reading and voting are placed on the agenda at this point.

Although some municipalities, such as statutory towns, may enact certain ordinances at the same time they are introduced, most ordinances must be brought before the council more than once. Introduction of ordinances occurs under New Business.

#### **Unfinished business**

This category includes business that was not disposed of at the preceding meeting or that was postponed to the present meeting. Unfinished business should only include items of business that meet these criteria and that cannot be properly placed under any other agenda item.

#### **New business**

Notices, petitions, recommendations, ordinances on first reading and resolutions are placed under new business. Many of these items need to be processed in some manner before being presented to the governing body for disposition. They, therefore, may have been previously referred to a member of the city or town staff or to a committee or board. When such items – with the requested recommendations, comments, or information from the staff member or committee attached – are placed on the agenda, they are classified as new business because no substantive action has yet been taken by the governing body.

#### **The presentation of bills, invoices and claims, and the authorization of warrants, occurs under new business**

At the end of new business, board or council members are often given a chance to make comments, give reports on meetings they have attended, or discuss citizen complaints they have received. Following this, the chairperson asks for or makes any announcements and requests a motion for adjournment.

### **The role of the agenda**

A meeting agenda is the statement of the purpose for the meeting and the basis of all planning for the meeting. A written copy of the agenda is therefore prepared in advance and distributed to council or board members, citizens, the media and other interested persons to inform them of the items of business to be considered.

The municipal clerk or manager often prepares the agenda. This responsibility varies and is usually set by the governing body. In addition, the clerk or manager follows the appropriate public notification procedures as outlined in state statute.

#### **Agenda analysis (Are meetings too long?)**

An agenda should include only as many items of business as can be considered in the time allotted for the meeting. Some effort should be made, therefore, to estimate approximately how much time agenda items will take, and to take these time estimates into consideration when planning the meeting. If there are 32 items on the agenda and each item is estimated to take “only” 10 minutes, the council is in store for a six-hour meeting. Some method to eliminate or consolidate the agenda items should be considered.

Reducing the number of items placed on the agenda is often a difficult task, especially when certain decisions must be made by the governing body, and when citizens have a right to know the reasons behind decisions. In such a case, some ideas to eliminate or consolidate agenda items are:

#### **Time-saving ideas**

1. A specific type of decision may be handled by an administrator, with a brief summary report being made to the board or council from time to time.

2. The board or council may establish policies to handle reoccurring decisions, then direct staff members to follow the policy.
3. Items may be handled by a committee, which does the initial gathering of opinion and facts, organizes the information and recommends a course of action to the council or board. (CAUTION: Committees don't always save time; in fact, they may actually add to the work of the governing body. They must be used wisely and sparingly, and their use should be evaluated to see if they are reducing or adding to the workload.)
4. The council or board may evaluate whether items are being postponed to future meetings when they could be dealt with at the present meeting. While decisions should not be made in a casual or hasty manner, council and board members should resist postponing items in the hope that, at the next meeting, a whole new set of facts will surface and make the decision easier. The "new set of facts" may make the decision more difficult and "perfect" solutions rarely materialize. Delay, when it results in a better decision, is commendable; but delay so that an official does not have to act on a sticky question may be inefficient and irresponsible.
5. The city council or town board may set definite times for the meeting to come to order and to adjourn. Few council or board meetings achieve much of value after four hours, and three to four hours is usually enough time to allocate for most meetings. Time limits also may be set for special hearings that are not required by law, for citizen participation periods and for the debate by council members and trustees. (Any council or board that wishes to set time limits for an entire meeting should refer to the special orders section(s) in Robert's Rules of Order Newly Revised.)
6. Establish a consent agenda.

### **Consent agenda**

A consent agenda allows the board or council to approve several items of routine business with one vote. Considered to be one category of business, the consent agenda contains routine items that are not controversial in nature and do not require further discussion.

Each governing body can determine which items of business are routine and can be placed on a consent agenda. Typical consent agenda items might include:

- Approving minutes
- Receiving and filing reports
- Receiving, filing, or referring communications
- Approving license applications and bonds
- Approving payment of contracts
- Approving certain appointments and accept resignations
- Approving finance warrants

It also is important to note that items can be removed from the consent agenda, often at the request of a single council or board member, for consideration by itself.

### **Study sessions**

Study sessions are a common way for councils and boards to manage the time of formal meetings more effectively. Study sessions are meetings held outside of the regular council or board meeting primarily for educational purposes. Certain issues before the council or board are more complicated than others, and therefore require extra time and depth that is difficult to accommodate in a regular council or board meeting. Many councils and boards choose to have study sessions on a regularly scheduled basis, while others opt to have study sessions on an as-needed basis. By conducting the majority of the in-depth discussion at a study session, time allotted during the regular council or board meeting can be reserved for public input and formal decision-making.

### **Executive sessions**

State law specifies in detail subjects that can be considered in executive sessions and procedures for calling and conducting executive session. These legal requirements should be carefully adhered to and, when in doubt, the municipal attorney should be consulted.

## **THE PLAYERS - ROLES AND RESPONSIBILITIES**

### **Presiding officer**

The presiding officer is the director and leader of any meeting of the municipal governing body. It is his or her responsibility to see that the meeting moves forward in an orderly fashion, that discussion is guided and controlled, and that the meeting runs as smoothly as possible.

The presiding officer has the principal duty to maintain order and decorum in the meeting of the governing body. Robert's Rules suggests 10 separate duties for the presiding officer, including:

1. Call the meeting to order and ascertain the presence of a quorum.
2. Announce and maintain the agenda.
3. Recognizing members entitled to the floor.
4. State, take the vote and announce the results of the vote on all questions legitimately put before the body.
5. Refuse to recognize obviously frivolous or dilatory motions.
6. Enforce procedural rules pertaining to debate, order and decorum.
7. Expedite business within the procedural guidelines adopted by the body.
8. Decide all questions of order, subject to appeal or, if in doubt, submit them to a vote of the body.
9. Respond to inquiries on parliamentary procedure or factual information relevant to the proceedings.
10. Upon the adoption of a motion to adjourn, or in the case of a sudden emergency, declare the meeting adjourned.

City council and town board meetings are formal meetings and, above all, the presiding officer should know and enforce the council or board rules of procedure and parliamentary law. It is the presiding officer's duty to see that all members know and understand the rules being applied. The municipal attorney may be very helpful in explaining parliamentary and procedural rules, when needed.

### **Mayor pro tem**

When the presiding officer is absent from a council or board meeting, the mayor pro tem (or in other cases, the president pro tempore) presides. The mayor pro tem is a member of the council or board and has been elected or appointed to his or her position by the governing body.

### **Council and board members**

The corporate and legislative authority of nearly all Colorado municipalities is vested in either a city council or town board, which is generally composed of between seven and 13 representatives chosen by the electorate for fixed terms of office. As previously discussed, the presiding officer is a member of the council or board.

All members of the municipal governing body have the right to full participation in the proceedings. That is, a member has the right to make motions, to speak in debate on motions and to vote on all questions put before the council or board. In some municipalities, the mayor votes only in case of a tie.

### **Agenda item discussion in a nutshell**

Meetings normally have a written, published agenda, which constitutes the body's agreed-upon road map for the meeting. While there are several approaches to agenda item discussion and no single "right" way to conduct the discussion, one possible format follows.

1. The presiding officer or chair (normally the mayor) should announce the agenda item and briefly describe the subject to be discussed.
2. The chair should invite the appropriate people to report on the item and provide recommendations. The appropriate people may be a member of the governing body, a committee chair, or a staff person responsible for providing information to the body.
3. The chair should then open the agenda item to the council or board to ask questions.
4. If appropriate, the chair may invite public comments after the council or board has had the opportunity to ask their questions about the agenda item. More information on involving the public is available in Section 6 of this handbook.
5. Once the public comment period (if applicable) is over, the chair can request a motion to be made from the governing body. A second is typically required to ensure that more than one person on the board or council is in agreement with the motion before the question is posed to the rest of the body for vote. The chair may wish to announce who made the motion and the second for purposes of meeting minutes.
6. Once the motion has been made and seconded, the chair can entertain debate from the council or board. If little or no discussion takes place, the chair can proceed directly to the vote. If the discussion is more lengthy, the chair may wish to restate the motion to be sure that everyone understands the question before them before taking a vote.
7. After closing the discussion, the chair calls for a vote. The vote typically involves asking for the "ayes" and then the "nays." Unless specific legal provisions require a super majority, a simple majority is all that is needed to pass a motion. The chair announces the results of the vote and may note the dissenting votes for the purpose of meeting minutes.

## Motions in a nutshell

Motions are vehicles for decision-making. There are three basic types of motions:

### The basic motion

The basic motion is the one that puts forward a decision for consideration. A basic motion might be: "I move that we create a five-member committee to plan our annual fundraiser."

### The motion to amend

If a member wants to change a basic motion under discussion, he or she would move to amend it. A motion to amend might be: "I move that we amend the motion to have a 10-member committee."

### The substitute motion

If a member wants to completely do away with the basic motion under discussion and put a new motion before the governing body, he or she would "move a substitute motion." A substitute motion might be: "I move a substitute motion that we cancel the annual fundraiser this year."

Motions to amend and substitute motions are often confused. They are very different, and so is their effect, if passed.

- A motion to amend seeks to retain the basic motion on the floor, but to modify it in some way.
- A substitute motion seeks to throw out the basic motion on the floor and substitute a new and different motion for it.

### Other types of motions

Beyond the basic motions listed above, there are other types of motions that are used on occasion during meetings. For more information about the types of motions and examples, please refer to Robert's Rules of Order, Newly Revised.

Privileged motions are matters of urgency, such as a motion to adjourn or recess.

Incidental motions are motions that pertain to matters of procedure, such as enforcement or suspension of the rules and objections to the main motion.

### Multiple motions

Up to three motions may be on the floor simultaneously. When two or three motions are on the floor (after motions and seconds) at the same time, the first vote should be on the last motion made.

## INVOLVING THE PUBLIC

How the governing body handles citizen participation can affect the meeting and the impression citizens have of their municipal government. For example, if the council or board has made no specific provision for citizen participation, any item of business may be sidetracked by a citizen who wishes to speak. It is, therefore, important that the governing body decide how and when citizens may participate, and adopt or amend rules of procedure accordingly.

The method by which citizens are allowed to speak at a council or board meeting varies from community to community, and the procedures may be established by ordinance, resolution, rule or tradition. Basically, however, there are five methods of placing citizen participation on the agenda. It is important that regardless of the method used to involve the public, citizens attending the meeting should have a clear idea of where in the agenda their comments will be heard before the meeting begins.

1. Citizens are recognized throughout the meeting. The council or board recognizes citizens and allows them to speak at any time throughout the meeting, as long as their comments are restricted to the agenda item currently under consideration.
2. Citizens invited to be heard. During this period, the council or board recognizes citizens and allows them to speak only on matters of business listed on the agenda. This method may be used exclusively or in addition to the public comment described below.
3. "Public comment welcomed." In this instance, the governing body recognizes citizens and allows them to speak only on matters of business listed on the agenda and labeled "public comment welcomed."
4. Public comment. During this period, the council or board recognizes citizens and allows them to speak on any matter other than those listed for the governing body's consideration. This method is used most often in combination with the previous two methods. When a council or board holds a public-comment period, it must consider certain issues: How quickly will council or board respond to a citizen's request? Will any discussion be allowed? For example, if a citizen brings a request for a drainage improvement on his or her property, will discussion of this concern occur?
5. Public hearings. Under the agenda category "public hearings," citizens are allowed to speak only on matters listed for hearing. The public hearings category is usually a necessary agenda item for all cities and towns on certain subjects and may be used in addition to any other method.

## Public hearings vs. public comment

A public hearing is any meeting or portion of a meeting of the municipal governing body at which members of the public are given the opportunity to speak on specific matters on the agenda for hearing. As such, public hearings are distinguished from citizen participation or public comment.

## Public hearings and other citizen participation sessions

Public hearings are held to allow citizens in the community and other interested persons to speak to the town board or city council. Some public hearings are called to hear comments on only certain specific subjects; others are open-ended and allow citizens to speak on any subject. Some councils set aside time for public comment during each council meeting; other public hearings are completely separate from council meetings. Some public hearings are required by law. The council does not make a decision until it has closed such hearings.

While public hearings should generally not be highly formalized, many councils have found it helpful to establish several procedural ground rules and to inform the public of these rules.

## Preparing citizens for hearings

No public hearing can be successful unless the people attending the hearing understand the issues to be discussed. It is just as important for citizens to understand the issues as it is for council members. Little true headway can be made at a public hearing if there are already misconceptions about either the issues or the council's intentions for dealing with them, and such misconceptions can cause substantial harm.

When citizens understand the issues, they are more likely to make intelligent and worthwhile comments about the advantages or drawbacks of the plan under consideration. Even when citizens oppose the government's position on a particular issue, it is still better if they accurately understand the facts.

## Procedures to promote orderly public comment

- Establish rules of procedure before the hearing and read them at the beginning of the hearing so that everyone understands how the hearing will be conducted.
- Announce that issues will be considered in the order listed on the agenda.
- Ask anyone who wishes to speak at the hearing to register.
- Set time limits on how long speakers can talk.
- Allow each person who wishes to speak a chance to do so before allowing a second round of comments.
- Ask each speaker to begin by stating his or her name and address, any group being represented, if any, and how many people he or she represents.<sup>1</sup>
- Establish ahead of time whether board or council members or other participants at the hearing will be allowed to ask questions of a speaker after his or her presentation.
- State that disruptive behavior will not be tolerated.

## A FINAL WORD ON DECORUM

Professional respect and courtesy are of the utmost importance to elected officials, and it is imperative that elected officials serve as a model representative of their community at all times. Not only will composure and professionalism enhance the quality and effectiveness of meetings, but it also will earn respect and attentiveness from colleagues, municipal staff, the media and the public. Here are just a few basic professional responsibilities of elected officials:

1. Be prepared for each meeting, read the agenda and other advance materials thoroughly, and to arrive at the meeting by the specified time.
2. Strive to contribute relevant information and opinions to the council's or board's proceedings within the framework of proper procedure, avoid "grandstanding" or repetitive speech.
3. Confine remarks and questions to matters before the governing body as specified by the agenda format or order of business.
4. Listen to and refrain from private conversation when citizens or other members of the council or board are speaking.
5. Accord courtesy to councilmembers or trustees, to municipal officials and employees, and to citizens appearing before the governing body.

<sup>1</sup> *When a large number of citizens attend a meeting to speak about an issue, there are a number of strategies to ensure that everyone's opinion is heard without unduly lengthening the meeting. First, the presiding officer can ask the citizens to sign in either "for" or "against" the particular issue at hand, and then request a representative from each group to speak on behalf of the others. The body also may simply ask members in the audience who are in agreement with the speaker to stand and acknowledge that fact in lieu of speaking.*

6. Refrain at all times from rude and derogatory remarks, reflections as to the integrity of others and statements as to the motives and personalities of others.
7. Work toward consensus whenever possible, recognizing and respecting the strengths, knowledge and opinions of fellow council and board members.

## **RESOURCES**

*The Good Meetings Guidebook*, Colorado Municipal League, 2000.

*Handbook for Municipal Elected Officials*, Colorado Municipal League, 2006.

*Municipal Clerks Handbook*, Colorado Municipal League, 2003.

National Association of Parliamentarians, [www.parliamentarians.org](http://www.parliamentarians.org).

*Roberts Rules of Order* (Newly Revised, 10th Edition), Perseus Publishing, 2000.

*Handbook compiled by CML Membership Services Manager Sara Reynolds*, Colorado Municipal League, 2004

## INTRODUCTION

### THE DEMOCRATIC HERITAGE OF MUNICIPAL GOVERNMENT

Modern municipal mayors, councilmembers and trustees are the heirs to the traditions of democracy first embodied in the ancient Greek city-state. This tradition is reflected in our modern reference to large cities or urban areas as “metropolises,” derived from the ancient Greek, meaning “mother city.”

Today towns and cities are the functional equivalents of the Greek city-states. Modern municipalities are extremely complex organizations but, at the same time, their operation is closer to the Greek ideal of direct democracy than any other unit of governance.

Municipal officials, unlike their counterparts in federal and state offices, are in direct contact with the citizens they serve on a continuing basis. Citizens hold their local officials responsible for everything from the state of the local economy and the level of pollution in the air to whether the potholes in the streets need repairing or the neighbor’s dog should be restrained. This is municipal government in action: a living demonstration that people who live together in a community can and want to solve their own problems.

### HISTORY OF COLORADO MUNICIPALITIES

The establishment of settlements in Colorado followed the ‘frontier’ pattern of fate, not planning. The earliest settlements were military forts, the first being Bent’s Fort, established in 1832 near present-day La Junta. Other forts included Fort Lupton, established in 1836, and Fort Pueblo in 1842.

The first permanent civilian settlements were established by Mexican Americans in southeastern Colorado. Among these was San Luis, established in April 1851, today the oldest continuously inhabited town in Colorado.

Other Colorado towns were established in waves. The first wave was fueled by the Pikes Peak Gold Rush of the late 1850s. The front-range communities of Denver, Boulder, La Porte (predecessor to Fort Collins), Fountain City (predecessor to Pueblo) and El Paso (predecessor to Colorado Springs) were established in 1859. Later, waves of settlements were fueled by the silver boom and the cattle industry during the 1870s. Silver towns included Leadville, Silverton, Idaho City (now Idaho Springs), and later Aspen, Rico, Telluride and Creede. Cattle towns, called colony towns, included Greeley, Longmont and Sterling.

Colorado towns and cities grew and multiplied over the decades. At present, Colorado is home to more than 270 separate municipalities that range in population from fewer than 20 residents to more than one-half million.<sup>1</sup>

### CLASSES OF COLORADO MUNICIPALITIES

With the exception of home-rule municipalities, the Colorado Constitution leaves the classification of municipalities to the state legislature:

The General Assembly shall provide, by general laws, for the organization and classification of cities and towns. The number of such classes shall not exceed four, and the powers of each class shall be defined by general laws, so that all municipal corporations of the same class shall possess the same powers and be subject to the same restrictions.<sup>2</sup>

<sup>1</sup> Colorado Municipal League, *2009 Colorado Municipal Directory*.

<sup>2</sup> Colorado Constitution Article XIV § 13.

Colorado municipalities are divided into four general classes: statutory towns, statutory cities, territorial charter cities and home-rule municipalities (both towns and cities). Statutory towns are defined as municipal corporations with a population of 2,000 or fewer, while statutory cities are those municipal corporations with a population greater than 2,000.<sup>3</sup>

The Colorado General Assembly has granted statutory municipalities broad powers:

municipalities shall have the powers, authority and privileges granted by [Title 31, C.R.S.] and by any other law of this state together with such implied and incidental powers, authority and privileges as may be reasonably necessary, proper, convenient or useful to the exercise thereof. All such powers, authority, and privileges are subject to the restrictions and limitations provided for in this title and in any other law of this state.<sup>4</sup>

Home-rule municipalities have a state constitutional status that make them somewhat different from their statutory “cousins.” Home-rule municipalities are those cities and towns that have, either upon incorporation or some time later, chosen to adopt a home-rule charter pursuant to Article XX, section 6 of the Colorado Constitution. Home-rule municipalities are empowered with “all ... the powers necessary, requisite or proper for the government and administration of its local and municipal matters.”<sup>5</sup> In stark contrast to statutory towns and cities, home-rule municipalities’ ordinances regarding “local municipal matters” actually *supersede* state laws which may conflict.<sup>6</sup>

Finally, one city, Georgetown, has retained its old territorial charter. In contrast to home-rule charters, this charter may be amended only by the General Assembly.<sup>7</sup>

Some cities have diminished to fewer than 2,000 residents since their incorporation, and a few towns have increased in population to more than 2,000 since they incorporated under their present form. Under current Colorado law, reorganization of a town to a city or a city to a town based on a crossing of these population thresholds is purely optional.<sup>8</sup> Home-rule municipalities may call themselves either a town or a city.

## Forms of government

The forms of government for statutory and charter municipalities are prescribed by statute. Municipalities choosing to organize or reorganize as home-rule municipalities under Article XX of the Colorado Constitution may choose the form of government that most suits their needs.

# CARRYING OUT THE GOVERNING BODY’S JOB

## THE JOB OF THE MUNICIPAL LEGISLATOR

### Getting elected

You have been elected to municipal office. What were your motivations to run in the first place? Will these factors determine what role you play as an elected official in your city or town? Let’s examine some of the common factors involved in running for local government office.<sup>9</sup>

*“Certain issues are being ignored.”*

You have personal feelings on a particular set of issues that you feel current officeholders are ignoring. You want to fix these issues once you are elected. Will you?

*“I disagree with the ideological position of the incumbents.”*

You have a philosophical disposition on issues or policies that is basically different from the incumbents. You want to change the direction of policy making as a result.

*“I love politics; it’s my passion in life.”*

You are hooked on politics in every manner and form. Involvement in elected office is in your blood.

*“I now have the time. Commitment is not a problem for me.”*

For example, you are retired. You have served on advisory boards in the past and it always interested you. Now, you have the time to make even a deeper time commitment.

*“This community has done so much for me. I want to give back something in return.”*

You have been successful in your professional life, and the community has been supportive of you. You now want to return that support in the form of elected public service.

3 §§ 31-1-101(2); 31-1-1101(13), *Colorado Revised Statutes*.

4 § 31-15-101(2), C.R.S.

5 Colorado Constitution Article XX § 6. For more information, see Colorado Municipal League, *Home Rule Handbook: An Introduction to the establishment and exercise of Municipal Home Rule* (1999).

6 *Id.*

7 See *generally* Georgetown v. Bank of Idaho Springs, 99 Colo. 519, 64 P.2d 132 (1936).

8 See § 31-2-216, C.R.S.

9 Taken from Susan A. MacManus, “Why Dick and Jane Run,” *Colorado Municipalities*, p.16-17 (July 2000).

*"I got drafted for the position by the group in which I am involved."*

Often times, candidates have been pressed into service by a local civic group or service organization in which they are involved. That is what happened in your case.

*"I ran because no one else would."*

Lack of competition for municipal elected office sometimes leads a person to declare their candidacy when no one else appeared willing. This is what happened to you.

*"We need an elected body that is more representative of the diversity of the community."*

The city council or town board as currently constituted is not representative of the community as a whole, and you feel your presence as an elected official can elevate the awareness of diversity.

While not reflective of all of the reasons why a person decides to run for municipal elected office, they do reflect a set of general impressions as to why people decide elected office is meant for them. However, what prompts a person to run, and then be elected, may become very different once sworn into office. What happens before an election and afterward once a person begins to serve on an elected governing body can seem like two different worlds.

## **Becoming oriented**

The newly elected mayor or member of the governing body will have little difficulty finding those who will tell him or her what to do and what not to do. It's not hard to find out the composition of the governing body—number of members, length of terms, who can be elected, etc. It isn't long until he or she knows how an ordinance is passed, or what the debt limit is, or when approval by the voters at an election is required. But these are not the most perplexing questions. Often what is most important to find out is simply how to do a good job.

There are roles taken before being elected, but what is the role now? Beyond all else, the person elected to office at the municipal level takes on the role of a leader. This means establishing public policy that can have broad impacts within and outside of the municipality. This means a person who is responsible for and responsive to the needs and concerns of municipal residents. This means a person involved in a variety of tasks internal to the organization of the municipality itself.

Local elected officials become caretakers of their communities' public life. Local elected officials can help strengthen local governance and problem solving in ways to make the future brighter. Municipal leadership motivates people to work together for a common good – to transform goals and objectives into a positive reality.

## **Municipal leaders wear many hats**

University of Michigan Professor Arthur W. Bromage, following his experiences as a member of the Ann Arbor City Council, concluded that a councilmember must wear several hats to meet the responsibilities of the position.

### *Lawmaker*

The adoption of formal policies and local laws, generally known as ordinances, takes up a great deal of time for any municipal elected officeholder. These regulations will have the force of law and cover many policy areas such as land use, liquor licensing, tax policy and community redevelopment.

### *Financier*

Although a municipal staff person may prepare the budget, the final decision rests with the elected official. The buck literally stops with the city council member or town trustee. Tax and spending decisions are critical roles that will be played by any elected official.

### *Employer*

An elected official has duties and responsibilities that may oversee the municipality's workforce. Working conditions, employment agreements, salary and benefit schedules all play a part in this.

### *Constructive critic*

An elected officer oversees the policies that govern the operations and administration of the municipality. This may mean bringing observations and input to municipal administrators to help the city or town run more effectively.

### *Intergovernmental relations*

An elected official must decide, for example, whether to sell water services to fringe areas and also may be asked to represent the city or town viewpoint before state governing bodies and to make policy that determines the relation of the municipality to the federal government.

### *Public relations representative*

An elected official serves as a representative of the community as a whole. Frequent contact with the media and speaking to groups come with the territory.

These examples illustrate only a few of the experiences on the job. The real task is to provide leadership and direction for the community, to decide what needs to be done, and to help prepare the municipality for future generations.

## Public policy making

The job of the municipal governing body is frequently stated thus: the governing body sets public policy.

Sound policy decisions are the result of hard work. The policy-making job in a municipality is amazingly complex. It requires from each member of the governing body a belief in the municipality, an understanding of its people, and a concept of what government is, does, could do and should do.

Sound policy decisions result when elected officials possess determination, imagination, and devotion to the best interests of the public. A member of the governing body who cannot view public interest apart from personal interests is of little help in determining sound public policies. How opinions or feelings may have been expressed during an election campaign might have to be modified once elected.

Each official has his or her own philosophy about what the municipality ought to do or ought not to do. The decision to run for office was no doubt influenced by satisfaction or dissatisfaction with the way in which the municipality was being governed. Upon taking office, however, the official may soon be confronted with many problems that had not occurred to him or her.

## Finding out what must be done

How does a municipal official find out about problems facing the municipality? How does he or she decide what activities or projects the municipality should or should not undertake?

The elected official already may know of problems or activities that need to be addressed; municipal employees also may have identified problems. Perhaps most important, the official must find out what the people want done. As their representative on the governing body the official wishes to respond to constituents' concerns about public policy.

The member of the governing body may frequently find that what needs to be done, what the people want done and what is possible to do may not coincide. What needs to be done may be impossible because the people don't want it done; what the people want done may be impossible for various reasons.

## Pressures on municipal officials

Discovering what the people want may be difficult, and the people may not always agree. Without special effort, of course, the official will receive expressions of interest or protest, in the form of telephone calls, letters to the editor in the local newspaper, protest petitions and attendance at meetings of the governing body. However, these expressions may or may not reflect the desires or best interests of the community as a whole.

The elected official truly concerned with representing the best interests of the people will go beyond these expressions and seek out opinions and ideas on every occasion-informal conversations, discussions with friends and business associates, and speaking engagements. One might assume that the citizens don't care how a problem is resolved unless they express themselves; however, a few loud voices on a certain issue may be misleading.

Much of the municipal legislator's work will be to seek public opinion, balance pressures from different interests and determine what course public policy should take.

## Keeping the public informed

Discovering what the people want done is not a one-way process. Government is a public matter, and the governing body has a responsibility to the residents of the community to let them know what has been done or will be done.

Statutes set minimum requirements for informing the public. Publication of items such as ordinances, franchises, annual financial statements and notices of budget hearings provide a way to let the people know about governmental activities. Exceeding these minimum requirements, however, can greatly increase interest and build confidence in the municipal government.

A well-informed public results in an improved flow of ideas and opinions, easier law enforcement, and increased understanding of the problems that face the municipal government.

Ways to inform the public are a matter of common sense and most of the techniques are obvious. Here is a partial listing:

- Expand personal contacts. Just as he or she asks for expressions of opinion from personal acquaintances and business associates, a member of the governing body also may use many day-to-day situations to explain what the municipal government is trying to do.
- Encourage attendance at meetings. Although citizens can find out easily when meetings of the governing body are held, members of the governing body should be sure that all meetings are given advance publicity to encourage attendance. They also can make sure that anyone attending a meeting has an opportunity to be heard.
- Establish good relations with the media. Members of the governing body may find that what they say makes news. Newspapers and radio and television stations can be of real assistance in letting the public know about governmental activities. Most reporters are anxious to do the best possible job in relating activities at the town or city hall. By helping

them in this job, by making it easy for them to get the news, by being frank and clear about municipal problems and activities, the governing body can serve the public by keeping the record straight.

By understanding what makes news, an elected official can improve his or her own media relations by anticipating in advance what the news angle will be in any situation, and thus be prepared when the reporter calls. It is not the responsibility of the reporter to keep the official from making erroneous or premature statements. If your municipality maintains a community access cable television channel, use this vehicle as another way to communicate with the public at large.

## Conflicts of interest

Any member of the governing body of a city or town having a “personal or private interest in any matter proposed or pending before the governing body” must disclose the interest to the body and not vote on the matter. Further, the member must refrain from “attempting to influence the decisions of the other members.”<sup>10</sup>

In practice, this means that the member having the conflict should announce his or her interest before discussion is commenced on the matter and should not participate in discussions or any voting. One relatively simple way to achieve this is, after disclosing the interest, to leave the room until after all discussion and voting has taken place. The statute does allow the member having the interest to vote on the matter “if his participation is necessary to obtain a quorum or otherwise enable the body to act.” However, if this is done, the member must also make a written disclosure to the Secretary of State, in accordance with a statutory procedure.<sup>11</sup>

The statutes do not specifically define what an “interest in a matter proposed or pending” is, but a general rule of thumb is that if the matter involves anything in which the member has or might have a financial interest, direct or indirect, including an interest in a business that could be placed in a superior competitive position by the action proposed to be taken, such actions constitute an interest that must be disclosed and may not be voted upon. Obviously, the municipal attorney should be consulted whenever there is any question about whether a member has an interest that requires disclosure and abstention from voting.

Local government officials are not permitted to hold an interest in any contract made by them in their official capacity or by any body, agency or board of which they are members or employees. Excepted from this rule are: (1) contracts awarded to the lowest responsible bidder based on competitive bidding procedures; (2) merchandise sold to the highest bidder at public auctions; (3) investments or deposits in financial institutions that are in the business of loaning or receiving moneys; (4) a contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract; and (5) a contract with respect to which any local government official has disclosed a personal interest and upon which the official either has not voted or voted notwithstanding the disclosed conflict in order to achieve a quorum or otherwise enable the body to act.<sup>12</sup> Any contract made in violation of this law can be voided at the insistence of any party to the contract except the officer with the conflicting interest.<sup>13</sup>

The “Code of Ethics” statute,<sup>14</sup> which is applicable to local elected officials, contains many restrictions on use of public office for private gain. For example, the statute prohibits use of confidential information for personal financial gain and acceptance of gifts or benefits as rewards or inducements for official action.<sup>15</sup> As well, there are criminal statutes that make it an offense to trade in or abuse public office.<sup>16</sup>

Finally, local officials should check whether their municipality has charter or ordinance provisions concerning conflicts of interest, and should consult with their municipal attorney before taking any action that may involve a conflict of interest.

## Some final guideposts

Municipal government is a team operation. No one member can hope to master every phase of governmental activity. Some people, however, are afraid of appearing “green” and are subsequently pressured into approving something they do not fully understand. The newly elected mayor, trustee or councilmember should not fear appearing to be “green” to the old hands.

There are many sources of information about municipal government available to the newly elected member. The publications and the information services of the Colorado Municipal League, meetings, institutes and conferences for municipal officials, and journals of the various professional associations of municipal officers and employees all provide basic information about the many problems and activities of municipal government.

10 § 31-4-404(2); § 24-18-109(3)(a), C.R.S.

11 § 31-4-404(2); § 24-18-109(3)(b), C.R.S.

12 See §24-18-201, C.R.S.

13 § 24-18-203, C.R.S.

14 §§ 24-18-101, C.R.S. *et seq.*

15 See § 24-18-104(1), C.R.S.

16 §§ 18-8-301, C.R.S. *et seq.*

In addition, there are specialists and professional consultants who can help with technical problems. Remember, however, that these persons are advisers and that the policy decisions should be left to the elected officials. The elected official must learn to evaluate the advice of specialists.

Overall, the most important job of the governing body is to make policy. It is easy for a governing body to lose sight of its policy-making function by spending most of its time looking down storm sewers or watching demonstrations of new types of equipment.

In the final analysis, no state law, handbook or any other guide can adequately outline the elected official's role in the governmental process. There is no formal requirement that the member of a governing body do anything more than comply with a few written rules. If he or she chooses not to run for re-election, there is nothing to prevent him or her from serving out the term of office doing no more than attending meetings, casting an occasional vote, and avoiding conduct that might be cause for removal. The member of the governing body must decide what his or her role shall be.

Yet, the member of the governing body has a real responsibility to the citizens. Members of the governing body are the trustees and custodians of the privilege of local self-government in this country, and the individual member, regardless of the size of the municipality, is engaged in the vital process of making American democracy work.

## **ESTABLISHING ADMINISTRATIVE MACHINERY**

### **The management process**

Good public policy decisions do not go into effect automatically. No matter how much time and careful thought may go into formulating public policy, there is always a management job to be done, and someone or some group must assume the responsibility to plan, organize, coordinate and control the administrative machinery. In smaller communities, members of the governing body may become more involved in this administrative process than do officials in other forms of government.

For many years, theorists have attempted to fit policy making and policy implementation into two neatly divided compartments. The justification was that every decision made in government involved either a "what" judgment (policy determination) or a "how" judgment (administrative execution of the policy). Nevertheless, the decision to build, for example, a sewage disposal system for the municipality (the "what" decision) can hardly be made without also deciding which method of treatment will be most suitable for the municipality's purpose (the "how" decision). Thus, even the theorists now agree that the "what judgment" and the "how judgment" are both parts of a single decision, instead of two separate decisions.

### **Types of administrative organization**

Administration of municipal affairs may be carried out by the mayor, appointed administrative officers or by the governing body. More common is a combination of the three, sometimes supplemented by the use of special boards and advisory committees.

#### *The mayor as chief administrator*

In some municipalities it may be the mayor who hires and fires employees, who orders supplies and who checks to see that the streets are cleaned, chuckholes repaired and park lawns watered. In these municipalities, department heads report directly to the mayor, not to the governing body, and the mayor may meet with the department heads at times other than at meetings of the governing body. In Colorado this is not a common form of municipal administration.

#### *Appointed administrative officers*

In some municipalities, execution of municipal business rests almost solely with appointed municipal officials. Where there is no coordinating administrative official, municipal administrative responsibility often is divided among independent department heads and other officials. Each department head supervises department employees and activities and reports to the governing body. Approval is necessary before undertaking new projects, and each department concentrates on activities directed by the governing body or of special interest to the department head. This system of operation, where no one person is responsible for municipal administration, may engender uncoordinated and inefficient administration.

As a result, an increasing number of Colorado municipalities have provided by ordinance for the position of city or town manager, administrator or superintendent. This person serves as the chief administrative officer, coordinates municipal administration, supervises other employees and is directly responsible to the city council or board of trustees. This system permits administrative responsibility to be centralized in one full-time employee and may lead to better coordinated administration and more professional leadership in municipal government. Nationally, Colorado is viewed as a state that strongly supports this approach to municipal government.

#### *Administration by committees*

In municipalities where neither the mayor nor any appointed municipal official has the responsibility to direct municipal affairs, the governing body must supervise and coordinate municipal administration. This can be done as a collective

endeavor, but more often the governing body forms committees that recommend policy and supervise administration of programs within each committee's sphere of responsibility.

The mayor may appoint members of the governing body to various committees, or the members may choose to organize their own committees and make their own appointments. Each member may serve on one or more committees composed of several members of the governing body. The names and scope of the committees may vary with each municipality, but commonly include water and sewer, street and alley, police and fire, finance, park and recreation, and health and welfare.

In some municipalities the governing body relies almost entirely on its committee structure to supervise administration of municipal affairs. Under such an arrangement, the street superintendent, for example, would report to the street and alley committee. In practice, the committee chairperson may assume most of the responsibility and control and directly oversee administration within the committee's area of responsibility. Committees provide a way to divide up the work, study activities in greater detail and more closely supervise municipal administration. This system usually requires members of the governing body to devote a great deal of time to committee work, leaving less time and energy to solve overall municipal problems.

Both systems — administration by the governing body and administration by committees — go against modern public management practice, which holds that only one individual should have the responsibility to supervise and coordinate administrative operations. As a result, neither administration by the governing body nor by council committees may be a sound and effective system for supervising and coordinating municipal administration.

#### *Boards and commissions*

Boards, commissions and citizen committees can provide the governing body with a great deal of assistance both in recommending public policy and in transforming policy decisions into action. Some are required or permitted by statute, while others are created by ordinance, resolution or motion. Some are empowered to make administrative decisions, others can only make recommendations to the governing body, and still others are primarily fact-finding bodies. Some boards and commissions are permanently established, with members appointed for overlapping terms to add continuity to committee operations, while others are established for a limited time to accomplish a single purpose and cease to exist once their functions are completed.

In some situations, municipal governing bodies may find the use of special boards and commissions to be to their advantage. They may be helpful in analyzing technical problems considered beyond the scope of the governing body. Boards and commissions give the municipality an opportunity to use the talents of local specialists in certain fields and permit citizens with special interests to serve the community in an area of personal concern.

Here is a partial listing of special boards and commissions authorized or required by state law (numbers in parentheses refer to title, article and section number of the C.R.S. in which the board or commission is authorized): Board of Trustees, Police Pension Fund (31-30.5-203); Board of Trustees, Fire Pension Fund (31-30.5-202); Library Board of Trustees (24-90-108); Planning Commission (31-23-202); Zoning Commission (31-23-306); Board of Adjustment (31-23-307); Local Liquor Licensing Authority (12-46-103-104; 12-47-103-104).

Others boards or commissions may be set up by the governing body to follow a particular project through to completion. Frequently, citizen committees are appointed to study such things as possible new sources of revenue; the need for new building codes; the need for new municipal facilities such as swimming pools, fire stations or parks; or the desirability of launching new projects. In many cases, persons who serve on such advisory committees may be carried over onto permanent commissions or boards upon completion of their study projects.

There are advantages and disadvantages to the extensive use of special boards, commissions and citizen committees. They can provide a convenient way to obtain technical advice, and they also may provide two-way access to important areas of public opinion and a way to build and maintain public support.

On the other hand, they are not a substitute for responsible administration, and too many boards or commissions may hamper efficient administration by spreading authority and responsibility too widely. Sometimes the needed information or advice can be better obtained from within the municipality's administrative organization or from professional consultants, therefore making a study committee or advisory committee a cumbersome addition to municipal organization.

## **BUDGETING**

### **More than a document**

There is a tendency to think of budgeting only in terms of the frenzied attempts to prepare a complicated document in sufficient time to comply with deadlines established by state law. Then, once the budget is filed, it can be forgotten until the next deadline rolls around. Municipal budgeting, however, is a year-round activity that involves not only preparation of a budget document, but also putting the budget into effect. In preparing a budget, the municipal governing body, in effect, promises that the municipality will do a certain amount of work with a certain amount of money. It is an agreement with the taxpayers as to what they will get for their tax money during the coming year.

This taxpayer-governing body agreement is of little value, however, if no attempt is made to carry out the program as promised. This process is usually known as budget execution or budget control. Budget control, properly exercised, is perhaps the most valuable administrative device for seeing that legislatively authorized programs are put into effect. By frequently comparing the budgeted revenues and expenditures with actual figures, the governing body can check its program commitments to see which activities are exceeding budget plans and which are lagging behind.

### **The budget as a work program**

The purpose of a budget is obvious-it attempts to keep expenditures within the municipality's estimated income. In simple language, the budget document is a work program converted to dollars and cents. The budget consists of two parts: first, a carefully prepared estimate of revenues and, second, a tabulation of the estimated amounts of money required to finance each activity listed.

In budgeting, the governing body makes important decisions about the work program of the municipality. Is a swimming pool more important than storm sewers? Does the municipality need a new library more than it needs extra policemen? Should the chuckholes be filled or the street completely rebuilt? It is a process by which the governing body determines the community's standard of living-what the community needs and wants, what it is willing and able to pay, and what services it can expect to receive for its tax dollars.

### **The capital budget**

A capital budget is a long-term plan for capital improvements. It usually is prepared along with the annual operating budget. After an estimate of revenue available for public improvement is prepared, a list is made of needed capital improvements in order of priority for the planning period. And the capital budget is enacted. The planning period is generally for about five years, although there is frequently a sketchy overall plan prepared for a longer period.

While the capital budget covers several years, it should be revised as needed and reenacted annually. A capital improvement budget is particularly necessary where the municipality wants to take advantage of the state law authorizing the appropriation and accumulation, over a period of years, of a capital-improvements fund for expenditures on public works projects.<sup>17</sup>

Every municipality should have a capital budget. By planning for public improvements, the governing body may be able to minimize problems, avoid crash programs and, perhaps, avoid financial embarrassment. Capital budgeting forces the municipality to make the more important big purchases and capital improvements first and helps provide a stabilized tax rate.

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17 See § 31-15-302(1)(f)(I), C.R.S.

# RESOURCES

## THE COLORADO MUNICIPAL LEAGUE

CML is a nonprofit, nonpartisan organization that has served and represented Colorado's cities and towns since 1923. The League offers membership to any incorporated city or town in Colorado, and currently serves more than 99 percent of Colorado's municipalities.

Major policies of CML are established by the membership at an annual business meeting and by the CML Executive Board, Policy Committee and standing committees. The Executive Board is comprised of 19 officials who are elected by the membership at the CML annual business meeting. They serve for two-year terms. Service on the Policy Committee and standing committees is open to any municipal official from a member city or town. Daily operations of the League are carried out by CML staff.

CML also has special-interest sections that cooperate with and help the municipal officials performing specific functions for their communities. Examples of sections include Mayors and Councilmembers, Managers, Attorneys and Clerks.

CML is organized into 14 districts, along the same geographic lines as the state's 14 planning regions. Each district elects officers and holds at least one meeting a year that includes a program of interest to officials in that district. The sections and districts give CML depth and breadth in its understanding of municipal needs.

### Advocacy

CML is your voice before the state and federal government, employing a general counsel, staff attorneys and full-time lobbyists to ensure that all municipalities are well represented at the State Capitol.

The League monitors the Colorado Legislature for proposals that would affect municipalities and works to pass, defeat or amend legislation in accordance with general municipal interests and membership direction. The work of state agencies also is under the watchful eye of CML, as are statewide ballot issues.

Respected and honored with many awards, CML is recognized as the leading municipal voice before the General Assembly, Congress and the courts.

CML represents Colorado's municipal interests at the federal level, as well, and is an active member of the National League of Cities.

The League participates as *amicus curiae* (friend of the court) in state and federal appellate court cases that involve issues important to municipalities.

### Information

CML provides the accessible information you need to serve your municipality and its residents.

Each year, staff responds to individual inquiries with information and advice about municipal government as well as sample documents from the League's extensive library.

CML periodicals (the bimonthly magazine, *Colorado Municipalities*; biweekly *CML Newsletter*; and *Statehouse Report* while the General Assembly is in session) and books capture important technical and legal research.

The League also distributes email (*Issues Update* and *CML News*) on emerging issues and posts regularly to our Web site, [www.cml.org](http://www.cml.org), as well as facilitates information through networking by email listservs that allow peers to share information and ideas electronically.

### Training

CML offers dynamic events and workshops to support your continuing education and training. The sessions and meetings attract about 1,000 participants from throughout Colorado every year.

League workshops are affordable, capacity-building sessions that promote better understanding of municipal government and provide tools for effective leadership. Topics are timely and relevant. Examples include leadership, meeting facilitation, communication and parliamentary procedure.

Each June, the *CML Annual Conference* is the premier meeting for municipal officials in Colorado; municipal officials from throughout the state attend the three-day series of seminars. The *Seminar on Municipal Law* is held each fall, while each February brings officials from cities and towns across the state to meet in Denver for the *Legislative Workshop* and an audience with state lawmakers.

The League also hosts informative meetings across the state each spring and fall.

### Contact the League for more information

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## REGIONAL COUNCILS OF GOVERNMENT

### District 1

#### Northeastern Colorado Association of Local Governments

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(f) 970-867-9053  
[www.northeasterncolorado.com](http://www.northeasterncolorado.com)

### District 2

#### North Front Range Transportation & Air Quality Planning Council

419 Canyon Ave. Suite 300  
Fort Collins 80524  
(p) 970-221-6243  
(f) 970-416-2406  
[www.nfrmpo.org](http://www.nfrmpo.org)

### District 3

#### Denver Regional Council of Governments

4500 Cherry Creek Dr. So. #800  
Denver 80246-1531  
(p) 303-455-1000  
(f) 303-480-6790  
[www.drcog.org](http://www.drcog.org)

### District 4

#### Pikes Peak Area Council of Governments

15 S. 7th St.  
Colorado Springs 80905  
(p) 719-471-7080  
(f) 719-471-1226  
[www.ppacg.org](http://www.ppacg.org)

### District 5

#### East Central Council of Local Governments

128 Colorado Ave., Box 202  
Stratton 80836  
(p) 719-348-5562  
(f) 719-348-5887  
[www.prairiedevelopment.com](http://www.prairiedevelopment.com)

### District 6

#### Southeast Colorado Enterprise Development Inc. and Southeast Council of Governments

112 West Elm St.  
Lamar 81052  
(p) 719-336-3850  
(f) 719-336-3835  
[www.seced.net](http://www.seced.net)

### District 7

#### Pueblo Area Council of Governments

229 West 12th Street  
Pueblo 81003-2810  
(p) 719-583-6000  
(f) 719-583-6376  
[www.pacog.net](http://www.pacog.net)

### District 8

#### San Luis Valley Development Resources Group Inc.

Box 300, 626 Fourth Street  
Alamosa 81101  
(p) 719-589-6099  
(f) 719-589-6299  
[www.slvdrg.org](http://www.slvdrg.org)

### District 9

#### Archuleta County Planning Commission

Box 1507, County Courthouse  
Pagosa Springs 81147  
(p) 970-264-8300  
(f) 970-264-1070  
[www.archuletacounty.org](http://www.archuletacounty.org)

### District 10

#### Region 10 League for Economic Assistance & Planning Inc.

300 N. Cascade, Suite 1, P.O. Box 849  
Montrose 81401  
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[www.region10.net](http://www.region10.net)

### District 11

#### Associated Governments of Northwest Colorado

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[www.agnc.org](http://www.agnc.org)

### District 12

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(f) 970-468-1208  
[www.nwc.cog.co.us](http://www.nwc.cog.co.us)

### District 13

#### Upper Arkansas Area Council of Governments

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(f) 719-275-2907  
[www.uaacog.com](http://www.uaacog.com)

### District 14

#### South Central Council of Governments

300 S. Bonaventure Ave.  
Trinidad 81082-2407  
(p) 719-845-1133  
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## 53 IDEAS:

# HOW GOVERNING BODY MEMBERS CAN GOVERN BETTER

*Reprinted from the League of Kansas Municipalities' brochure, "Suggestions for Successful Public Service."*

Governing is clearly more of an art than a science. There are no ultimate answers on how to govern; different approaches are to be expected, and probably desired. However, there do seem to be some fundamentals. The suggestions that follow range from practical, common sense fundamentals to those more philosophic and theoretical. These tips for successful and effective public service are intended to assist mayors, council members, and board trustees. While most suggestions relate to individual officers, others apply to the governing body as a whole. These two applications, however, are interdependent—the capacity of a governing body to govern effectively is dependent on the collective capacities of at least a majority of its membership. These suggestions are not in any priority order, and not all are universally accepted. All of them, however, are worth consideration by anyone who would serve the public through an elective local office.

Further contributions and suggested revisions to this list are welcome; please send any such suggestions to CML.

1. Learn all you can about your city, its history, its operation, its financing. Do your homework. Know your city ordinances. Dust off your comprehensive plan.
2. Devote sufficient time to your office and to studying the present and future problems of your community.
3. Don't bum yourself out on the little things but recognize that they are often important to the public. Save some energy—and time—for the important matters.
4. Don't act as a committee of one; governing a city requires a team effort—practically and legally.
5. Don't let honest differences of opinion within the governing body degenerate into personality conflicts.
6. Remember that you represent all the people of your community, not just neighbors and friends. Be wary of personal experiences coloring your public decisions.
7. Take your budget preparation job seriously, for it determines what your city does or does not do for the coming year and will also influence what happens in future years.
8. Establish policy statements. Written policy statements let the public, and the city staff, know where they stand. They help the governing body govern, and writing them provides a process to develop consensus.
9. Make decisions on the basis of public policy, and be consistent. Treat similar situations similarly, and avoid favoritism.
10. Focus your attention on ways to prevent problems, rather than just trying to solve them as they occur. Filling potholes is one approach to governing; developing plans to prevent them is more important.
11. Don't be misled by the strong demands of special interest groups who want it done now, their way. Your job is to find the long-term public interest of the community as a whole, and you may be hearing from the wrong people.
12. Don't rush to judgment. Few final actions have to be taken at the first meeting at which they are considered. Avoid "crisis management."
13. Don't be afraid of change. Don't be content to just follow the routine of your predecessors. Charge your appointed officers and employees with being responsible for new ideas and better ways. Listen to what they have to say.
14. Don't give quick answers when you are not sure of the real answer. It may be embarrassing to appear ignorant, but it can be more embarrassing, and damaging, to tell a person something which is wrong.
15. As an individual, even if you are the mayor, don't make promises you can't deliver! Most decisions and actions require approval of the governing body, and this takes a majority vote.
16. Remember that you have legal authority as a governing body member only when the governing body is in legal session.
17. Don't spring surprises on your fellow governing body members or your city staff, especially at formal meetings. If a matter is worth bringing up for discussion, it's worth being on the agenda. Surprises may get you some publicity, at the embarrassment of others, but they tend to erode the "team" approach to governance.
18. Participate in official meetings with the dignity and decorum fitting those who hold a position of public trust. Personal dress and courteous behavior at meetings help create an environment for making sound public decisions.
19. Conduct your official public meetings with some formality, and follow rules of procedure. Have an agenda, and follow it. Most governing body members agree that formal meetings expedite the process and promote better decision making.
20. Don't be afraid to ask questions. It is one of the ways we learn. But do your homework by studying agenda material before meetings.
21. Vote yes or no on motions. Don't cop out by abstaining except when you have a conflict of interest. A pass does not relieve you of responsibility when some decision must be made.

22. Once a majority decision of the governing body has been made, respect that official position and defend it if needed, even if you personally disagreed.
23. Respect the letter and intent of the open meetings law, but also keep private and confidential matters to yourself. Don't gossip.
24. Retain competent, key employees, pay them well, trust their professional judgment, and recognize their authority and responsibilities.
25. Don't bypass the system! If you have a manager or other chief administrative officer, stick to policy making and avoid personal involvement in the day-to-day operations of the municipality. If you do not have an administrative officer, make sure you have some management system that officers, employees, and the public understand.
26. Don't let others bypass the system. Insist that people such as equipment or service suppliers work with your city staff. If direct contact with governing body members is necessary, it should be with the governing body as a whole, or a committee, and not on a one-on-one basis.
27. Don't pass the buck to the staff or employees when they are only following your policies or decisions.
28. Don't always take no for an answer. The right question may be "How can we do this?" instead of "May we do this?" Be positive!
29. Learn to evaluate recommendations and alternative courses of action. Request that your staff provide options. Encourage imaginative solutions.
30. Avoid taking short-term gains at the expense of long-term losses. Be concerned with the long-term future of the city.
31. In determining the public interest, balance personal rights and property interests, the possible harm to a few versus the good of the many. Recognize that in some situations, everyone can't be a winner.
32. Remember that cities are for people! Be concerned with the total development—physical, economic, and social—of your community.
33. Don't act as if the city operates in a vacuum. Cities must work within the intergovernmental system to be effective. Keep in contact and cooperate with your federal, state, county, and school officials. CML can assist with some of these contacts.
34. Know your neighbors. Get to know the officials of neighboring and similar size cities. Visit other cities, particularly those with a reputation of being well run.
35. Learn to listen—really listen—to your fellow governing body members and the public. Hear what they are trying to say, not just the words spoken.
36. Keep your constituents informed, and encourage citizen participation.
37. Be friendly and deal effectively with the news media. Make sure what you say is what you mean. Lack of good communication, with the media and the public, can be a major problem for municipal officials.
38. Remember that what you say, privately and publicly, will often be news. You live in a glass house. Avoid over-publicizing minor problems.
39. Expect, and respect, citizen complaints. Make sure that your governing body members, and your city, have a way to deal effectively with them. Have a follow-up system.
40. Be careful about rumors. Check them out. Help squelch them when you know they are false.
41. Appoint citizen advisory committees and task forces when you need them, but be prepared to follow their advice if you use them.
42. Take care in your appointments to boards and commissions. Make sure they are willing and capable as well as representative of the whole community.
43. Never allow a conflict of interest to arise between your public duties and your private interests. Be sensitive to actions you take that might even give the appearance of impropriety.
44. Seek help. Use manuals, guides, and other technical assistance and information available from the League and other agencies. Attend workshops and conferences put on for the benefit of you and your city.
45. Pace yourself. Limit the number of meetings you attend. Set some priorities, including the need to spend time with your family. Recognize that life—and the city—is dependent on a lot of things you have little control over.
46. Establish some personal goals and objectives. What do you want to help accomplish this year? Next year?
47. Help develop some short-term and long-term goals and objectives for your city, and check your progress at least every six months.
48. Similarly, help your city develop a vision of the future. Plan from the future to the present—no vision, no plan. One of the important purposes of a governing body is to establish a vision for the future.

49. Focus on the future, and try to leave your city better than that which you inherited as a city officer.
50. Be a leader, as well as part of the team of elected and appointed officials who were selected to make your city an even better place to live.
51. At least once a year, schedule a governing body discussion about how you are governing. Review the processes and procedures. Sit back and ask, "How are we doing? How can we do things better?"
52. Be enthusiastic about your public service and the privilege you have, and let the public know it. But maintain your sense of humor. Don't take yourself or the business of government so seriously that you don't enjoy it. It should be fun as well as a rewarding experience.
53. Celebrate! Always focusing on problems and issues may lead you, the governing body, and the public, to believe that nothing positive ever happens. Good things do happen. Let the public share your successes.

## SELECTIONS FROM ETHICS HANDBOOK

### ISSUES AND CONSIDERATIONS REGARDING ETHICS

#### Overview

In addition to the legal requirements discussed in the accompanying Webinar, there are a number of other laws, principles and related issues that involve ethics for municipal officials.

First, the Colorado statutes, in addition to the code of ethics, the disclosure and abstention statute and the criminal code, provide a list of “ethical principles.” These principles, while written in the statute books, are not legally binding. They serve primarily as guidelines for conduct and best practices.

The second part in this section discusses nepotism, cronyism, and employment of spouses, and statutes relevant to these issues.

We conclude this section with a brief discussion on ethics and the expectations of your community and citizens. Like the “ethical principles” in the state statutes, these expectations are not legally binding. Yet these expectations are important when considering ethical conduct of municipal officials.

#### Non-binding ethical “principles” in the Colorado state statutes

The Colorado statutes (CRS 24-18-105) provide “ethical principles” that are not written to be legally binding, but are intended to provide supplemental guidance for ethical behavior.

- The principles in this section are intended as guides to conduct and do not constitute violations as such of the public trust of office or employment in state or local government.
- A public officer, a local government official, or an employee should not acquire or hold an interest in any business or undertaking which he has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by an agency over which he has substantive authority.
- A public officer, a local government official, or an employee should not, within six months following the termination of his office or employment, obtain employment in which he will take direct advantage, unavailable to others, of matters with which he was directly involved during his term of employment. These matters include rules, other than rules of general application, which he actively helped to formulate and applications, claims, or contested cases in the consideration of which he was an active participant.
- A public officer, a local government official, or an employee should not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when he has a substantial financial interest in a competing firm or undertaking.

#### Nepotism and cronyism

Nepotism is commonly defined as “favoritism (as in appointment to a job) based on kinship.” Cronyism is “partiality to cronies especially as evidenced in the appointment of political hangers-on to office without regard to their qualifications.” Neither of these words are specifically mentioned in the state statutes, and neither cronyism or nepotism are specifically prohibited by Colorado law.

The Colorado statutes on unfair or discriminatory employment practices do, however, contain provisions concerning employment of spouses. 24-34-402 (1) (h). While generally providing that it is a forbidden employment practice to discharge an employee or refuse to hire a person based solely on the fact that the person is married or plans to marry another employee, the statute says these actions are not a violation when:

- One spouse directly or indirectly would exercise supervisory, appointment, or dismissal authority or disciplinary action over the other spouse;
- One spouse would audit, verify, receive, or be entrusted with moneys received or handled by the other spouse; or
- One spouse has access to the employer's confidential information, including payroll and personnel records.

Some local governments in Colorado have taken the initiative to pass their own anti-nepotism ordinances. However, even absent express prohibitions on cronyism or nepotism, elected officials should be aware that there may be times when disclosure and abstention from voting on matters that directly concern their relations, close friends or financial or political supporters may be desirable. Trustees and council members at times excuse themselves from votes regarding these matters to avoid the potential appearance of impropriety. If a situation like this arises, consult with your municipal attorney.

## Expectations of your community

It is important to note that laws are limited in their ability to provide guidance for every situation you encounter. While an action may be legal, it may not necessarily be ethical or viewed by the public as ethical behavior. As many popular references suggest, laws should be regarded as a floor for ethical behavior, not a ceiling. The public probably isn't aware of all the laws that apply to your position as a public official; nonetheless they will have expectations of your behavior and will hold you to a high standard – regardless of the law.

What the public expects from public officials:

- Honesty
- Decisions that put the community first, rather than the interests of the individual public official
- An open, impartial and fair decision-making process
- Respect for individual rights and community rights
- Accountability
- Forthrightness
- Decorum and professionalism
- Personal character and lawful personal behavior

## OTHER LEGAL CONSIDERATIONS

In addition to the laws, there are several related legal issues that often go hand in hand with an ethics discussion. In order to keep this discussion focused and concise, we did not address these issues. However, the League has publications or resources available on each of these topics, if you would like more information on them.

- Quasi judicial proceedings, and the associated restriction on *ex parte* communications
- Campaign finance laws
- Open meetings laws, including openness, notice and executive session requirements (please see CML's publication, *Open Meetings, Open Records*)
- Open records laws and personal correspondence (including email) (please see CML's publication, *Open Meetings, Open Records*)

## STICKY SITUATIONS – QUESTIONS TO ASK

Unfortunately, not all of our questions involving ethics are black and white or addressed clearly in the laws. When you are faced with a difficult ethical question, it may be helpful to ask yourself the following questions:

1. What does the law require in this situation?

The law should be considered a minimum standard for ethical conduct. It can and should be a starting point for your decisions.

2. What does our own municipal ethics code require in this situation?

If your city or town has a locally-adopted ethics code, make sure you understand it and apply it to your decisions. Like state laws, local ethics codes always should be considered a floor for your decisions, not a ceiling.

3. Is this a right vs. wrong situation? Is the issue simply that doing the "right" thing involves significant personal cost?

Remember, your responsibility is to do the right thing for your community, regardless of personal cost. Ethics and the associated legal requirements are written to avoid improper conduct, not to serve as an excuse for avoiding politically difficult decisions.

4. Would I be embarrassed to read about my actions in the local newspaper?  
This is a simple “self-test,” but can be very useful in clarifying a sticky situation!
5. Which decision will build or preserve the most public confidence in our municipality and the leadership of this council/board?  
The public expects you to base your conduct on the highest standards – even the appearance or perception of unethical behavior can test the public’s confidence in your leadership.
6. Which decision is most consistent with my values?  
Is it fair? Compassionate? Respectful of all parties involved? Am I keeping my word?
7. Does this decision represent the interests of everyone in my community? Are there other stakeholders or members of the public who should be heard before this decision is made?  
Keeping your procedures open and accessible to the public not only ensures that everyone has an opportunity to be heard, but also that you make the best decisions for your community.
8. Does this decision involve conflicting values? If so, what are the facts? Is there a decision that best reflects my responsibility to the community as a whole? Does this decision do more good than harm? Is there something we can do to make this decision more fair and equitable?  
Sometimes, no matter what you do, there will be someone in your community who disagrees with your decision. However, if you have carefully thought through all of these considerations, you can be assured that you have done everything possible to ensure a fair – and ethical – decision.

## AMENDMENT 41 AND MUNICIPAL OFFICIALS AND EMPLOYEES: A PRACTICAL INTRODUCTION

### INTRODUCTION

At the statewide general election held on Tuesday, Nov. 7, 2006, Colorado voters overwhelmingly approved Amendment 41, which adds a new Article XXIX, entitled “Ethics in Government,” to our state constitution. Article XXIX addresses a variety of topics, from limitations on receipt of gifts by various public officials and employees to strict limitations on giving by “professional lobbyists,” limitations on how soon former state legislators may become lobbyists, and creation of an independent “Ethics Commission,” at the state level. Certain of these provisions, especially those limiting receipt of gifts or “things of value,” as well as those provisions creating the state Ethics Commission, should be of immediate interest to municipal officials and employees in Colorado.

This memo responds to numerous requests from our membership for guidance concerning the provisions of Amendment 41. It should be understood that the observations contained in this memo are preliminary, as local government attorneys across Colorado continue to wrestle with numerous ambiguities and questions concerning the requirements of this complicated amendment. Consequently, while we hope this material provides a useful introduction and some guidance concerning Amendment 41, this material should not be viewed as a substitute for legal advice from your own municipal attorney.

The language of Amendment 41 (following) is somewhat dense and difficult to track. Thus, we have presented the requirements of the amendment in an “outline” format, in hopes that this may aid understanding. We have paraphrased the requirements, while retaining critical language. When appropriate, we have inserted our own comments and observations, denoted by a check mark.

The principal limitations of Amendment 41 that affect municipal officials and employees are found in sections 3(1) and 3(2) of the amendment. The reach of these prohibitions is determined by the definitions of “government employee” and “local government official,” which are found in section 2 of Amendment 41. This outline begins with discussion of these prohibitory provisions, followed by an introduction to the provisions creating the state Ethics Commission and defining its role. Finally, we address the home rule provision in §7 of the amendment, which presents home rule municipalities with a significant alternative to the requirements of Amendment 41.

### PROHIBITORY PROVISIONS AFFECTING MUNICIPAL OFFICIALS AND EMPLOYEES

#### Who’s covered?

The Amendment 41 restrictions apply to various classes of persons. Among those covered are the following, which include municipal officials and employees.

“*Government employee*,” defined (section 2(1)), in pertinent part, as “any employee, including independent contractors, of ... any local government.”

“Local government official,” Defined (section 2(3)), in pertinent part, as “an elected or appointed official of a local government.”

“Local government,” as used in the foregoing definitions, is defined in section 2(2) to include only counties and municipalities. Thus, when Amendment 41 limits receipt of gifts, etc., by “government employees” or “local government officials,” those limits do not apply to officials and employees of Title 32 special districts or school districts, among others.

## What prohibitions does Amendment 41 impose on receipt of money or gifts?

Sections 3(1) and (2) are the principal sections of the amendment potentially affecting municipal officials and employees. Note that these provisions limit what may be received. The donee, not the donor, is the object of these sections.<sup>1</sup>

§3(1) A government employee/local government official shall not “accept” or “receive” any:

money

“forbearance” or

forgiveness of indebtedness

without receiving “lawful consideration of equal or greater value” in return.

§3(2) A government employee/local government official shall not, directly or indirectly (via gift to spouse or dependant child) solicit, accept, or receive:

any “gift or thing of value,” having a fair market value or “aggregate actual cost” greater than \$50.00 “in any calendar year,”

without receiving “lawful consideration of equal or greater value” in return.

Notably, these limits apparently apply regardless of whether the gift or fiscal benefit is provided in relation to or for the purpose of influencing official action. The Independent Ethics Commission has, however, found receipt of various gifts not violative of Amendment 41 when there is no violation of the public trust, such as when the animus for the gift has nothing to do with the recipients public position.

The \$50 limit in section 3(2) is on the “fair market value” or “aggregate actual cost” of gifts received by the covered official or employee, from “a person,” in “any calendar year.” So it’s a limit of \$50 per year, per donor, per covered official or employee.

The limitation is on gifts, etc. received, per year, from “any person.” “Person” is defined as “any individual, corporation, business trust, estate, trust, limited liability company, partnership, labor organization, association, political party, committee, or other legal entity.” (Section 2(4))

One question: Is “person” the interested entity, on whose behalf a number of natural persons may provide gifts/meals, etc.? In other words, may an unlimited number of persons who work at West, Inc., buy lunch for legislator X (and bring along the company’s lobbyist...), so as long as no one West, Inc., employee spends over \$50? Or is West, Inc., as an entity, limited to \$50 per year, no matter who it sends to lunch with the company credit card?

This section of the amendment declares that a “gift or thing of value” includes, but is “not limited to, gifts, loans, rewards, promises or negotiations of future employment, favors or services, honoraria, travel, entertainment, or special discounts.” Amendment 41 contains no formal definition of the terms “gift or thing of value,” (which terms also appear in subsection 3(4), limiting what may be given by professional lobbyists). This list in subsection 3(2) is thus as close as we get to a definition of these terms in Amendment 41.

*Receptions, etc.* The actual costs of food, drink, etc., for a reception or similar event, to which covered officials and/or employees are invited, may fairly be divided equally among everyone that attends. As a consequence, the distributed “gift” or “value” received by each individual official or employee attending could be quite minimal (e.g., if 200 people attend a \$2000.00 reception, covered officials/employees receive a \$10 “gift” or “thing of value” from the event sponsor). See also exception (e), below.

*Scholarships, etc.* A common question is whether sections 3(1) or 3(2) preclude award of scholarships to covered officials and employees, or their children. The Independent Ethics Commission has determined scholarships awarded utilizing objective criteria unrelated to the applicant’s status are not prohibited under Amendment 41.

## What are the exceptions to these prohibitions?

The exceptions set forth in section 6 of the amendment provide that the limitations contained in subsection 3(1) and 3(2), described above, do not apply, if the gift or thing of value received by a municipal official or employee is:

a. **Campaign contributions “as defined by law.”**

“Contribution” is defined very broadly in the Colorado Constitution, Article XXVIII, Sec. 2(5).

b. **An “unsolicited item of trivial value,” less than \$50, such as a “pen, calendar, plant, book, note pad or other similar item.”**

<sup>1</sup> Which is not to say, however, that donors have nothing to be concerned about under Amendment 41. See the discussion below of the Amendment’s penalty section, where those “inducing” a violation are subject to punishment.

*Some have suggested that this exception may be read as including finger food and beverages provided at receptions or similar events attended by covered officials or employees. Complicating this interpretation is that none of the listed items in this exception is food or drink, while these items are expressly mentioned in exception “e” below.*

- c. **An “unsolicited token or award” in form of plaque, trophy, etc.**
- d. **Unsolicited publications, subscriptions, or “informational material” related to “recipient’s performance of official duties.”**
- e. **Admission and the “cost of food or beverages” at a reception, meal, or “meeting” before whom the recipient appears to speak or answer questions, as part of a “scheduled program.”**  
*Note that it’s the “program” that has to be scheduled, not the attendees. If attendees are amendable to answering questions, neither the cost of admission, nor the cost of food/drink that they consume counts against their \$50 annual limit on gifts, etc., from the sponsoring entity or group. Note also that, strictly speaking, questions need not relate to public business, in order to qualify the respondent to not count admission cost or the value of food/drink consumed against his or her annual \$50 limit.*
- f. **“Reasonable expenses” paid by a non-profit organization or local government for “attendance” by covered officials or employees at a:**  
**convention, fact-finding mission, trip, or “other meeting”**  
if the person is “scheduled” to:  
**deliver a speech, make a presentation, participate on a panel, or “represent” the state or local government,** provided the non-profit organization receives “less than 5% of its funding from for-profit organizations or entities.”  
*Note that for this exception to apply, the actual “person” has to be scheduled, not just the “program,” as is the case with exception (e), above.*
- g. **Gift, etc., that is given by “an individual” who is a relative or “personal friend” of recipient, “on a special occasion.”**
- h. **Compensation/incentive given to an employee.**

## THE INDEPENDENT ETHICS COMMISSION

Section 5 of Amendment 41 concerns creation of an Independent Ethics Commission. The amendment does not specify what it is that the Commission is to be “independent” of, nor whether or where the Commission will be located in the state bureaucracy. The amendment provides, however, that the General Assembly “shall appropriate reasonable and necessary funds to cover staff and administrative expenses” of the Commission.

- The Commission is comprised of 5 non-paid members, one of whom will be a local government official or employee.
- The purpose of the Commission is to: (a) hear complaints, (b) issue “findings,” (c) “assess penalties,” and (d) issue advisory opinions.
- The Commission is authorized to do these things in connection with: (a) ethics issues arising under the provisions of Amendment 41, and (b) ethics issues arising under “any other standards of conduct and reporting requirements as provided by law.” The latter language could fairly be read as giving the Commission jurisdiction to hear complaints, assess penalties, etc., in connection with alleged violations of existing “ethics” statutes, such as the Public Official’s Code of Ethics, 24-18-101-205, C.R.S., the gifts & honoraria reporting statute, at 24-6-203, C.R.S., and the voting disclosure and abstention statute, at 31-4-404, C.R.S., among others.
- The Commission is given the authority to adopt rules for the purpose of “administering and enforcing”: (a) the provisions of Amendment 41, as well as (b) “any other standards of conduct and reporting requirements as provided by law.” The Commission’s authority apparently includes rulemaking for the enforcement of various state “ethics” statutes, of the sort mentioned in the foregoing paragraph.

## Complaints to the Commission

Subsection 5(3) describes the Commission’s complaint process:

- “Any person” may file a complaint.  
No entity is designated as responsible for policing or enforcing compliance with Amendment 41.
- The complaint must be in writing.
- The complaint must ask the Commission to determine whether a covered official or employee failed to comply with: the requirements of Amendment 41, or “any other standards of conduct or reporting requirements as provided by law” within “the preceding twelve months.”
- The Commission may dismiss “frivolous” complaints without a public hearing.  
*“Frivolous” is not defined in Amendment 41. Implementing legislation or commission rules will likely address this issue.*

- As to non-frivolous complaints, Amendment 41 requires the Commission to: “conduct an investigation,” hold a public hearing, and “render findings,” pursuant to written Commission rules.
- The Commission is authorized to assess penalties for “violations,” as prescribed in Amendment 41, and as “provided by law.” (Penalties for violation of Amendment 41 are set forth in section 6 of the amendment, discussed below.)
- Members of the Commission are authorized to subpoena documents or witnesses.

## **THE PENALTY SECTION OF AMENDMENT 41**

Section 6 of the amendment provides that: any covered official or employee “who breaches the public trust for private gain,” and “any person or entity inducing such breach,” shall be liable to the state or local jurisdiction for “double the financial equivalent of any benefits obtained by such actions.”

Amendment 41 provides that the “manner of recovery” of these penalties may be provided by law, as may “additional penalties.”

Interestingly, section 6 makes no express reference to the requirements of Amendment 41 itself, nor to the requirements of any of the various state ethics statutes. The penalty for breach of the “public trust” apparently complements section 1(1)(d) of the amendment’s “Purposes and Findings” section, in which it is declared that “any effort to realize personal financial gain through public office other than compensation provided by law is a violation of that [public] trust.” This language may provide helpful direction to courts and the General Assembly, in construing or clarifying Amendment 41 to avoid some of the unintended consequences that the language of the amendment might be otherwise be read as supporting.

The language of the penalty section making the person or entity that induces a breach of the public trust liable to the state or local government stands out in an amendment that, except for its provisions concerning professional lobbyists, focuses on covered officials or employees as recipients\_of gifts, etc. The jurisdiction of the Commission would apparently extend to assessing penalties on those who have led covered officials or employees astray.

## **LOCAL AUTHORITY AND THE HOME RULE PROVISION**

Section 7 of Amendment 41 provides first that “any” county or municipality may adopt ordinances or charter provisions with respect to ethics matters that are “more stringent” than the requirements of Amendment 41.

Home rule municipalities and counties are then given substantial additional authority. Section 7 provides that the requirements of Article XXIX (Amendment 41) “shall not apply” to home rule counties or municipalities “that have adopted charters, ordinances, or resolutions that address the matters covered by [Article XXIX].”

This language has raised a number of questions among municipal attorneys representing home rule jurisdictions. First among these has been whether the “have adopted” language means that a home rule municipality must have had its local enactment on the books prior to Amendment 41 taking effect. CML endorses the interpretation that this language allows ordinances, charter provisions or resolutions, adopted after the effective date of Amendment 41 to remove officials and employees of that municipality from the Amendment 41 restrictions.

A second major issue has been what the “matters covered by” language requires to be included in the local ordinance, charter provisions or resolutions. It’s safe to assume the local provision should address gift limits of some sort, but what else, if anything, should be required? A complaint process? Penalty provisions? A cutoff for violations? Attorneys for home rule jurisdictions have been and will continue to analyze and discuss these and other interpretive issues arising out of Amendment 41. CML has available several recent municipal ethics enactments for your information.



# *City Charter*

Revised April 6, 2004

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*HONOR THE PAST ~ ENVISION THE FUTURE*

## PREFATORY SYNOPSIS

Population growth and the change in legal status from a town to a city were primary motivations for creating and adopting the City of Fruita's first charter in 1981. Since that time, charter provisions have been reviewed and modifications offered for public consideration in 1984, 1986, 1988, and 1998.

In November of 2002 the City Council adopted Resolution 2002-59 appointing a Charter Review Commission in accordance with Article 11.5 of the Fruita City Charter, a provision that requires that the Charter be reviewed every six years. The Mayor and City Council charged the Commission with the task of reviewing the charter in full and then make suggestions that would bring clarity to the document. The goal of the 1981 commission was to create a charter which would guide the City of Fruita to be progressive as a community and responsive to its inhabitants. The 2002-2003 Charter Commission kept that goal as the primary focus and took steps to ensure that the document as proposed could meet the ever changing needs and desires of the community.

After reviewing and discussing the document thoroughly, there were no pivotal or dynamic recommendations for change made. The Commission continued to embrace the Council-manager form of government created in the original 1981 Charter and continued to embrace an independently elected mayor with veto authority. The Commission has offered a number of changes for consideration that are designed to improve citizen participation, clearly define the responsibilities of staff and the policy makers and increase the level of accountability to the elected officials by clarifying a commitment to the City Council-Manager form of government. The resulting clarity will help to better serve the citizens of Fruita.

The goal of 2002-2003 Charter Commission was to re-evaluate the Charter and provide recommended changes that will ensure that the document provide the necessary framework to keep Fruita a progressive and well managed community. The Charter Commission believes the recommended changes will help meet that goal.

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**CHARTER COMMISSION MEMBERS - 1981**

James Adams

William Baird

John Barcus

Robert Burdett

Craig Caldwell

Barbara Cowley

James Garcia

Bert Harrison

Henry (Pat) Kelly

Carol Lage

Jean Lutz

Robert Orr

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Viola Ward

Charles Webster

**CHARTER REVIEW COMMISSION - 2003**

Jim Adams

Fred Espinosa

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**ARTICLE I  
NAME, BOUNDARIES AND  
POWER OF THE CITY OF FRUITA**

**1.01 Name, Boundaries:** The Municipal Corporation previously existing as the Town of Fruita shall continue under the name City of Fruita and with the same boundaries. The City shall have power and authority to change boundaries in a manner authorized by law.

**1.02 Powers of the City:** The City shall have all powers possible for a City to have under the Constitution and Laws of this State.

**1.03 Form of Government:** The form of government of the City of Fruita shall be the Council-Manager plan. All powers of the City shall be exercised by direction of a City Council which shall be elected as provided by this Charter. The Mayor shall have separate powers and duties as established by this Charter. The City Manager shall be the chief administrative officer of the city.

## ARTICLE II THE CITY COUNCIL

**2.01 Composition:** There shall be a City Council of six (6) members elected at large by the registered voters of the City. The terms of all Council members shall be four (4) years, and until their successors are elected and assume office. Three (3) Council members shall be elected at a regular election; three (3) at the next succeeding regular election. A quorum shall consist of at least four (4) members.

**2.02 Eligibility:** Only registered voters residing in the City which are twenty one years (21) of age or older shall be eligible to hold the office of Council member.

**2.03 Salary:** The Council members shall receive such compensation as may be fixed by ordinance. No salary increases shall be effective during the current term of the Council members enacting such ordinance. The Council members shall also receive reasonable actual and necessary expenses incurred in the performance of their official duties.

**2.04 Vacancies:**

- A. When Existing: A vacancy in the office of a Council member shall exist when a Council member
1. Dies;
  2. Resigns;
  3. Moves from the City;
  4. Fails to attend two (2) consecutive regular meetings of the Council, unless excused by the Council;
  5. Is recalled;
  6. Is convicted of a felony or after a due process hearing, is found to have wilfully engaged in unethical conduct as defined by ordinance;
  7. Is judicially declared incompetent.
- B. Procedures: When there is a vacancy in the Council, the Council shall have sixty (60) days from the date of that vacancy to appoint a qualified person to fill the vacancy until the next general municipal election. All appointments shall be approved upon a majority vote of the Council as then constituted at a public meeting. If the Council

fails to fill the vacancy within the sixty (60) days provided by this Charter, a special election shall be held not less than ninety (90) days from the date of the vacancy unless a regular municipal election shall occur within 90 days.

- C. Loss of Quorum: If there are three or more concurrent Council vacancies, the Mayor shall call a special election in compliance with state law.

**2.05 Powers and Duties of the Council:** The Council is responsible for policy making. The Council shall have the power to:

- A. Adopt the budget and determine the City tax levy;
- B. Adopt ordinances, resolutions, and motions necessary for the orderly conduct of City affairs;
- C. Review and ratify appointments made by the Mayor;
- D. Appoint a City Manager and evaluate his performance;
- E. Enact necessary legislation required for the operation of the City.

**2.06 Prohibitions.** Individual members of the City Council shall not, in any manner, control or demand the appointment or removal of any city administrative officer or employee whom the City Manager or any subordinate of the City Manager is empowered to appoint, nor shall individual members of the City Council give orders to any such officer or employee, either publicly, or privately but shall deal with city officers and employees who are subject to the direction and supervision of the City Manager solely through the City Manager. The City Council may express its view and fully and freely discuss with the City Manager anything pertaining to appointment and removal of such officers and employees.

**2.07 Procedure for Meetings:**

- A. Meetings: The Council shall prescribe by ordinance the time and place of all regular Council meetings. There shall be at least one (1) Council meeting per month. Special meetings may be held on the call of the Mayor or of four or more members of the Council. Notice of meetings shall be given to the public pursuant to Colorado Revised Statutes.
- B. Council meetings shall be open to the public, except that the Council and Mayor may recess for the purpose of discussing in a closed session the items stipulated in C.R.S. 24-6-402 (4). A summary of those items that may be discussed in executive session include:

1. Matters required to be kept confidential by federal or state law or consideration of documents protected by the Open Records Act.
  2. The purchase or sale of any real property;
  3. Personnel matters;
  4. Matters subject to negotiation.
  5. Conferences with an attorney for the purpose of receiving legal advice on specific legal questions.
  6. Specialized details of security arrangements or investigations
- C. Before a closed session, the Council shall state the subject of the closed session in a motion calling for the closed session. Voting on matters which have been discussed in a closed session shall occur in open session and shall be recorded publicly.

**2.08 Rules and Record:** The Council shall make its own rules and order of business. A public record of its proceedings shall be kept.

**2.09 Voting Shall be by Roll Call:** The order of roll call shall be rotated for each succeeding vote, and the ayes and nays shall be recorded. Final approval of an ordinance, shall be by the affirmative vote of a majority of the quorum present. Every member present must vote, except that Council members shall be excused from voting on matters involving a his own conduct or when his direct financial interest is involved.

**2.10 Ordinances, Resolutions and Motions:** The Council shall act only by ordinance, resolution or motion. All legislative enactments must be in the form of an ordinance; all other procedures may be in the form of resolutions or motions. Each ordinance or resolution shall be confined to one subject, except in the case of repealing ordinances.

**2.11 When Ordinances are Required:** In addition to other acts required by law or by specific provision of this Charter, acts of the Council shall be by ordinance which:

- A. Adopt or amends an administrative code or establishes alters, or abolishes any department, office or agency;
- B. Provide for a fine or other penalty or establishes a rule or regulations, for violation of which a fine or other penalty may be imposed;
- C. Levy Taxes;

- D. Conveys or authorizes the conveyance of any real property of the City and the lease of any real estate for a period of more than one year.
- E. Granting of a franchise.

**2.12 Enacting Clause:** Every proposed ordinance shall be introduced in writing, and in the form for final adoption. No ordinance shall contain more than one subject which shall be clearly expressed in its title. The enacting clause shall be, "BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO". The Council shall adopt a resolution prescribing the form by which repeals and amendments to existing ordinances shall be presented for discussion.

**2.13 Procedure for Enactment of an Ordinance:** Procedure for enactment of an ordinance by the Council shall be as follows:

- A. Any person, including a Council member, may present a proposed ordinance to the Council. A member of the Council may introduce a proposed ordinance or request that a public hearing be set concerning the subject matter of the proposed ordinance;
- B. Upon introduction of a proposed ordinance or a request for a public hearing, the Council shall set a date for a public hearing;
- C. The clerk will publish a notice setting forth the time and place of the public hearing, and summarizing the subject matter of the proposed ordinance by title, or at the direction of the Council, may publish the entire ordinance. Where ordinances relate to real property the simplest, clear description of the location of the property shall be used. The public notice shall state that copies of the proposed ordinance are available for inspection at the office of the Clerk. The Mayor, Council members, and the City Manager shall each receive a copy of the proposed ordinance prior to the public hearing;
- D. All interested persons shall have an opportunity to be heard at the public hearing;
- E. Following the public hearing, the Council and Mayor shall discuss the proposed ordinance. The Council may adopt, defeat, or postpone the decision on the ordinance;
- F. If the ordinance is passed and adopted:
  - 1. For planning and zoning ordinances, publish again the title noted above, and adding that copies of the ordinance (containing the legal description) are available for inspection at City Hall;
  - 2. Publish other Ordinances by title or, at the direction of the Council, in full.

- G. Ordinances other than emergency ordinances shall become effective thirty (30) days after their adoption by the Council;
- H. All ordinances which are the subject of an election shall, if approved by a majority of those voting, become effective upon such approval and the procedures of this section shall not apply.

**2.14 Emergency Ordinances:** To meet a public emergency affecting life, health, property, or the public peace, the Council may adopt one or more emergency ordinances. These ordinances may not regulate taxes or authorize the borrowing of money, except as otherwise provided by this Charter.

An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms.

The Council must, prior to the enactment of an emergency ordinance, receive evidence in support of the declaration that an emergency exists, and must make a specific finding of fact that a public emergency affecting life, health, property, or the public peace exists. An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced.

A summary of every emergency ordinance shall be published. It shall become effective upon adoption or at a specified time. Every emergency ordinance shall automatically stand repealed on the 61st day following the date on which it was adopted. This shall not prevent reenactment of the ordinance in accordance with the provisions set forth in Section 13 of this Article.

## ARTICLE III MAYOR

**3.01 How Chosen:** The Mayor shall be chosen by a regular election. If there are more than two candidates, a plurality is required to elect. The Mayor shall serve a two (2) year term.

**3.02 SALARY.** The Mayor shall be paid as determined by ordinance, except that no increase in salary shall take effect until after the next regular City election. The Mayor shall also receive reasonable actual and necessary expenses incurred in the performance of the Mayor's official duties.

**3.03 Eligibility.** Only registered voters residing in the City which are twenty one years (21) of age or older shall be eligible to hold the office of Mayor.

**3.04 Vacancies:**

- A. When existing: A vacancy in the office of the Mayor shall exist when the Mayor
1. Dies;
  2. Resigns;
  3. Moves from the City;
  4. Fails to attend two (2) consecutive regular meetings of the Council, unless excused by the Council;
  5. Is recalled;
  6. Is convicted of a felony or after a due process hearing, is found to have wilfully engaged in unethical conduct as defined by ordinance.
  7. Is judicially declared incompetent.
- B. Procedures: When there is a vacancy in the office of Mayor, the Mayor Pro-tem shall assume the office of Mayor until the next regular election.

**3.05 Mayor Pro-tem:** The Council shall elect from its membership a Mayor Pro-tem who shall act as Mayor during the absence or disability of the Mayor. The Mayor Pro-tem shall serve a two (2) year term. If there is a vacancy in the office of Mayor, the Mayor Pro-tem shall resign his/her council seat and assume the office of Mayor until the next regular election. If there is a vacancy in the office of Mayor Pro-tem, a Mayor Pro-tem shall be

elected by the Council to fill the unexpired term.

**3.06 Powers and Duties of the Mayor:** The Mayor is the recognized political leader and represents the City at official, civic and social functions. The Mayor shall have the power to:

- A. Preside over Council meetings;
- B. Call special meetings;
- C. Subject to Council review and approval, appoint members of boards and commissions;
- D. Recommend ordinances, resolutions, and motions;
- E. Vote in the event of a tie vote of the Council;
- F. Be recognized as the political head of the city government;
- G. The Mayor shall approve or disapprove ordinances in accordance with Colorado Revised Statutes 1973 31-16-104, and any amendments, revisions and renumbering of that statute.
- H. Other powers and duties as designated by the City Council.

**3.07 Prohibitions.** The Mayor shall not, in any manner, control or demand the appointment or removal of any city administrative officer or employee whom the City Manager or any subordinate of the City Manager is empowered to appoint, nor shall the Mayor give orders to any such officer or employee, either publicly or privately, but shall deal with city officers and employees who are subject to the direction and supervision of the City Manager solely through the City Manager. The Mayor, acting with the City Council may express his views and fully and freely discuss with the City Manager anything pertaining to appointment and removal of such officers and employees.

## ARTICLE IV ADMINISTRATIVE STAFF

### **4.01 City Manager:**

- A. Appointment, Qualifications, Compensation: The Council shall appoint a City Manager, by a majority of the entire Council, for an indefinite term and fix his compensation. The manager shall be appointed solely on the basis of his qualifications.

**4.02 Removal of Manager:** The Council may remove the manager from office by a majority vote of the entire Council.

**4.03 Annual Evaluation of the Manager:** The Council and Mayor shall, annually, evaluate the performance of the City Manager to determine if he should be retained. The procedure for such evaluation shall be as follows:

- A. Not less than thirty (30) days prior to the date of the evaluation, the Council shall publish notice to the public, inviting comment on the performance of the City Manager;
- B. At the time of publication of the notice, the form to be used by the Council in evaluating the City Manager shall be made available to the public;
- C. The actual contents of the evaluation of the City Manager shall not be made public;
- D. The determination of the Council, after reviewing the evaluation of the City Manager, shall be announced at a regular Council meeting.

**4.04 Acting City Manager:** By letter filed with the City Clerk, the City Manager shall designate an acting City Manager to exercise the powers and duties of the City Manager if he is temporarily absent or disabled. During the absence or disability of the City Manager, the Council may revoke the designation of the acting City Manager, and appoint another person to serve until the Manager shall return or his disability shall cease.

**4.05 Powers and Duties of the City Manager:** The City Manager shall be the Chief Administrative Officer of the City and is responsible for the management of the City. He shall be responsible to the Council for all City affairs placed in his charge by this Charter, the Council, or by law. He shall have the following powers and duties:

- A. To appoint, with the approval of the Council, all heads of departments, offices and agencies.

- B. To appoint acting department heads to act in case of temporary absence or disability of a department head.
- C. To suspend or remove any City employee or administrative officer except as otherwise provided by personnel rules of the City. Removal of department heads must be reviewed and approved by the Council;
- D. To direct and supervise the administration of all departments, offices and agencies of the City;
- E. To attend all Council meetings unless excused by the Council and shall have the right to take part in discussions, but shall not vote;
- F. To see that all laws, provisions of this Charter and acts of the Council, subject to enforcement by him or by officers subject to his direction and supervision, are properly performed.
- G. To recommend to the Council personnel rules and policies in addition to the current personnel manual which is hereby adopted subject to revision and amendment by the Council.
- H. To keep the Council and Mayor fully advised of the financial condition of the city.
- I. To direct the preparation of the annual budget.
- J. To make such other reports and perform such other duties as may be required by the Council.
- K. Make recommendations to the City Council and Mayor concerning the affairs of the city.

**4.06 City Attorney:** The Council shall appoint for the City, an attorney (or firm of attorneys) licensed to practice law in the State of Colorado. He shall serve at the pleasure of the Council and perform duties determined by the Council. Compensation of the City Attorney shall be fixed by the Council.

**4.07 City Clerk:** The City Manager shall appoint a City Clerk, with the approval of the Council, who shall be custodian of the Seal of the City, and shall perform such other duties as required by this charter, the Council or the City Manager.

**4.08 Chief of Police.** The City Manager shall appoint a Chief of Police, with the approval of the Council, who shall be in direct command of the Police Department, and shall perform such other duties as required by this Charter, the Council or the City Manager.

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**ARTICLE V**  
**MUNICIPAL COURT**

The Council shall appoint a municipal judge who is licensed to practice law in the State of Colorado, who shall serve at the pleasure of the Council, subject to annual review. Compensation of the municipal judge shall be fixed by the Council.

## ARTICLE VI BOARDS AND COMMISSIONS

**6.01 Boards and Commissions, Appointment and Compensation:** Members of Boards and Commissions shall be appointed by the Mayor, with approval of the Council for a period of three (3) years, with overlapping terms, and shall serve without compensation. First appointments shall be for one (1), two (2), and three (3) year terms.

**6.02 Meeting Procedures:** Each Board and Commission shall operate under established rules of procedure at public meetings as approved by the City Council and in accordance with the state open meetings law. A record of each meeting shall be kept.

**6.03 Established Boards and Commissions:** The following Boards and Commissions are hereby established:

**6.03.01 Board of Adjustment:** A Board of Adjustment as established by ordinance.

**6.03.02 Election Commission:**

- A. Colorado Municipal Election Law Adopted: Elections shall be governed by the Colorado Municipal Election Law in effect at the time of the election, except as the Council may prescribe by ordinance.
- B. An Election Commission is hereby created consisting of the Clerk, who shall be Chairman, and two other members at large, who, shall not be the City officers, employees, candidates, or nominees for elective City office. These two (2) members shall be appointed by the Mayor for a term of two (2) years.
- C. Powers and Duties of Commission: The Election Commission shall establish precincts and appoint election judges and clerks for each precinct. The Election Commission shall have the power to adopt reasonable rules and regulations not in conflict with the Constitution and Statutes of the State of Colorado, this Charter, and ordinances of the City of Fruita. In the event of a tie vote, the Election Commission shall determine by lot the person or persons who shall be elected. No member of the Election Commission shall serve as a municipal election judge or clerk.
- D. Municipal Elections: A general municipal election shall be held on the first Tuesday of April 1982, and on the first Tuesday of April of every second year thereafter.

**6.03.03 Planning and Zoning Commission:** A Planning and Zoning Commission as established by ordinance.

**6.03.04 Police Commission:**

- A. The Police Commission shall consist of one (1) Council member, and four (4) members at large.
- B. The Police Commission shall recommend policies, standards, procedures, and limitations for the Police Department to the Council.
- C. Upon the direction of the City Council the Police Commission may receive public comment on the operations and management of the Police Department.
- D. Upon the direction of the City Council the Police Commission may provide input to the City Manager on the appointment of the Chief of Police.
- E. Upon the direction of the City Council the Police Commission may provide assistance to the Chief of Police in selecting members of the department.

**6.03.05 Parks and Recreation Commission:**

- A. The parks and Recreation Commission shall consist of one Council member and six (6) members at large.
- B. It shall recommend to the Council plans for acquisitions, development and operation of parks, recreation areas, and recreation facilities owned and operated by the City.
- C. It shall recommend to the Council Recreation programs.

**6.04 Additional Boards and Commissions:** The Council shall have the authority to create or abolish other Boards and Commissions.

**6.05 Advisory Capacity:** Except for the Election Commission and Board of Adjustment, Boards and Commissions serve in an advisory capacity.

**6.06 Membership Requirements:** Eligibility requirements for members of all Boards and Commissions shall be as set forth in ordinance or resolution.

**6.07 Reasons for Removal of any Member:**

- A. Being found guilty of committing a felony:
- B. Having failed to attend two (2) consecutive regular meetings, unless excused.
- C. Is found to have wilfully engaged in unethical conduct as defined by ordinance.

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**ARTICLE VII**  
**ADMINISTRATIVE DEPARTMENTS**

**7.01 Creation of Departments.** The City Council may establish or abolish city departments, offices or agencies and may prescribe the functions of all departments, offices and agencies.

**7.02 Department of Police:**

- A. There is hereby created a Department of Police, the director of which shall be the Chief of Police, who shall be appointed and may be removed in the same manner as other department heads.
  
- B. The Chief of Police shall be in direct command of the Department of Police, and shall be assisted by the Police Commission in selecting members of the Department. He shall assign all members of the department to their respective posts, shifts, details and duties. He shall make rules and regulations affecting the department in conformity with the ordinances and resolutions of the City, concerning the operation of the department and the conduct of the department. He shall further provide for the care and custody of all property used by the department.

## ARTICLE VIII FINANCIAL PROCEDURES

**8.01 Fiscal Year:** The fiscal year shall be the calendar year or as determined by the Council by ordinance.

**8.02 Budget:** The City Manager shall direct the preparation of an annual budget, and shall submit the Annual Budget to the City (90) days prior to the end of the current fiscal year or at such time as directed by the Council.

**8.03 Contents of the Budget:** The year's proposed budget shall contain:

- A. A list of anticipated revenues, and of any surplus funds from the preceding year;
- B. A statement of the proposed expenditures for each department. This statement shall include a breakdown of the expenditures for personnel, operations, other expenses and capital outlays;
- C. Subsidiary budgets shall be prepared for all city-owned utilities in conformance with Generally Accepted Accounting Principles;
- D. An estimate of the amount of surplus funds which may exist at the end of the budget year;
- E. An itemized comparison with the previous year's budget.
- F. Any other supporting information that the Council may request.

**8.04 Long Term Financing:** The proposed budget shall also include:

- A. A statement of all known capital construction projects to begin or continue during the budget year. The statement shall contain an estimate of the cost and necessary revenue measures to accomplish the completion of each project, and an estimate of the annual cost of operating each project.
- B. A statement of bonded indebtedness, and of other long term obligations, with retirement schedules, interest requirements, and special reserve funds provided for those obligations.

**8.05 Budget Hearing:** A public hearing on the proposed budget shall be held before its final adoption. Notice of public hearing shall be published at least two weeks prior to the hearing. The complete proposed budget shall be available for public inspection for a period of not less than two weeks before the date of the hearing. Copies shall be made upon

request for purchase at cost.

**8.06 Council Amendments:** After the public hearing the Council may adopt the budget with or without amendment. If the total proposed expenditures are increased or decreased by more than five percent (5%) of the original amount, another public hearing shall be held.

**8.07 Council Adoption:** If the Council fails to adopt a budget by the first day of the fiscal year, the amounts appropriated for the prior fiscal year shall be pro-rated on a month to month basis until the Council adopts the budget.

**8.08 Taxes:** The right is reserved to impose any tax not specifically denied to cities by the statutes of the State of Colorado. Any new tax or increase in existing tax, except the general property tax and taxes on special improvement districts, must be approved by a majority of the voters in a special or regular election.

- A. Property Tax Levy: Adoption of the budget constitutes appropriation of the amounts specified. The Council shall cause the property tax to be certified to the county for collection.
- B. Taxes imposed on special improvement districts shall be exempt from the general election requirement. However, a majority of the voters in such a district must approve the special improvement bond issue.

**8.09 Public Record:** The budget is a public record, and copies may be purchased at cost.

**8.10 Amendments to the Budget after Adoption:**

- A. SUPPLEMENTAL APPROPRIATIONS: If the City Manager certifies there are excess revenues, the Council by resolution and after notice of public hearing published five days prior to the public hearing, may make supplemental appropriations up to the amount of the excess. This section shall not limit emergency appropriations under the provisions of Section 10B.
- B. EMERGENCY APPROPRIATIONS: To meet a public emergency the Council may make emergency appropriations. Such appropriations shall be made by emergency ordinance. If there are no available revenues to meet such an appropriation, the Council may, by emergency ordinance, authorize the issuance of short term notes. The 61 days time limit for emergency ordinances shall not apply to these short term notes.
- C. REDUCTIONS OF APPROPRIATIONS: If during the year it appears probable to the City Manager that revenues will be insufficient, he shall report to the Council without delay, indicating the estimated amount of deficit, any remedial action taken by him, and his recommendation as to any other steps to be taken. The Council shall then take

action to prevent or minimize any deficit, and for that purpose it may reduce one or more appropriations.

- D. **TRANSFER OF APPROPRIATIONS:** The City Manager may transfer part or all of any unencumbered appropriations within a department. The Council may transfer by resolution, part or all of any unencumbered appropriations from one department to another.
- E. **LIMITATION:** No appropriation for debt service may be reduced or transferred.

**8.11 Special Reserve Funds:** The Council, may, by ordinance, provide reserve funds for debt service, future improvements, or other projects. Such funds are to be held in trust for each specified purpose.

**8.12 Accounting Records:** The City Manager shall use an accounting system guided by current Generally Accepted Accounting Principles. This system shall include:

- A. An itemized method for handling of receipts and disbursements;
- B. A monthly statement of receipts and expenditures from which the Council can determine compliance with the budget. This statement shall be made available for public inspection;
- C. An annual report of all funds and financial operations.

**8.13 Annual Audit:** An audit shall be made annually by a certified public accountant (or accounting firm) licensed to practice in the State of Colorado. The accountant shall not be used for more than eight (8) years consecutively. The Council shall select the accountant and may call for more frequent or special audits. Audits shall be available for public inspection.

**8.14 Purchasing:** The City Manager, with the approval of the Council, may direct a central purchasing operation. The City may enter into a joint purchasing agreement with any other governmental entity.

**8.15 Depository:** The Council shall designate depositories for City funds.

**8.16 Investments:** Funds not needed for current operations may be invested by the City Manager pursuant to Colorado Revised Statutes with approval of the Council. Such investments shall take into account the time when the funds will be needed. The City Manager shall present a review of the investment program to the Council quarterly or more frequently if requested.

**8.17 Forms of Borrowing:** The City may borrow money and issue securities as follows:

- A. Short term notes;
- B. General obligation bonds;
- C. Revenue bonds;
- D. Industrial development revenue bonds;
- E. Bonds for special or local improvement districts;
- F. Any other like securities.

**8.18 Limitations:** Taking into consideration that the provisions of Article VIII, Section 20 of this Charter, which requires an election and disclosure of the current assessed valuation and outstanding general obligation bonded indebtedness of the City prior to the issuance of general obligation bonds, there shall be no limitation on the amount of bonds or other securities the City may issue except as may be stated in the documents pertaining thereto. All bonds or other securities issued pursuant to the provisions of this Charter shall be sold at public or private sale to the best advantage of the City at, above or below par. Bonds may contain provisions for redemption prior to maturity with or without the payment of a premium. The maximum premium payable on prior redemption of any general obligation bonds may, but need not, be specified in the bond question approved by the qualified electors. No action or proceeding concerning the issuance of bonds shall be maintained against the City unless commenced within 30 days after the date of passage of the contested resolution or ordinance.

**8.19 Short-Term Notes:** The Council may, by resolution without an election, issue short term notes maturing within twelve (12) months of the date of their issuance. The resolution shall include provisions for re-payment.

**8.20 General Obligation Bonds:** All general obligation bonds to which the full faith and credit of the City is pledged or which are payable in whole or in part from the proceeds of general property taxes shall only be issued after approval at a regular or special election. Such election shall be called pursuant to the requirements of Article X, Section 20 of the Colorado State Constitution and an ordinance, which shall include:

- A. The bond question to be submitted;
- B. The amount of the total current assessed valuation of the taxable property within the City;

- C. The amount of the City's total general obligation bonded indebtedness as of the date of the ordinance and the total amount if the proposed bonds are issued.
- D. The maximum premium payable on prior redemption of any general obligation bond may be specified in the bond question.

**8.21 Revenue Securities:** The Council may, by ordinance, issue securities made payable solely from revenues other than property taxes. These securities include, but are not limited to, those payable from revenues derived from:

- A. The operation of the project or capital improvement acquired or bettered with the proceeds;
- B. Any other projects or improvements;
- C. The available proceeds of any sales tax, use tax, or other excise tax, or;
- D. Any part or combination of such sources.

**8.22 Industrial Revenue Bonds:** Industrial revenue bonds may be issued as provided by Colorado Statute.

**8.23 Bonds for Special or Local Improvements Districts:** Subject to the approval of the owners of more than half of the property in the area concerned the Council may, by ordinance, contract for or construct special or local improvements within specified districts of the City. The Council shall determine the methods of assessing the cost of these improvements. The Council may provide a special surplus and deficiency fund. This fund shall provide separate accounting for any surplus or deficiency after the bonds for a district are completely paid. Any surplus may be applied to any other special improvements.

In addition, in consideration of general benefits conferred on the City at large from construction or installation of improvements in special or local improvements districts, for the purpose of paying assessments against any property owned by the City and as additional security for improvement bonds, the Council may provide for an annual tax levy, and annually transfer to such special fund any available money of the City.

Whenever 80% of the principal amount of the outstanding bonds of a special or local improvement district have been paid and canceled, and for any reason the remaining bonds of the district and the interest due thereon, and there are not sufficient monies in the special surplus and deficiency fund, then the City shall pay said bonds when due and the interest due thereon, and reimburse itself by collecting unpaid assessments due said district.

**8.24 Refunding Securities:** Any bonds or other securities may be refunded as provided by

Colorado Statute.

**8.25 Long-term Lease Agreement:** The Council may by ordinance enter into long-term rental or leasehold agreements. Payment may be made by general appropriations, by imposition of usage fees on the rental of leasehold property, or a combination of both general appropriations and usage fees.

## ARTICLE IX FRANCHISES

**9.01 Granting of Franchises.** Franchises ordinances relating to any street, alley or public place of the City must be approved by a majority of all the members of the City Council.

Any franchise relating to any street, alley or public place is subject to the initiative and referendum powers reserved to the people pursuant to Article XX, Section 4 of the Colorado Constitution.

**9.02 Right of Purchase:** Every grant of a franchise or right for public utility within the City shall provide that the City may purchase and take over the property and plant of the grantee, upon payment of its fair value, and in the manner to be specifically set forth in the ordinance granting such franchise. The Council shall have the power to extend or enlarge existing franchises by ordinance.

**9.03 Powers and Regulations:** The City reserves the right to make all regulations which may be necessary to insure safety and welfare, and to protect the public from danger or inconvenience in the operation of any franchise.

**9.04 Review:** Franchises shall be granted for a period not to exceed 25 years.

**ARTICLE X  
INITIATIVE, REFERENDUM  
AND RECALL**

**10.01 Definition of Initiative and Referendum:**

- A. Initiative: The registered voters of the City shall have the power to propose ordinances to the Council. If the Council fails to adopt such an ordinance without any change in substance, the voters may adopt or reject it at an election.
- B. Referendum: The registered voters of the City shall have the power to require reconsideration by the Council of any adopted ordinance.

**10.02 Scope of Ordinances:** Any proposed, initiated, or referred ordinance may be submitted to the Council by petition, signed by the registered voters of the City equal to the number required (Section 10.7). Power of initiative or referendum shall not extend to the budget or capital programs or to any ordinance relating to the appropriation of money, authorizing the issuance of bonds, the levy of special assessments, or salaries of City officers and employees.

**10.03 Recall:** Any Council member or the Mayor may be recalled after holding office for six months.

**10.04 Commencement of Proceedings:** Petitioners Committee Affidavit: Any five (5) registered voters may commence initiative, referendum or recall proceedings by filing with the Clerk an affidavit stating they constitute the Petitioners Committee. They will be responsible for circulating the petitions, and filing them in proper form, and stating their names and street addresses, and specifying the address to which all notices to the committee are to be sent.

- A. In the case of an initiative, the affidavit shall set forth the proposed ordinance in full.
- B. In the case of a referendum ordinance, the affidavit shall set forth the referred ordinance.
- C. In the case of a recall, the affidavit shall demand the recall of the Council member named in said affidavit, and shall contain a general statement, in not more than 100 words, of the ground or grounds for which the recall is sought.

**10.05 Duty of Clerk:** Upon the filing of the necessary affidavits by the Petitioners Committee, the Clerk shall prepare the appropriate petition blanks for the initiative, referendum, or recall, and shall designate the number of signatures necessary for each such proceeding.

**10.06 Petitions:**

- A. **Form and Content:** All papers of a petition shall be uniform in size and style, and shall be assembled as one instrument for filing. Each signature shall be executed in ink and shall be followed by the street address of the person signing. Petitions for initiative or referendum shall contain or have attached, throughout their circulation, the full text of the ordinance proposed or to be reconsidered. In the case of a recall, the petition shall contain the name of the individual and the reasons for recall. All petitions shall be headed by this statement, "ONLY REGISTERED VOTERS RESIDING WITHIN THE FRUITA CITY LIMITS MAY SIGN".
- B. **Affidavit of Circulation:** Each paper of a petition shall have attached to it when filed, an affidavit executed by the circulator thereof, stating:
1. The person personally circulated the petition;
  2. The number of signatures;
  3. That all the signatures were affirmed in his presence;
  4. That he believes them to be genuine;
  5. That each signer had an opportunity before signing to read the full text of the initiated ordinance proposed, the recall petition, or the ordinance to be reconsidered.

**10.07 Submission of Petitions:** After obtaining the necessary signatures, the petitions shall be returned to the Clerk not more than thirty (30) days after their issuance. The petitions shall be sufficient when submitted as follows:

- A. **Initiative:** The petition shall be signed by the registered voters of the City, no fewer than fifteen percent of the total vote cast in the last regular municipal election.
- B. **Referendum:** The petition shall be signed by registered voters of the City, no fewer than ten percent of the total vote cast in the last municipal election;
- C. **Recall:** The petition shall be signed by registered voters of the City, no fewer than twenty percent of the total vote case at the last municipal election.

**10.08 Examination by Clerk:** Within ten days from the filing of any petition, the Clerk shall determine whether the petition is signed by the correct number of registered voters and if sufficient, shall attach a certificate of sufficiency. If the petition is insufficient, the Clerk shall immediately notify the Petitioners Committee by certified mail, at the address

designated by the Petitioners Committee. The petitioner may then be amended within ten days of receipt of notification of the certificate of insufficiency. Upon filing of the amended petition, the clerk shall, within five days, examine the amended petition, and shall attach a certificate. If still insufficient, the Clerk shall notify the Petitioners Committee of the insufficiency of the petitions and the proceedings shall terminate. Petitioners shall be retained only for a period of one year. The termination of any proceeding due to insufficiency of petition shall preclude the initiation of any proceeding pertaining to the same subject matter or same elected City official for one year.

**10.09 Certification to the Council:** If the petitions are certified as sufficient by the Clerk, the Clerk shall at the next regular Council meeting, present the petitions to the Council which shall act as follows:

- A. In the case of an initiative ordinance, the Council shall, within thirty (30) days after the attachment of the Clerk's certificate of sufficiency, either:
  - 1. Pass said ordinance without any change in substance;
  - 2. Call a special election to be held not less than thirty (30) nor more than ninety (90) days, unless a regular election shall occur within 90 days, after certification to the Council.
- B. In the case of a referred ordinance, the ordinance shall be suspended upon certification to the Council of the sufficiency of the petition, and the Council shall first reconsider the ordinance. If the ordinance is not entirely repealed by the Council, the proposed referendum ordinance shall be submitted, without alteration, the vote of the registered voters of the City. The elections shall not be held less than thirty (30) nor more than ninety (90) days after certification to the Council unless a regular election shall occur within 90 days.
- C. In the case of recall, the Council shall set a date for a recall election. The election shall be held not less than 30 nor more than 90 days after certification to the Council.

**10.10 Publication and Form of Ballot:** The publication and form of ballot shall be as follows:

- A. Initiative: The ordinance shall be published in full, not less than ten days prior to the date of the election. The ballot heading upon which the proposed ordinance is submitted shall contain a brief summary and the ballot shall contain the words, "FOR THE ORDINANCE" and "AGAINST THE ORDINANCE".
- B. Referendum: Referred ordinances shall be published, and the ballot shall follow the same form as provided for initiated ordinances.

- C. Recall: The ballot shall be published in full, not less than ten days prior to the date of the recall election. It shall contain the reasons set forth in the petition for recall, and there shall also be printed the words "SHALL (name of person upon whom the recall is filed) BE RECALLED FROM OFFICE?"

**10.11 Effect of Election on Recall:** If a majority of the registered voters favor an initiative, the proposed ordinance shall become effective immediately. If a majority of the registered voters favor a referred ordinance, the ordinance shall immediately go into effect. If the referred ordinance shall be rejected by the voters, the ordinance shall be repealed. If a majority of persons voting recall approve the recall, the office shall be declared vacant immediately. The vacancy shall be filled as provided in Article II of this Charter. The completion of any proceeding under this Article shall preclude the initiation of any subsequent proceedings pertaining to the same topic or same person for one year.

**10.12 Submission by Council:** The Council shall have the power to submit any proposed ordinance to the vote of the people.

**10.13 Implementation:** The Election Commission shall make such additional rules and regulations as are necessary to implement the procedures of this Article.

## ARTICLE XI GENERAL AND MISCELLANEOUS PROVISIONS

**11.01 Present Form of Government Continues:** Except as otherwise provided by this Charter, the form of government existing in the City of Fruita at the time of the adoption of this charter, shall continue unaltered, and all officers and other persons in the service of the City at the time this Charter takes effect, shall continue to serve and their compensation shall not be modified by the adoption of this Charter.

**11.02 Responsibility of Transition:** It shall be the duty of the Council in office when the proposed charter takes effect, to implement all the requirements of this Charter.

**11.03 Present Ordinances Continued in Force:** All laws, ordinances, resolutions, by-laws, orders, rules or regulations in force in the City of Fruita at the time this charter takes effect which are not inconsistent with the charter, shall continue in full force and effect until the Council otherwise provides.

**11.04 Continuing Bonds:** All official bonds, recognizances, obligations, contracts, and all other instruments entered into, or executed by or to the City before this charter takes effect, and all taxes, fines, penalties and forfeitures due or owing to the City, and all writs, prosecutions, actions, and causes of action, except as herein otherwise provided, shall continue to remain unaffected by this Charter.

**11.05 Charter Amendments:** This charter may be amended as provided by Article XX of the Constitution of the State of Colorado. More than one charter amendment or measure may be submitted at an election. The Charter shall be reviewed by the City Council at least once every 6 years.

**11.06 Publicity and Legal Advertising:** All legal notices of City business of general interest to the citizens of Fruita shall be publicized as required by law or by the Council.

**11.07 Boards and Commissions:** All Boards and Commissions now in existence shall continue as constituted.

**11.08 Severability:** If any provision of this charter is held invalid, the other provisions of the charter shall not be affected. If the application of this charter, or any of its provisions to any person or circumstance is held invalid, the application of the charter and its provisions to other persons or circumstances shall not be affected. Every ordinance introduced shall be deemed to contain a severability clause.

**11.09 Codification:** All ordinances shall be codified.

**11.10 Employment:** Where qualifications are equal, preference in hiring shall be given to

Fruita residents.

**11.11 Effective Date:** This charter shall be effective when filed with the Secretary of State following approval by the voters.