



TOWN OF PAONIA
MONDAY, JULY 12, 2021
SPECIAL TOWN BOARD MEETING AGENDA
5:00 PM

Roll Call

Approval of Agenda

Announcements

1. Announcements

New Business

2. CIRSA Presentation – Best Practices

Adjournment

3. Adjournment

I. RULES OF PROCEDURE

Section 1. Schedule of Meetings. Regular Board of Trustees meetings shall be held on the second and fourth Tuesdays of each month, except on legal holidays, or as re-scheduled or amended and posted on the agenda prior to the scheduled meeting.

Section 2. Officiating Officer. The meetings of the Board of Trustees shall be conducted by the Mayor or, in the Mayor's absence, the Mayor Pro-Tem. The Town Clerk or a designee of the Board shall record the minutes of the meetings.

Section 3. Time of Meetings. Regular meetings of the Board of Trustees shall begin at 6:30 p.m. or as scheduled and posted on the agenda. Board Members shall be called to order by the Mayor. The meetings shall open with the presiding officer leading the Board in the Pledge of Allegiance. The Town Clerk shall then proceed to call the roll, note the absences and announce whether a quorum is present. Regular Meetings are scheduled for three hours, and shall be adjourned at 9:30 p.m., unless a majority of the Board votes in the affirmative to extend the meeting, by a specific amount of time.

Section 4. Schedule of Business. If a quorum is present, the Board of Trustees shall proceed with the business before it, which shall be conducted in the following manner. Note that all provided times are estimated:

- (a) Roll Call - (5 minutes)
- (b) Approval of Agenda - (5 minutes)
- (c) Announcements (5 minutes)
- (d) Recognition of Visitors and Guests (10 minutes)
- (e) Consent Agenda including Approval of Prior Meeting Minutes (10 minutes)
- (f) Mayor's Report (10 minutes)
- (g) Staff Reports: (15 minutes)
 - (1) Town Administrator's Report
 - (2) Public Works Reports
 - (3) Police Report
 - (4) Treasurer Report
- (h) Unfinished Business (45 minutes)
- (i) New Business (45 minutes)
- (j) Disbursements (15 minutes)
- (k) Committee Reports (15 minutes)
- (l) Adjournment

* This schedule of business is subject to change and amendment.

Section 5. Priority and Order of Business. Questions relative to the priority of business and order shall be decided by the Mayor without debate, subject in all cases to an appeal to the Board of Trustees.

Section 6. Conduct of Board Members. Town Board Members shall treat other Board Members and the public in a civil and polite manner and shall comply with the Standards of Conduct for Elected Officials of the Town. Board Members shall address Town Staff and the Mayor by his/her title, other Board Members by the title of Trustee or the appropriate honorific (i.e.: Mr., Mrs. or Ms.), and members of the public by the appropriate honorific. Subject to the Mayor's discretion, Board Members shall be limited to speaking two times when debating an item on the agenda. Making a motion, asking a question or making a suggestion are not counted as speaking in a debate.

Section 7. Presentations to the Board. Items on the agenda presented by individuals, businesses or other organizations shall be given up to 5 minutes to make a presentation. On certain issues, presenters may be given more time, as determined by the Mayor and Town Staff. After the presentation, Trustees shall be given the opportunity to ask questions.

Section 8. Public Comment. After discussion of an agenda item by the Board of Trustees has concluded, the Mayor shall open the floor for comment from members of the public, who shall be allowed the opportunity to comment or ask questions on the agenda item. Each member of the public wishing to address the Town Board shall be recognized by the presiding officer before speaking. Members of the public shall speak from the podium, stating their name, the address of their residence and any group they are representing prior to making comment or asking a question. Comments shall be directed to the Mayor or presiding officer, not to an individual Trustee or Town employee. Comments or questions should be confined to the agenda item or issue(s) under discussion. The speaker should offer factual information and refrain from obscene language and personal attacks.

Section 9. Unacceptable Behavior. Disruptive behavior shall result in expulsion from the meeting.

Section 10. Posting of Rules of Procedure for Paonia Board of Trustees Meetings. These rules of procedure shall be provided in the Town Hall meeting room for each Board of Trustees meeting so that all attendees know how the meeting will be conducted.

II. CONSENT AGENDA

Section 1. Use of Consent Agenda. The Mayor, working with Town Staff, shall place items on the Consent Agenda. By using a Consent Agenda, the Board has consented to the consideration of certain items as a group under one motion. Should a Consent Agenda be used at a meeting, an appropriate amount of discussion time will be allowed to review any item upon request.

Section 2. General Guidelines. Items for consent are those which usually do not require discussion or explanation prior to action by the Board, are non-controversial and/or similar in content, or are those items which have already been discussed or explained and do not require further discussion or explanation. Such agenda items may include ministerial tasks such as, but not limited to, approval of previous meeting minutes, approval of staff reports, addressing routine correspondence, approval of liquor licenses renewals and approval or extension of other Town licenses. Minor changes in the minutes such as non-material Scribner errors may be made without removing the minutes from the Consent Agenda. Should any Trustee feel there is a material error in the minutes, they should request the minutes be removed from the Consent Agenda for Board discussion.

Section 3. Removal of Item from Consent Agenda. One or more items may be removed from the Consent Agenda by a timely request of any Trustee. A request is timely if made prior to the vote on the Consent Agenda. The request does not require a second or a vote by the Board. An item removed from the Consent Agenda will then be discussed and acted on separately either immediately following the consideration of the Consent Agenda or placed later on the agenda, at the discretion of the Board.

III. EXECUTIVE SESSION

Section 1. An executive session may only be called at a regular or special Board meeting where official action may be taken by the Board, not at a work session of the Board. To convene an executive session, the Board shall announce to the public in the open meeting the topic to be discussed in the executive session, including specific citation to the statute authorizing the Board to meet in an executive session and identifying the particular matter to be discussed “in as much detail as possible without compromising the purpose for which the executive session is authorized.” In the event the Board plans to discuss more than one of the authorized topics in the executive session, each should be announced, cited and described. Following the announcement of the intent to convene an executive session, a motion must then be made and seconded. In order to go into executive session, there must be the affirmative vote of two thirds (2/3) of Members of the Board.

Section 2. During executive session, minutes or notes of the deliberations should not be taken. Since meeting minutes are subject to inspection under the Colorado Open Records Act, the keeping of minutes would defeat the private nature of executive session. In addition, the deliberations carried out during executive session should not be discussed outside of that session or with individuals not participating in the session. The contents of an executive session are to remain confidential unless a majority of the Trustees vote to disclose the contents of the executive session.

Section 3. Once the deliberations have taken place in executive session, the Board should reconvene in regular session to take any formal action decided upon during the executive session. If you have questions regarding the wording of the motion or whether any other information should be disclosed on the record, it is essential for you to consult with the Town Attorney on these matters.

IV. SUBJECT TO AMENDMENT

Section 1. Deviations. The Board may deviate from the procedures set forth in this Resolution, if, in its sole discretion, such deviation is necessary under the circumstances.

Section 2. Amendment. The Board may amend these Rules of Procedures Policy from time to time.

AGENDA SUMMARY FORM

	Announcements
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Summary:

Notes:

Possible Motions:

Motion by: _____ 2nd: _____ vote: _____

Vote:	Trustee Bear	Trustee Budinger	Trustee Johnson
Trustee Knutson	Trustee Meck	Trustee Pattison	Mayor Bachran

AGENDA SUMMARY FORM

	CIRSA Presentation – Best Practices
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Summary:
 Sam Light with CIRSA will be on hand to provide a presentation regarding Municipal government best practices, standards, and procedures.

Notes:

Possible Motions:

Motion by: _____ 2nd: _____ vote: _____

Vote:	Trustee Bear	Trustee Budinger	Trustee Johnson
Trustee Knutson	Trustee Meck	Trustee Pattison	Mayor Bachran:



Seven Key Commitments for Success in Public Office

Presented by Sam Light, CIRSA General Counsel



Board of Trustees Training June 28, 2021

Introduction

Presentation Overview

•Key commitments that will enhance your effectiveness and success and as a Town official – which in turn will reduce risk for the Town and you individually. Topics we will touch on include:

- The role of public official
- Transparency rules
- Running good meetings
- Ethical obligations
- The Town's structure & liability
- 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
- The role requires an understanding that in the eyes of the community, you are always a public official.

One: Commit to the Role of Public Official

- When you became a Town official, you agreed to uphold and follow applicable laws, including the Town's ordinances, etc. What does that commitment embody?
 - A commitment to respect your role/responsibility in the Town structure.
 - A commitment to lawful conduct, including following the Town's rules, procedures and criteria in making decisions.
 - A commitment to ethical practices.
 - A commitment to professional courtesy and respect for one another's divergent viewpoints and styles.

One: Commit to the Role of Public Official

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

Two: Commit to Transparency

- Transparency is a basic expectation for public entities.
- Citizens take interest in the goings-on of the Town, how/when those goings-on are discussed, and the opportunities afforded to them to listen in on/participate in the discussion.
- A lack of transparency can cause massive trust and credibility issues, and potential claims/disputes over compliance.

Two: Commit to Transparency

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

Two: Commit to Transparency

- How can you break faith with the OML? Let's count some ways...
 - Three or more members of Board hold “meetings before the meetings” or “impromptu” meetings to sort things out.
 - Three members of Board have a lengthy e-mail exchange about the merits of a policy question that is on the next meeting agenda. Recently adopted [House Bill 21-1025](#) will bring some clarity regarding application of the OML to e-mails. See this: [CIRSA article](#).
- Keep in mind: The policy of the OML is that “the formation of public policy is public business and may not be conducted in secret.”
- Thus, don't subscribe to any parallel process (e.g., e-mail, social media, etc.) that can create OML concerns. (While the OML does not apply to a one-on-one discussion, it also does not authorize “serial meetings”!).

Two(b): Protect the Town's Confidences

- The OML permits executive sessions for discussion of only a limited number of authorized topics and following specific procedures. Authorized topics most frequently used:
 - Conference with legal counsel for legal advice/specific legal questions
 - Matter subject to negotiation (but only for developing strategy, determining positions and instructing negotiators)
 - Personnel matters (unless person subject to session has requested open discussion). Note, this authority does not extend to discussion of general personnel policies or board members
- Must follow detailed procedures and make/maintain a recording. Make sure your executive session procedures are set up to comply with OML. Consequences of noncompliance can be significant. See this CIRSA article: https://www.cirsa.org/member_resource/colorado-court-of-appeals-weighs-in-on-the-calling-of-executive-sessions-youll-want-to-read-this/.
- Make sure your procedures are also set up to protect confidential information.

Two(b): Protect the Town's Confidences

A Scenario

In executive session the Board develops a strategy for negotiating a purchase of water rights. The water engineer says the rights are worth \$30,000-40,000 per acre-foot and the Board instructs the Town Administrator to meet with the owner and negotiate for up to \$30,000 per acre foot. Board member Smith sees the owner the next day and tells her the Town is willing to pay \$30,000 per acre-foot and may go as high as \$40,000. Problem?

What if Board member Smith opposes the purchase and, instead, tells the owner that though she'll get an offer, negotiating with the Town is a waste because "I'm going to do everything I can to be sure we don't buy this water."

Two: Commit to Transparency - CORA

- Separate from the OML, correspondence of elected officials is also subject to the Colorado Open Records Act (CORA).
- As such, email correspondence and other writings relating to performance of your duties, public funds, and/or public business may be subject to public inspection.
- There are some narrow exceptions; e.g., privileged communications, work-product.
- Takeaways? Be circumspect in all forms of communications as public officials. Recognize that your emails and other correspondence are subject to records retention requirements, may be open to inspection, and may travel well beyond your intended recipient!

Three: Commit to Running Good Meetings

- Plan for...and lay the groundwork for...orderly & productive public meetings! Great meetings don't usually happen by happenstance.
- Give the agenda the time and attention it deserves.
 - Do you have common understandings of how potential agenda items are identified and put on the agenda?
 - Do members follow...and stay on...the agenda during the meeting?
- Effective agenda-setting and effective use of the agenda ensures OML compliance, helps members & staff focus effort and resources, and builds community trust.

Three: Commit to Running Good Meetings

- Use and expect civility in your meetings.
 - Remember, a culture of civility flows from the top down – if members practice incivility towards one another or towards staff/citizens, then....
- Maintain a degree of formality at meetings – use titles, insist speakers be recognized, use podium, etc.
- Develop process rules or guidelines:
 - Time limits for speakers, and be consistent in enforcing them.
 - Have a consistent sequence for proceeding –don't be ad hoc.
 - Have a plan for handling disruptions.

Three: Commit to Running Good Meetings

- Find time for self-examination if meetings aren't going well:
 - Are our “public comment” periods turning into “public inquisition” periods or “public argument” periods?
 - Do we “suffer” from lack of focus or excessive informality?
 - Are parties speaking on/over/across/for each other?
 - Are we undermining fruitful discussions via preemptive strikes and/or hidden agendas?
 - What are the dynamics that are allowing this to happen?

Four: Commit to Ethical Conduct

- In Colorado, ethics scandals are rare – but happen from time to time.
- Ethical misjudgments greatly undermine public confidence in public bodies, and appearances of conflicts can be just as damaging as actual conflicts.
- Can result in personal criminal and civil liability.
- There is often a “personal benefit” exclusion from public officials liability coverage.

Four: Commit to Ethical Conduct

- The theme that runs through codes of ethics is: It is not permissible to gain a personal benefit by virtue of holding public office.
- Main rule – Conflicts of Interest: Disclose, recuse, don't vote, and don't influence other members.
 - See this CIRSA video: <https://www.cirsa.org/wp-content/uploads/2020/06/How-To-Deal-With-Conflicts-Of-Interest-Final.mp4>
- Don't have a financial interest in Town contracts or purchases, and if you will have such interest follow all rules.
- Don't disclose or use any confidential information for personal benefit.
- Decline any gifts that seem to be connected to your service (and abide by gift rules).

Five: Commit to Supporting the Town Structure

- Everyone within the organization has a “job description”—it is important that you understand and honor your “job description,” both to help ensure the organization functions at a high level, and to avoid risks of liability, including the risk of personal liability!
 - You have protection from personal liability if you are “within the scope of employment” and not acting “willfully and wantonly.”
 - Means everyone needs to know and respect their “job description.”
 - Conduct that is “outside the scope” or “willful and wanton” can result in a loss of governmental immunity and create liability, including the potential of personal liability for you.

Five: Commit to Supporting the Town Structure

- Tips to support the structure and avoid concerns of conduct “outside the scope”:
 - Understand “job description” and stay within it. Look to your structural documents; e.g.:
 - The “powers and duties” provisions of your Town Code.
 - Applicable state statutes that govern your powers and duties and the areas within your authority.
 - As well as the structural documents for others in the organization. Those “other” provisions are there to “serve and protect.” The **serve** to clarify where authority and responsibility lies, and to **protect** you and the Town assuming everyone is committed to “role discipline.”

Five: Commit to Supporting the Town Structure

- More tips to support the structure and avoid concerns around “role discipline” and “scope”:
 - Your role is a group role; recognize that elected officials act primarily as a BODY, and exercise responsibilities mainly by VOTING in a PUBLIC MEETING. While each member holds a fraction of the power, that power can’t be exercised individually. It can only be exercised by the body.
 - If you are thinking of acting individually, ask whether you have authority to act (and if you don’t, don’t do it).
 - Therefore, think “We” ... not “I”! If you find yourself about to act in terms of “I” rather than “we” ...that’s a red flag.
 - Another warning sign: He/she/they did what?!

Five: Commit to Supporting the Town Structure

- Recognize that “role discipline” and support of the Town structure can require:
 - Setting aside a personal interest or agenda when there is lack of support.
 - Accepting that “the Board has spoken” though one may have preferred a different outcome.
 - Patience in terms of waiting until a matter is “ripe” for the governing body’s discussion and decision.
 - A commitment to “norms of conduct” regarding individual activities of members.

Five: Commit to Supporting the Town Structure

- Adherence to the Town's organizational structure is also important in the area of employee relations: Remember:
 - Except for the Town Board's few direct reports, elected and appointed officials are not employee supervisors. Rather, under your organizational structure, the Administrator (and subordinate supervisors) are primarily responsible for supervision of employees (other than your direct reports). Therefore:
 - Don't get individually and improperly involved in personnel issues.
 - Don't engage in or facilitate activities that bypass the Town's chain of command or personnel rules.
 - Similarly, avoid getting individually involved in permit or other administrative matters assigned to staff.

Five: Commit to Supporting the Town Structure

Policy Governance

- Is the governing body's focus on governance rather than management or administration?
- Management is not the same thing as governance! Being a “super-manager” or “micro-manager” is still not governing.
- Governance is policy-setting, big picture, and forward-looking, rather than making reactive, case-by-case decisions as issues arise, or after-the-fact after a problem surfaces. The governing body:
 - Has the longest time horizon—looking down the road.
 - Has the broadest interests in mind.
 - Should develop “a taste for the grand expanse of the big picture.”

- John Carver, *Boards that Make a Difference*.

Five: Commit to Supporting the Town Structure

Where Does the Governing Body 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

Five: Commit to Supporting the Town Structure

- Recognize that while your Board is made up of individuals, each with different goals and priorities; it is a single body.
- Therefore, resolve to speak with one voice to your support staff, and follow established channels.
- The Board is responsible for sorting out and reconciling the views and priorities of its members, so that it can speak with one voice. This is how the Board achieves clarity, credibility and accountability to its voice.

Six: Commit to Providing Due Process

- While the Board has the paramount role of policy making (or legislative matters), the Board also has a “quasi-judicial” role.
- This is when you are deciding specific “cases,” or “applications” and for these “quasi-judicial” matters—including most land use applications—the members are essentially acting as judges and therefore must behave like judges.
- In this role you are required by law to provide “due process” and a failure to provide due process exposes you and the Town to liability.

Six: Commit to Providing Due Process

- A quasi-judicial decision is one that:
 - Determines the rights of a specific person/entity for a specific property (or protected property interest).
 - Is based on facts developed at a hearing to resolve the particular interests in question. In this process, you are called upon to apply existing legal standards to a specific case.
- The key characteristics of a quasi-judicial process are notice, a hearing, and a decision based on the record and set criteria, by a fair and impartial decision-maker—that's you!
- Quasi-Judges—familiarize yourself with the QJ rules of engagement! See this CIRSA video: <https://www.cirsa.org/wp-content/uploads/2020/05/Quasi-Judicial-Proceedings.mp4>

Due Process - Tips for Quasi-Judges

- Limit your involvement to just your participation at the public hearing.
- Don't engage with one side or the other, or with your fellow members, before or outside the hearing (ex parte contacts). This is a critical responsibility that goes along with your power to decide quasi-judicial matters.
- Remain neutral; don't make up your mind before the hearing and don't make prejudicial pre-hearing statements.
- Don't participate if you have a prohibited conflict of interest in the matter (code of ethics).
- Don't make your decision on the basis of irrelevant or non-existent standards. Base your decision only on the applicable criteria.

Due Process - Tips for Quasi-Judges (and Beyond!)

- Deliberations Matter - Whether you're in "policy" mode or "quasi-judicial" mode, group deliberation is important. Your Board's discussions are where:
 - Your group formulates the bases of its impending decision.
 - The applicant (if any), the public, and others obtain an understanding of your position.
 - If the matter is QJ, your discussions are what a reviewing judge will look at to understand why you decided the matter as you did (and whether you followed your own rules).
 - So Discuss and Deliberate – Talk Amongst Yourselves!!

Seven: Embrace Wise Leadership

Recognize:

- You set the tone for the whole organization in terms of the treatment of employees, citizens, and the business community.
- You are perceived as holding the most powerful positions in your local government.
- It is important—for building faith and trust in government (and reducing risks)—that you use courtesy, tact, and diplomacy in interactions, especially in public settings. Recognize that certain liability risks—in particular civil rights claims—can be exacerbated by “bad facts” that suggest (or are perceived to be based upon) retaliatory or reactive conduct.

Seven: Embrace Wise Leadership

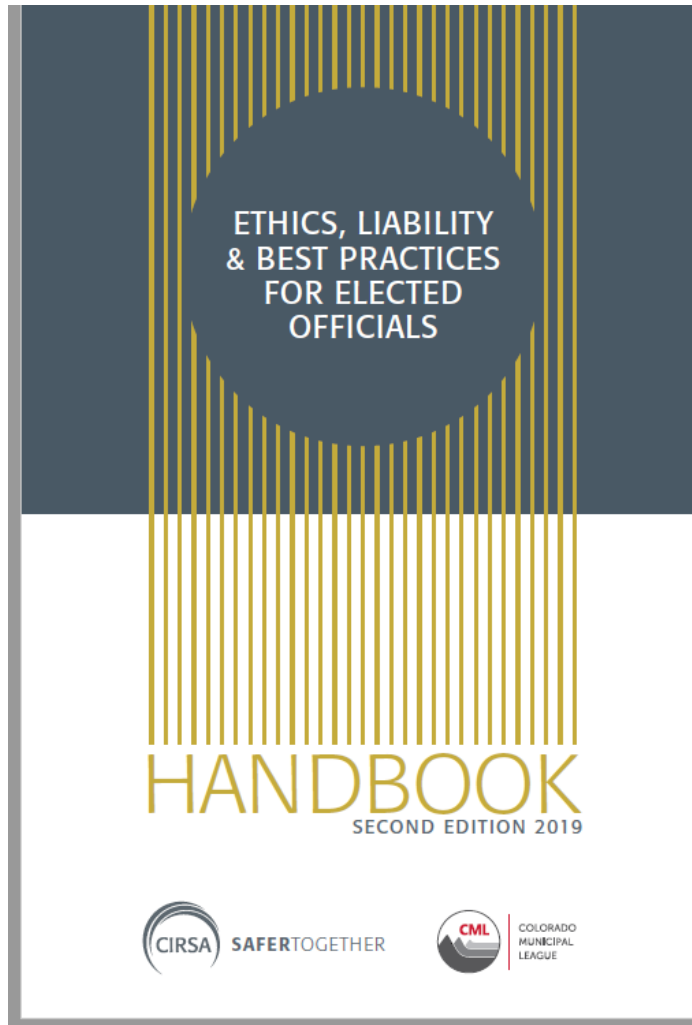
- As a body, commit to a “no surprises” approach at your meetings and while dealing with one another and staff, and commit to speaking with one voice.
- Deal effectively with discord. Every public body has disagreements but discord should not drive meetings, your agenda, or how you interact with the community, each other, or staff. And folks can disagree without being disagreeable.
- Commit to act as “we” and not as “I,” to build strong relationship between your Board and staff.
- Always keep in mind that you are the stewards of the Town’s best interests and assets.

Conclusion

Thank you for your public service!

And for the opportunity to present.

Resources



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

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

CIRSA Webinar on Quasi-Judicial Proceedings
Basic Training & Best Practices:
<https://www.cirsa.org/wp-content/uploads/2020/05/Quasi-Judicial-Proceedings.mp4>

Conclusion

Colorado Intergovernmental Risk Sharing Agency

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

Conclusion

Speaker Bio

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

AGENDA SUMMARY FORM

	Adjournment
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Summary:

Notes:

Possible Motions:

Motion by: _____ 2nd: _____ vote: _____

Vote:	Trustee Bear	Trustee Budinger	Trustee Johnson
Trustee Knutson	Trustee Meck	Trustee Pattison	Mayor Bachran