



# Open Meetings Law & Quasi-Judicial Hearings

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March 25, 2019  
City Council Study Session

# Open Meetings Law (24-6-402)

- **Meeting:** “any kind of gathering, convened to discuss **public business**, in person, by telephone, electronically, or by other means of communication.”
  - Includes e-mails, texts, online discussions, etc.
- A **meeting** must be **public & noticed** if:
  - 3 or more members present
  - Public business discussed or formal action could be taken (402(2)(b-c))
- A **meeting** must be **noticed** if 3+ members present or expected (402(2)(c))

# Executive Sessions

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- Limited discussion topics
- Cannot take action or adopt positions
  - Except with regard to litigation strategy or negotiating positions
- Requires 2/3 majority



# Risk of Violating COML

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- Loss of public trust
- Loss of public knowledge
- Voiding of actions taken in violation
- Liability for challenger's attorney fees



Commerce  
CITY

# Potential COML Issues

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- Secret ballot (except for mayor vacancy)
- Group texts or e-mails (e.g., reply all)
- Phone trees
- Discussion of public business at social gatherings
- Commenting on social media posts

# Council Functions

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- Policy makers and legislators
  - Broad, prospective, general in nature
  - Ordinances, resolutions, annexations, etc.
  - Prejudgment, ex parte contacts, and debate are appropriate
- Judges
  - Limited role
  - Land use cases, appeals, employment matters



# Quasi-Judicial Hearings

- A determination of
- the rights, duties, or obligations
- of specific individuals
- on the basis of the application of presently existing legal standards or policy considerations
- to past or present facts developed at a hearing
- conducted for the purpose of resolving the particular interests in question.

# Constitutional Duty as a Judge

- 5th Amendment (U.S. Constitution)
  - “Nor shall any person...be deprived of life, liberty, or property, without due process of law”
- 14th Amendment (U.S. Constitution)
  - “Nor shall any State deprive any person of life, liberty, or property, without due process of law”
- Art. II, Section 25 (Colorado Constitution)
  - “No person shall be deprived of life, liberty or property, without due process of law.”





# Quasi-Judicial Key Points

- You aren't making policy.
- Your role is neutral and impartial.
  - Avoid statements or actions showing bias.
  - Disclose conflicts or don't participate.
- Your decision is limited to:
  - Applying the record to . . .
  - The applicable legal criteria.
- Use the hearing to gather information.
  - Avoid *ex parte* contact or information outside public hearing.



# The Applicable Criteria

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- Land use applications have specific criteria for approval or denial
- Review standard:
  - Did Council abuse its discretion under law?
    - Misconstrued or misapplied applicable law
    - Not reasonably supported by any competent evidence in the record
  - Did Council exceed its jurisdiction as provided by law?

# The Hearing & Record

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- Key elements of due process & fairness
- What is the record?
  - Items in the packet.
  - Testimony and documents accepted during the public hearing.
- Why is it important?
  - You can only rely on facts in the record.
  - Without a record, your decision risks being arbitrary and capricious.



# Potential Disqualification

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- *Ex parte* contacts:
  - Site visits & prior knowledge
  - Meetings with staff, applicant, interested parties
  - Review/discussion on social media
- Indications of potential pre-judgment:
  - Statements outside the hearing
  - Non-verbal actions
  - Sidebar discussions during meeting



# Recusal/Abstention

- Can council tell a person not to vote?
  - Not on legislative matters (subject to ethics policy, however) (CP-14)
  - For quasi-judicial matters, if Council concludes a disclosed ex parte contact prevents unbiased participation. (CP-14(I); CP-22(O))
- Can I just not vote?
  - If ex parte contact prevents unbiased participation, can excuse self (CP-14(I); CP-22(O))
  - If Council finds you should be excused for financial interest, member conduct, or good cause. (CP-14(D))



# What if...?

- I have a concern about conflicts or ex parte contacts?
  - Disclose & determine ability to participate.
  - Attempt to cure.
- We don't have enough information?
  - Continue/re-open the hearing (motion).
- We want to add conditions of approval?
  - Establish conditions as part of approval (motion).
  - Must meet legal requirements.
- We want deny the application?
  - Must prepare written factual reasons (motion).



# Questions?

