



**Collbran Board of Trustees
Work Session Agenda
Tuesday, April 22, 2025, 6:00 PM**
Collbran Town Hall 1010 High Street
and Via Zoom
[Join the Meeting via Zoom](#)

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Colorado Intergovernmental Risk Sharing Agency (CIRSA) Board Training, presented by Nick Cotton – Baez, Associate General Counsel for CIRSA
5. Adjournment

Possible Board Work Session may Follow Regular Meetings

Work Sessions are for the purpose of Board members informally receiving reports and discussing town business. No formal action shall occur at a work session. Any decisions proposed during a work session shall be approved at a subsequent board meeting in the appropriate manner.

NOTICE TO READERS: Town Council meeting packets are prepared several days prior to the meetings. Timely action and short discussion on agenda items does not reflect lack of thought or analysis on the Trustee's part as issues have been discussed by Trustees in workshop or committee meetings which are open to the public. **The Board of Trustees may take action on any of the agenda items as presented or modified prior to or during the meeting, and items necessary or convenient to effectuate the agenda items.**

PUBLIC INVITED TO ATTEND: The Public will be limited to three minutes each unless prior arrangements have been made with the Town Clerk or Administrator. Town Trustees may not respond to your comments on this evening, rather, they may take your comments and suggestions under advisement and your questions will be directed to the appropriate person or department for follow-up.



Risk Management for Municipal Officials

Town of Collbran • April 22, 2025

Presented by: Nick Cotton-Baez, Associate General Counsel

Introduction – Presentation Overview

- Suggestions for best practices that will enhance your effectiveness and success as municipal officials – which in turn will reduce risk for the Town and you individually
- Topics we will touch on include:
 - The role of public official
 - Organizational structure & liability
 - Transparency – open meetings
 - Code of Ethics
 - Due process requirements
- Presentation is a training resource only; is not intended to address or provide legal advice on any specific, pending issues.

One: Commit to the Role of Public Official

- Being a public official means your role has changed:
 - Citizen → government official (24/7!)
 - Outsider → insider
 - Critic/proponent → representative-ambassador-**fiduciary** of the Town as an entity and of the Board of Trustees as an institution.
- In the eyes of the community, you are always a public official!

The Role of Public Official

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

Two: Commit to Supporting the Town Structure

- Another important risk management principle for everyone within the organization is to recognize and honor their role—it is important that everyone “swim in their lane” to avoid risks of liability, including the risk of personal liability!
 - You have protection from personal liability under Colorado Governmental Immunity Act (CGIA) if you are “within the scope of employment” and not acting “willfully and wantonly.”
 - Means everyone needs to know and respect their “job description.”
 - Conduct that is “outside the scope” or “willful and wanton” can result in a loss of governmental immunity and create liability, including the potential of personal liability for you.

Supporting the Town Structure

- Can also result in potential loss of insurance coverage. Public official liability (POL) policies follow “course and scope” and “willful and wanton” concepts. That is, they extend coverage to elected officials “in their capacity as such” (or similar) and have provisions excluding coverage where liability is based on willful & wanton conduct, etc.
- The CGIA provides a form of qualified immunity, but it is not an absolute shield!
- Similarly, a federal form of qualified immunity protects government officials from liability for civil damages “insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”
- Recognize that certain liability risks—particularly in civil rights claims—can be exacerbated by “bad facts” that suggest (or are perceived to be based upon) retaliatory or reactive conduct.

Elected Official & Governing Body Liability Risks

- Where do liability risks lie for elected officials and elected governing bodies?
 - Civil rights claims (e.g., First Amendment, Due Process, Equal Protection)
 - Employment practices – e.g. harassment, discrimination, retaliation
 - Alleged “willful & wanton” conduct (state law intentional torts)
 - Breach of ethics and/or fiduciary duty
 - Open meetings/open records laws
 - C.R.C.P. 106(a)(4) challenges to a “quasi-judicial” action of the Board
 - Declaratory or injunctive relief claims arising from Board action; e.g., challenging an ordinance or some other action
 - Contract and quasi-contract claims
 - Takings and regulatory takings claims

Supporting the Town Structure

- What is the Town structure? The Board's "job description"?
 - Collbran operates as statutory town, with a board-administrator form of government.
 - Under this structure, there is an allocation of powers (policy/administration) and this is the most common form of municipal structure.
- Town Board: "Legislative & Governing Body" with "Corporate Authority" (i.e., Policy & Governance) (*See* C.R.S. 31-4-301; Town Code Ch. 2.08). Mayor is the presiding officer with the same voting powers as any member of said Board. (*See* Town Code Sec. 2.08.020.)
- Town Administrator: "Chief Administrative Officer" (i.e., Administration); Responsible for the administrative "day-to-day". (*See* Town Code Sec. 2.12.090). The Town Administrator is your point of contact and resource. Town Clerk serves as CAO in TA's absence. (*See* Town Code Sec. 2.12.060.)

Supporting the Town Structure

Where Does the Town Board Focus its Efforts?

Ownership

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Governance

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Management

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Supervision

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Front Line Employment

Legislative and Corporate Governance is:

- Policy-setting, big picture, and forward-looking, rather than dealing with day-to-day, and rather than making reactive, case-by-case decisions as issues arise, or after-the-fact.
- Examples: General ordinances, annual budget, decisions regarding corporate assets, appointment & oversight of Board “direct reports”, deciding quasi-judicial and corporate matters reserved to the Board.
- The governing body should:
 - Have longest time horizon—looks down the road.
 - Have broad interests in mind.
 - Work together in their fiduciary role to protect the Town as an entity and the Board as an institution.

Supporting the Town Structure

- Adherence to this organizational structure is particularly important in the area of employee relations and handling of administrative matters assigned to staff.
- Except for Board's few direct reports, elected officials are not employee supervisors. Rather, under your organizational structure, the Administrator (and department heads/supervisors subordinate to the Administrator) are responsible for supervision of employees. Thus,
 - Don't get individually and improperly involved in personnel issues.
 - But, focus appropriate Board attention on supervision of direct reports. Resolve to speak with "one voice". The Board is responsible for sorting out and reconciling the views and priorities of its members. In doing so, Board achieves clarity, credibility and accountability to its voice.

Supporting the Town Structure

- These relationships are recognized and addressed in the Town Code:
 - **Board:** “The legislative and corporate authority of the Town shall be vested in a Board of Trustees...” Town Code Sec. 2.08.010(a).
 - What’s that? Basically, all powers granted to the Town by state statutes, unless delegated to administrative staff.
 - **Town Administrator:**
 - “The Town Administrator shall have such authority and perform such duties as provided by statute, the Town Employee Handbook, and as otherwise delegated or assigned to the Town Administrator by the Board of Trustees...” Town Code Sec. 2.12.090(a).
 - “The Town Administrator is the personnel director of the Town and is charged with establishing appropriate personnel rules and regulations in compliance with State and federal laws, subject to the approval of the Board of Trustees...” Town Code Sec. 2.12.090(b).
 - “[T]he Town Administrator shall have the responsibility and authority to appoint, supervise, and discharge all department heads and employees, excepting appointed officers of the Town...” Town Code Sec. 2.12.090(b).

Supporting the Town Structure

- Tips to support the structure and avoid concerns around “role discipline” and “scope”:
 - Respect the delegations of authority already made via your ordinances and organizational structure. Those allocations work to **serve** and **protect** the Town, the Board, and the Town’s elected officials—but only if they’re **honored!**
 - Your role is a group role; if you are thinking of acting individually, ask whether you have authority to act (and if you don’t, don’t do it).
 - Recognize elected and appointed officials act primarily as a group and exercise responsibilities mainly by voting in a public meeting.
 - Therefore, think “We” ... not “I”! If you find yourself about to act in terms of “I” rather than “we” ...that’s a red flag.

Supporting the Town Structure

- Commit to personal conduct that strengthens the WE – the governing body as an institution. This sometimes requires personal sacrifices, such as:
 - Setting aside a personal interest or agenda when there is lack of support.
 - Accepting “the Board has spoken” though one preferred a different outcome.
 - Accepting when “Our work is done”; i.e., the hand-off from Board → staff.
 - Recognizing that there is “one board of seven,” not seven boards of one.
 - Avoiding perceptions (internal or external) of “getting ahead” of or “speaking for” the voice of Board where Board has not yet spoken.

Three: Commit to Transparency

- Honor the “openness” requirement of Colorado’s Open Meetings Law (OML)
 - Discussion by 3 or more Trustees of public business must occur at a meeting open to the public!
 - If action will be taken or quorum present, 24 hours notice by agenda posting.
- Using email? Could be a meeting!
 - See handout and this CIRSA article: <https://www.cirsa.org/news/how-the-colorado-open-meetings-law-applies-to-elected-officials-email/>.
 - Separate from OML compliance issues, the correspondence of elected officials that relates to their duties or to public funds is a matter of public record (subject to certain exceptions). Thus, be circumspect in your use of email.
- Be cognizant of other transparency-related risks—e.g., texting, social media use, etc.
- Executive sessions?
 - Narrow set of authorized topics
 - Strict procedures

Four: Commit to Ethical Conduct

- Become familiar with the ethics rules governing your conduct! The theme that runs through codes of ethics is: It is not permissible to use public office for private financial gain. Some key areas:
 - **Conflicts of Interest:** Disclose, recuse, don't vote, and don't influence other members.
 - **Confidential Information:** Don't disclose or use any confidential information for personal benefit.
 - **Gifts:** Decline any gifts that seem to be connected to your service (and abide by gift rules).
 - **Avoid situations that may create an appearance of impropriety.** Recognize that in matters of ethics, fair or not, sometimes perception = reality and reality = perception.

Local Ethics Rules

- Familiarize yourself with and follow the Town's local ethics rules!
- Town Code Sec. 2.08.100, Conflict of Interest
 - Mimics state ethics standards (Colorado "Standards of Conduct," C.R.S. title 24, article 18).
- Town Code Sec. 2.24.100, Ethical Relationships with Vendors and Suppliers
 - Concerns gifts, favoritism, and anticompetitive behaviors

Go Beyond Ethics!

- Beyond ethical conduct, commit yourselves to high levels of personal conduct. Recognize that inappropriate personal conduct can be destructive to a public body, its agenda, and its reputation. Some problem areas we've seen:
 - "Outsider syndrome" and elected officials "going it alone".
 - Accusations of lack of respect, lack of good faith, hidden agendas, preconceptions, undue partisanship, incivility, or other concerns creating a sense of distrust.
 - An "imbalance" of information and/or participation on the body, or bodies constantly lining up with the same split vote on every issue.
- Commit to identifying and avoiding personal conduct that can debilitate a public body.

Five: Commit to Providing Due Process

- Most of the time you're acting as "legislators"—making general policies that apply generally—or handling routine Board-level business matters.
- But sometimes you make decisions affecting a specific applicant's property rights. For these "quasi-judicial" matters—e.g., Board level liquor licensing and land use/zoning hearings—the members are essentially acting as judges. In this role you have heightened responsibilities to provide "due process" and a failure to provide due process exposes you and the Town to liability.
- So, be familiar with the due process "rules of engagement" that apply to quasi-judicial matters.
- These rules have a familiar source: "No person shall be...deprived of life, liberty, or property, without due process of law."

Local Rules

- Collbran has adopted and codified its own rules of procedure for all boards and commissions holding quasi-judicial hearings (Ch. 2, Art. 36 of the Town Code).
- The rules are designed to ensure applicant due process.
- They're on the books so you must follow them strictly!

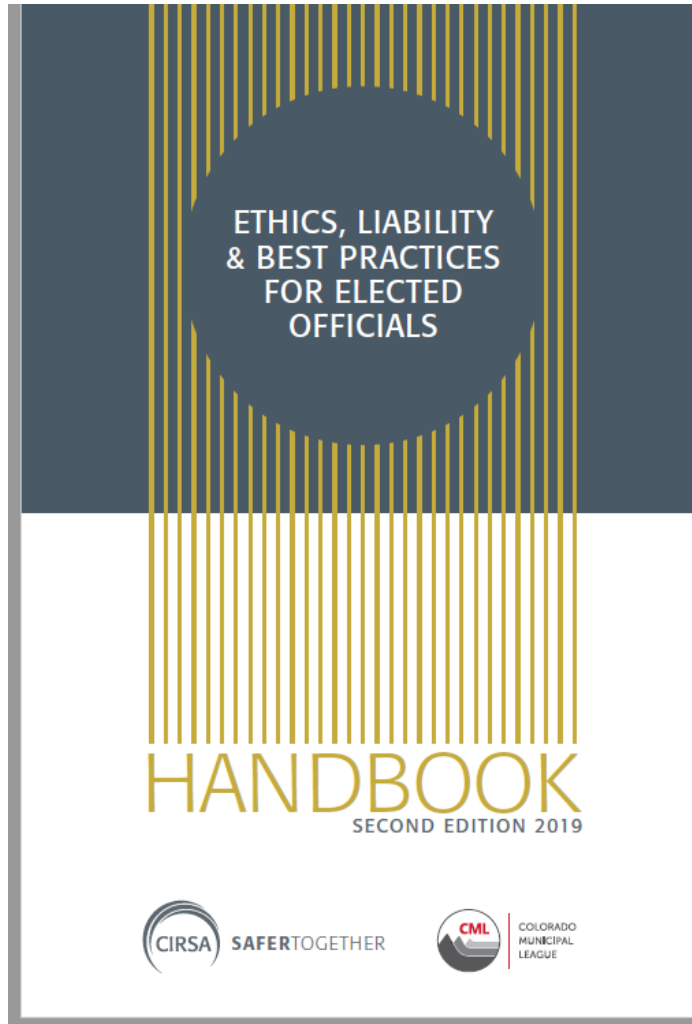
Due Process - Tips for Quasi-Judges

- **Limit your involvement to just your participation at the public hearing.** That is, irrespective of the level of citizen interest or staff activity, wait until the QJ matter is “ripe” for the governing body.
- **Remain neutral;** don't make up your mind before the hearing and don't make prejudicial pre-hearing statements.
- **Don't engage with one side or the other,** with your fellow quasi-judges, or with members of the public before or outside the hearing (ex parte contacts).
- **Deliberations Matter.** Make sure your deliberations and decision are focused and based on the relevant, existing criteria. In this role you must set aside personal opinions and preferences. Use Sam's “Rule of Why.”
- For more on quasi-judicial “rules of engagement”, see this CIRSA presentation:
<https://www.cirsa.org/wp-content/uploads/2020/05/Quasi-Judicial-Proceedings.mp4>.

Concluding Thoughts

- While there are many aspects of risk management that municipalities and their elected officials cannot fully control—e.g., public perceptions, the actions of claimants, the inclinations of judges, the enactments of federal and state legislatures, etc.—embracing wise leadership in the areas we can control will support your success and reduce your risks. Some examples:
 - Committing to a “no surprises” approach.
 - Dealing effectively with discord.
 - Committing always to civility & mutuality of respect.
 - Touting your governing body’s, your organization’s, and your staff’s successes—builds faith and trust that your government is getting good things done!
 - Committing to service of the Town as an entity and the governing body as an institution, and embracing the fiduciary, stewardship, and “We” responsibilities of Board membership.

Resources



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

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

CIRSA news & events page:
<https://www.cirsa.org/news-and-events/news/>

CIRSA Training & Events Calendar:
<https://www.cirsa.org/news-and-events/events-calendar/>

CIRSA Safety YouTube Channel:
https://www.youtube.com/@CIRSA_Safety/videos

About the Colorado Intergovernmental Risk Sharing Agency (CIRSA)

- Public entity self-insurance pool for property, liability, and workers' compensation coverages.
- Formed by in 1982 by 18 municipalities pursuant to CML study committee recommendations.
- Not an insurance company, but an entity created by intergovernmental agreement of our members.
- Total membership today stands at 290 member municipalities and affiliated legal entities
- Member-owned, member-governed organization.
- No profit motive – sole motive is to serve our members effectively and responsibly.
- CIRSA Board made up entirely of municipal officials.
- Seek to be continually responsive to the liability-related needs of our membership – coverages and associated risk management services, sample publications, training, and consultation services, as well as specialty services such as home rule charter review.
- We have the largest concentration of liability-related experience and knowledge directly applicable to Colorado municipalities.

Speaker Bio

Nick Cotton-Baez is CIRSA's Associate General Counsel. Nick has practiced law in Colorado since 2016. Before joining CIRSA, Nick previously worked in the Denver City Attorney's Office, and then as a partner for a full-service municipal law firm, where he served as general and special counsel for municipalities and their instrumentalities and other public entities throughout Colorado.



CIRSA AT A GLANCE

Fewer claims. Safer employees.

SAFER TOGETHER

GET TO KNOW CIRSA – YOUR TRUSTED PARTNER

Formed by Colorado municipalities for Colorado municipalities, CIRSA empowers our members to take control of risk, safety and losses. Municipal staff and elected officials work smarter and safer by relying on us to meet municipal risk management needs. We are:

- A self-insurance pool created by intergovernmental agreement of member municipalities (and other public entities)
 - Pools exist in part to provide stability in costs from year to year
- Governed by a Board of Directors made up of member officials
- A pool that operates exclusively in Colorado; subject matter experts in Colorado risk management issues
- Accountable to each member individually and membership as a whole, and not to stockholders seeking a profit
 - This guides everything we do: we look for ways TO serve, and we look FOR coverage, not exclusions FROM coverage
- Regulated by Division of Insurance

RESOURCES YOU CAN'T FIND ELSEWHERE

CIRSA's coverages extend beyond what commercial providers offer:

- Coverages are broad, with limits that are tailored to your actual risks
 - Example: You don't pay extra for high limits in areas where you would likely not have an exposure that would reach those limits, such as auto liability
- We seek to meet members' reasonable expectations around coverage, so our coverages evolve continually as members' needs and expectations change
- We seek to avoid coverage limitations, such as different deductibles per building on property coverage and percentage deductibles that are virtually impossible to budget for, or cost extra to "buy down"
- We provide "no deductible" coverages in unique specialty areas. When you use these coverages, they directly offset expenses that your municipality would otherwise incur, at no additional cost. These "no deductible" specialty coverages include, among others:
 - Defense of actions challenging "quasi-judicial" decisions
 - Defense of public records/criminal justice records claims against custodian of records
 - Costs of medical expenses for claimed "in-custody" injuries
- Workers' compensation: WC coverages are statutory, so there is no variance between providers. But because WC claims often have liability implications, a member of both CIRSA's property/liability pool and WC pool has the advantage of having a WC claim handled holistically, with a view towards a global liability and WC settlement when appropriate.

TRAINING & PREVENTION SERVICES THAT HELP YOU MANAGE YOUR RISKS

The best claim is the claim you are able to avoid having at all. To that end, we provide a large array of value-added services to partner in risk management for virtually every municipal department:

Municipal Properties: We provide pre-loss roof inspections at entry; periodic property valuations by an outside valuation company; pre-loss preparation assistance for potential events such as wildfires; replacement cost rather than actual cash value valuation for most properties; assignment of a construction professional to serve as your advocate and consultant in major property losses; annual property surveys by the Risk Control Department.

Cyber-risks: In addition to basic and optional cyber coverages, we pay for your cost to join KnowBe4 for cyber-risk training (including periodic “phishing” tests) for ALL of your employees. The value of this benefit to each member ranged in 2023 from \$391 to \$32,400 which varies based on the number of users.

Governing Body/Boards and Commissions: Governance and liability training; quasi-judicial training; ethics training; retreat facilitation; values, norms, and rules of conduct training; harassment and respectful conduct training.

Human Resources: Liability hotline for employment issues; policy review; assistance with potentially high-risk employment investigations and actions; supervisory training; harassment and respectful conduct training; bullying training; contracting issues training, etc. In issues requiring a high degree of discretion and/or specific legal expertise, we can open a file pre-claim and assign a defense attorney (or other professionals) to assist; this service is invaluable in handling sensitive personnel matters.

Financial: We will provide you with analyses to help you identify the “sweet spot” for deductibles, and assist with gauging the financial impact of selected deductibles. We make available the services of our actuary on an as-needed basis, too. We can also assist with allocating coverage and liability costs to your various departments. To assist in tracking claims, we offer access to our Origami Member Portal, which serves a number of the purposes of a risk management information system (RMIS).

Police: We recognize that law enforcement is a critical high-value service that carries critical high value risk, so we devote substantial resources to police liability and officer wellness issues, including: Regional Law Enforcement Roundtables; ABLE (Active Bystandership for Law Enforcement); CORDICO Wellness app; SIGMA cardiac assessments; Dr. Jamie Brower psychological counseling services; policy review; and coverage for police officers’ \$25,000 personal liability per S.B. 20-217.

Public Works/Parks: Many of our “core” risk control services and trainings are aimed at your public works and parks exposures. Public works personnel can obtain their required Continuing Education Units (CEU) through CIRSA’s course offerings. We provide playground inspections. Our Risk Control Department is certified to provide waterslide inspections in accordance with State Amusement Rides and Devices Program requirements.

Risk Management: Our Risk Control Department can be used as an extension of your own risk management work. Our risk control services are uniquely tailored to the municipal risk profile, and when you use these services, they help directly offset risk management expenses your entity would otherwise incur. As an example, one CIRSA member with a population of 31,000 was provided with more than \$176K in value-added risk management services over a 4-year period. In addition, our Legal and Underwriting Departments can assist with review of contractual insurance and risk transfer arrangements and provide resources on other risk issues.

Claims Handling: Our Claims Department will partner with you to bring covered claims to a successful resolution. With an average claims handling experience of over 20 years, our Claims staff has extensive knowledge in handling public entity claims, and since they only handle claims in Colorado, they have a level of expertise that surpasses other insurance carriers. You can choose from law firms on our defense panel that are the “go-to” firms for public entities in their areas of expertise. We’ll also assist in matters that may not otherwise be covered, too. For example, if you have a “no fault” sewer backup program, we’ll be glad to adjust those claims for you (or assist you in setting up such a program). If you need help in subrogation matters (to recover amounts from an at-fault third party contractor, for example), we can assist you with seeking and obtaining recovery. If you’d like to partner in a program to “self-handle” some claims, we have a framework in place to accomplish that and still keep in place coverages that might otherwise be compromised by “self-handling”.

Underwriting: You can consult in-person or virtually with your CIRSA underwriter, who actually knows you and your entity, to get answers and resolve issues. We’ll guide you in much more than the details of a policy. Our staff also will review contracts, help you get surety bonds and supplemental policies, and compare products from other carriers to make sure you are adequately protected.

START-TO-FINISH CLAIMS ASSISTANCE

Commercial insurance companies focus on claims after they happen. But at CIRSA, we work with you to prevent claims from happening. You can call us anytime to discuss how to protect yourself and handle issues before they escalate. And we’re there for you when there is an issue. Should a claim or lawsuit be filed, we’ll manage the process with you and assign an experienced attorney to represent you in litigation. CIRSA is not driven by profit. We are driven by successful outcomes for our members.

CIRSA Handout - Basics of Quasi-Judicial Decision-Making

What does it mean to be acting in a quasi-judicial capacity?

- Acting like a judge
- Deciding the rights, duties or obligations of a specific person or entity
- Making a decision based on facts developed at a hearing
- Applying existing standards or criteria to the facts

Are we always in a quasi-judicial capacity?

- No, some actions are legislative, and others are administrative
- *Legislative* actions are more general and permanent, typically involve policy-making, usually don't relate to a single person or entity, and affect their rights only in the abstract
- *Administrative* actions carry out existing policies and purposes, are generally temporary in operation or effect, and typically don't involve the need for notice or a hearing

So, what are some examples?

<u>Quasi-Judicial</u>	<u>Legislative</u>	<u>Administrative</u>
<u>Think: Judge</u>	<u>Legislator</u>	<u>Executive</u>
Zoning/rezoning	Health/safety ordinance	Buying equipment
Development application	Master plan approval	Appointing boards
Subdivision request	Adoption of tax	Acting on contracts
Liquor licensing	Annexation	Operating policies
Variance request	Vacating a road	License agreements
Conditional or special review use	Amending development regulations	Determining benefits

Why are there special constraints on how we handle quasi-judicial matters?

- Because the due process clause and other laws require we ensure *fundamental fairness in the decision-making process*, which mandates the applicant and other interested parties have notice and a meaningful opportunity to be heard before a neutral and impartial decisionmaker
- Failure to adhere to these principles can increase the risk of personal liability and the risk that your decision will be overturned

So, what should I do/not do in relation to quasi-judicial matters?

- DO stick to your criteria – use the criteria list from your staff report or another summary if needed
- DO avoid ex parte (outside the hearing) contacts; that is, do not discuss quasi-judicial matters outside of the noticed hearing
- DO disclose unavoidable ex parte contacts
- DO avoid inappropriate confrontations or inquisitions
- DO take time (and ink) to decide – use a resolution and, particularly for complex or contentious cases, consider making a tentative decision and directing staff to prepare a draft resolution or order with conclusions of law and factual findings, for further consideration at your next meeting
- DO ask for staff advice on how the criteria operate
- DON'T make your decision based on irrelevant criteria
- DON'T become a witness in a proceeding where you are the “quasi-judge”
- DON'T participate if you weren't there for the whole hearing (or at least listened to the tape of any portion you missed)
- DON'T participate if you have a conflict of interest...and know that even an appearance of impropriety can be as damaging as an actual conflict
- DON'T sign any "pro" or "con" petitions
- DON'T make up your mind before the hearing (bias)
- DON'T ignore the record; if all the evidence points to yes. . .

Another way to look at quasi-judicial decision making is to remember that you are acting like a judge, and ask yourself:

- Would a judge seek out citizens and invite or ask them to come and testify as witnesses in a case pending before the judge?
- Would a judge allow himself/herself to be “lobbied” on a pending matter at home or at the local supermarket?
- Would a judge compromise the appearance (and possibly reality) of fairness by singling out one side or another to be overly friendly with?
- Would a judge decide a matter in which the judge had a financial interest, or on which the judge's mind was already made up?
- Would a judge make a public statement that could come back to haunt him/her later on in terms of displaying a possible bias?

****This handout is for general reference only and not legal advice. Specific legal and other questions should be referred to the entity's own legal counsel and staff as appropriate.***

CIRSA Training: Email Suggestions for Elected & Appointed Officials

By Sam Light, CIRSA General Counsel

The use of email by elected or appointed officials to discuss public business raises issues under both the Colorado Open Meetings Law (“OML”), C.R.S. § 24-6-401 et seq., and the Colorado Open Records Law (“CORA”), C.R.S. § 24-72-201 et seq. The OML recognizes that discussions by email can trigger notice and openness requirements. Specifically, the OML provides that any meeting of a quorum, or three or more members of a local public body (whichever is less), at which public business is discussed or at which formal action may occur must be open to the public. Also, the meeting must be preceded by proper notice if a quorum will be present, or any action will be taken. A meeting can include a discussion that occurs by phone or email.

Additionally, CORA recognizes that public records can include emails of elected and appointed officials where the communications involve City/Town business or public funds and are made, maintained or kept by the City/Town as part of its operations. Under CORA, emails may be public records even if they do not trigger open meetings rules. Based on these rules, the following are suggested email “dos and don’ts:”

Email – Okay to Do

- Have a one-on-one discussion with another council/board member.
- Respond to constituent emails consistent with “role discipline.”
- Correspond directly with City/Town staff.
- Email other council/board members concerning scheduling and availability, or posing a question for later discussion, or sharing “FYI” only information. But, such communications must not morph into a discussion of the merits or substance of any public business.
- Copy other council/board members on an email, subject to the same limitation.
- Do use your City/Town-assigned email address and device, if applicable.

Email – Don’ts

- Do not use email (or similar technology) to discuss the merits or substance of any matter of public business among a quorum or more than two members (whichever is less), whether simultaneous and/or serial or not.
- Do not use email as a substitute for open public meeting discourse.
- Do not use email as a substitute for taking any official action.
- Do not “reply to all” on emails sent to more than two council/board members, excepting only emails that clearly have no policy purpose (e.g., “FYI” emails).
- Do not send messages that discuss both personal matter and public business.
- Most importantly, do not use email to discuss pending quasi-judicial matters.

