



# 2023 Fruita Council Refresher Training

June 6, 2023



# Home Rule & City Charter

- **Fruita 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 possesses “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.**





Established 1924

**ICMA CODE OF  
ETHICS**

## **Council – Manager Form of Government**

- **City Council and Mayor elected, develop long-range vision & policy making.**
- **City Manager is a trained professional appointed Chief Administrative Officer, oversees operations & carries out the policies of the City Council.**
- **Flexible enough to adapt to local needs & demands.**
- **Began in 1908 in Staunton, VA**

# **Roles of Elected Officials**

**City Charter Section 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.**



# **Roles of Elected Officials cont.**

- **Elected as a Council/group – not to independent seats**
- **Serve entire community – not only who voted for you**
- **Utilize different perspectives, community feedback and professional recommendations to make best decisions for community**



# **Roles of Elected Officials cont.**

- **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). In these scenarios, more information is not going to help solve a political problem.**
- **City Manager works for entire Council, not individuals**
- **Council directs City Manager, City Attorney & Municipal Judge**
- **City Manager directs staff**



# **Norms of Conduct**

**The purpose of this document is to clarify guidelines agreed to by the City Council to define the Norms of Conduct that City Council and Mayor will abide to perform the duties of their office most effectively. These guidelines are organized into 5 sections.**

**A. Parameters & Realities**

**B. Additional Norms of Conduct**

**C. Appendix**

**A. Summaries of values found in other documents**

**B. Word Cloud**

**C. Slides from CIRSA training with notes from the facilitator**

# Parameters and Realities

- The Councils decisions are based on majority rule and effective Councils respect the will of the majority following productive discussion.
- Individuals have their own learning style. Each Council member may not be at the same spot on the “learning curve” of any given issue.
- Although the totality of your experience, background, and perspectives may have been key to your seeking/winning office, your role is as ultimate generalist setting policy and providing direction for professional staff to provide recommendations on and ultimately implement.
- Municipal government is nonpartisan.





# **Additional Norms of Conduct**

- In addition to the Parameters & Realities, the Core Values found in the City Charter, Comprehensive Plan, Code of Ethics, City Council Handbook complete the City Council Norms of Conduct. These Core Values are:
  - Fun
  - Respectful
  - United
  - Innovative
  - Transparent
  - Authentic



# **Additional Norms of Conduct cont.**

- **Fun**

- **We will seek to “keep it positive.”**
- **Any form of humor will be in the best interest of the group, not at the expense of any member or offensive in any way to another.**



# Additional Norms of Conduct cont.

- **Respectful**

- Respect the Mayor's "traffic direction" role.
- Praise in public, criticize in private.
- Be tough on issues, but not on each other.
- Respect on another and the staff, our limited time resources, and varying learning styles.
- Respect equality of power in our discussions by not interrupting and listening intentionally.
- Respect the chain of command, understanding that this must go both ways.
- Not make assumptions – understand and clarify differences of opinion.



# **Additional Norms of Conduct cont.**

- **United**

- Compromise
- Speak with one voice after a decision has been reached. Respect the will of the majority and continue to be constructive even if we were a dissenting vote/voice.
- Seek to understand differing points of view, especially when there isn't an agreement.
- Ensure everyone has had the opportunity to have a say, uninterrupted, before discussion commences.
- Listen to understand, not just to respond.
- Wait to commit to a position until we have heard everyone's point of view.



# Additional Norms of Conduct cont.

- **Innovative**

- Be open to changing our own perspective
- Ask and encourage questions
- Maintain a sense of flexibility

- **Transparent**

- Honor transparency as a Core Value
- Believe in equality of power, information, and time
- Understand the importance of perception management as our roles carry actual as well as perceived powers

- **Authentic**

- Arrive with the best of intentions and assume the best intentions of others
- Manage our tone and body language when communicating



# Appendix

- **Charter**

- “We, not I” – Council powers; also respect Mayoral role
- Highest ethical standards – removal for violations
- Transparency – open meetings, limited executive sessions
- Inclusive – Diverse viewpoints
- Respective governance/administration “lanes”

- **Fruita in Motion Comprehensive Plan**

- Friendly, neighborly, fun
- Collaborative, open-minded
- Inclusive, diverse

- **Code of Ethics**

- Courtesy, fairness, impartiality, equality under the law
- Public interest over private interest



# Appendix cont.

## • Council Handbook

- Collective action and teamwork
- Consider others' viewpoints, disagree respectfully
- Respect and “speak with one voice” once collective action is taken
- Collaboration, search for shared points of agreement
- Seek differing viewpoints, be comfortable in debate
- Pursue best solutions, not individual agendas
- Provide/receive information in equal manner, operate from same “base” of information
- Positive and welcoming





# Word Cloud

# Inputted Values from the Council Workshop on Norms of Conduct, June 28, 2022.





# Rules of Procedure

- **General Guidelines**

- Mayor Serves as Parliamentarian.
- Abstaining from Voting is not Permitted.
- A Conflict-of-Interest Mandates a Recusal from Voting.
- A Motion is Not a Prerequisite to Discussion or Debate on a Matter



# Rules of Procedure cont.

- **General Rules Governing the Meeting**

- Quorum Required
- No Interruptions or Side Discussions
- Second Required for Debate
- Vote Requirement
- Aye or Nay Vote Required
- Explanation of Vote



# Open Meetings

- All meetings of **three** or more members of council must be open to the public and noticed 24 hours in advance – however, case law may be changing this (*Douglas County School Board*).
- A Meeting is “any kind of gathering convened to discuss public business in person, by telephone, electronically, or by other means of communication”
  - E-mails among 3 or more council members discussing public business constitutes a meeting
  - Chance meetings and social gatherings at which discussion of public business is not the central purpose are NOT considered a meeting
- Council can only act at properly-noticed meetings
- Any action taken at a meeting that does not comply with the Open Meetings law is void



# Open Meetings cont.

- **Executive Sessions not required to be open to public**
  - Enumerated purposes including:
    - Personnel matters unless involving a specific employee who has requested open session
    - Receiving legal advice
    - Discussing a property transaction
    - Negotiation strategies
  - Specific procedures to be followed
  - Must be noticed
- **Public Hearings**
  - Only apply to certain matters (e.g., land use applications, budget)
  - Require additional noticing provisions to be completed by land use applicant



# **Colorado Open Records Act**

## **C.R.S. & 24-72-201, *et seq.***

- All public records are open for inspection by any person at reasonable times
- A public record is any writing:
  - Made, maintained, or kept by the City
  - For use in the exercise of functions authorized by law or rule
  - Or involving receipt or expenditure of public funds
- Content of record is key as to whether disclosure is required



# **Colorado Open Records Act**

## **C.R.S. & 24-72-201, *et seq.***

- **“Record” Includes:**
  - e-mails, recordings, meeting minutes, memos, and any other documentary material
  - Following 2017 amendments to CORA, electronic documents must be produced in their native format (e.g., the actual e-mail not a paper copy or .pdf version of it)
- **City has adopted its own CORA policy that describes the process for requesting the City’s records**



# **Colorado Open Records Act**

## **C.R.S. & 24-72-201, *et seq.***

- **Government official's correspondence is subject to CORA unless it is:**
  - Work product (advisory or deliberative materials, e.g. memos)
  - Without a demonstrable connection to official functions
  - From a constituent and clearly intended to be private and confidential
- **Records not kept in "official capacity" are not subject to CORA BUT**
  - Cannot use personal e-mail to avoid CORA
  - Discussing public business/official functions through personal e-mail may subject personal e-mail account to search and/or disclosure
  - Be careful with use of social media
  - Only use City e-mail to discuss official business



# Communication

- Email, no reply all, blind copy
  - iPad usage, phones, etc.
- Weekly Update
- 1:1 meetings with City Manager
- Constituency Requests
- Social Media
- Text
- Media





# Council Meetings

- Rules of Procedure
- Agenda Orientation
- Meetings v. Workshops
- Preparing for Meetings – Council Packet
- Use of iPad
- Proclamations & Presentations
- Minutes
- Consent Agenda
- Public Hearings
- Administrative Updates
- Council Updates
- Executive Sessions



# Public Hearings: Legislative vs. Quasi-Judicial

- **Legislative actions:**
  - enacting laws, policies, and regulations of general applicability
  - subject to substantive and procedural due process requirements
- **Quasi-Judicial actions: applying laws to specific facts (e.g., approving land use applications)**
  - Decisions to be based on the record
    - No ex parte communications
    - Beware of social media
    - Any communications had or facts learned outside public hearing must be stated on the record
  - Procedural due process
  - Substantive due process
  - 28 days to challenge per CRCP 106 (abuse of discretion)
  - Federal challenges



# Role of Council vs. Staff

- **Council's Role**: help establish policies for City as a whole; set overall goals and priorities; enact legislation; exercise duties and powers assigned to Council
- **Staff's Role**: manage and accomplish work assigned by Council or otherwise delegated to staff through the City Manager; execute and implement policies adopted by Council; day-to-day administration of City business, including HR matters



# Chain of Command



- **Council not to interfere with Manager-Employee relations**
- **Grievances:**
  - If regarding another employee, go to Direct Supervisor
  - If regarding Direct Supervisor, go to Department Head
  - If regarding Department Head, go to City Manager
  - If regarding City Manager, go to City Council or City Attorney
  - If regarding a Councilmember, go to City Manager or City Attorney



# Personnel Matters

- **Council should:**

- set general HR policies or rules
- determine personnel budget, pay plans, benefits, etc.
- select and supervise staff that reports directly to Council (City Manager, Attorney, Municipal Judge)

- **Council should avoid:**

- Interfering with or influencing hiring, firing, and disciplinary decisions for staff members that don't report directly to Council
- Bypassing chain of command
- Interfering in staff-level decisions
- Directing staff that doesn't report directly to Council



# Workplace Liability

- **Sexual harassment**
  - Quid pro quo
  - Disparate treatment
  - Hostile work environment
- **Race, religion, nationality, etc.**
- **Disability**
  - Reasonable accommodations
- **Age**
- **Retaliation for Reporting**
- **Risk of Councilmember's personal liability for employment matters goes down if chain of command respected.**



# Personal Liability

- **Liability under Fruita Code Chapter 2.70 and the Board of Ethics**
- **Immune from tort claims under Colorado Governmental Immunity Act**
- **42 U.S.C. § 1983 Actions**
  - Lawsuit regarding violation of right, privilege, or immunity granted by US constitution or federal law
  - **Can be sued in official and/or individual capacity**
    - Official capacity: action that violated rights taken pursuant to official policy or custom of the City; City pays damages, if any
    - Personal capacity: action that violated rights taken while acting in furtherance of official duties; individually responsible for damages



# Ethics

- **Must carry out duties for the benefit of the people you serve**
- **Avoid conduct that violates or appears to violate the public trust**
- **Abstain from personal financial gain beyond the compensation established in the Charter**
- **Must not use position to gain an unfair advantage**
- **Guiding Principle: what is the right thing for the City?**





# Gifts

- State and local laws restrict gifts to public officials
- **Fruita Code Sec. 2.70.20(E): Council members prohibited from accepting gifts that they “would not be offered or given to him if he were not an official”**



# Conflicts of Interest

- **Private interests (both financial and non-financial) that infringe on Councilmember's ability to objectively perform duties**
- **Colorado Code of Ethics (C.R.S. §§ 24-18-101, *et seq.*) establishes:**
  - ethical standards
  - prohibited conduct
  - civil and criminal liability for failing to comply
- **Financial Interests include**
  - Ownership interest in a business
  - Being a director or officer of a business
  - Employment or prospective employment
  - Ownership of real or personal property



# Conflicts of Interest cont.

- If a councilmember has a “personal or private interest” in any matter proposed or pending before Council, he or she must disclose such interest, shall not vote, and must avoid influencing other members (best to leave the room). Although the Colorado statutes would allow the councilmember to vote in certain circumstances, the Fruita Code at Section 2.70.020 prohibits any participation in deliberation or voting. (State conflict of interest laws found at C.R.S. § 24-18-101 et seq. but since Fruita is home rule, its Code trumps the statute).
- If a councilmember serves on the board of a nonprofit entity:
  - It is NOT a conflict of interest or breach of any duty for the member to vote on matters affecting the nonprofit, provided that the member announces his or her involvement before voting
  - The Councilmember need only file a disclosure statement and refrain from voting if the member has a financial interest in or receives services from the nonprofit that are independent of his or her duties as a member of the board of directors
- Fruita Code Section 2.70.020 CONFLICT OF INTEREST. Financial or personal interest.
  - A. No official, either on his own behalf or on behalf of any other person shall have any financial or personal interest in any business or transaction with any public body unless he shall first make full public disclosures of the nature and extent of such interest.
  - B. Disclosure and disqualification. Whenever the performance of his official duties shall require any official to deliberate and vote on any matter involving his financial or personal interest, he shall publicly disclose the nature and extent of such interest and disqualify himself from participating in the deliberation as well as in the voting.
  - C. Incompatible employment. No official shall engage in private employment with, or render services for, any private person who has business transactions with any public body unless he shall first make full public disclosure of the nature and extent of such employment or services.
  - D. Representation of private persons. No official shall appear on behalf of any private person, other than himself, before any public body in the city.
- Fruita Code Section 2.70.020(H) prohibits nepotism.
- Personal conflicts not within Colorado Code of Ethics or City Code may nonetheless raise the “appearance of impropriety” and warrant recusal



# Conflicts of Interest – Civil Liability

**Fruita Code Section 2.70.025-2.70.040:** Provides the process by which conflict of interest allegations are heard with the appointment of a Board of Ethics. If a willful violation is found, the Council member will be discharged from their Council seat.

- **Basis for liability under the Colorado Revised Statutes:**
  - Disclosing or using confidential information acquired through official duties to further personal financial interests;
  - Accepting a gift or other thing of substantial economic value;
  - Engaging in a substantial financial transaction for private business purposes with a person whom the official inspects or supervises in the course of official duties;
  - Performing an official act that directly and substantially bestows an economic benefit on a business or other undertaking in which the official has a substantial financial interest or is engaged as counsel, consultant, representative, or agent;
  - Accepting goods or services for the official's personal benefit from a person who is at the same time providing goods or services to the official's governmental body or receiving compensation in any way from that governmental body
- Public official is personally responsible for any monetary damages or other consequences resulting from prohibited action



# Conflicts of Interest – Criminal Liability

- Basis for liability
  - Having a financial interest in any contract made by the official in his/her official capacity or by any body, agency, or board of which he/she is a member or employee
  - failing to disclose an actual or potential conflict of interest before exercising a discretionary governmental function regarding a government contract or other pecuniary transaction
- Conflict exists if member owns or controls directly or indirectly a substantial interest in any non-governmental entity participating in a transaction
- Violation constitutes Class 1 or Class 3 Misdemeanor



# Tips for Strategic Governing

- Be prepared
- Ask questions
- Listen
- Speak up
- Be ok with honest differences of opinion
- Recognize different views are representative of varied community-wide opinions
- Remember who your bosses are
- Avoid Distractions—focus on priorities, connect budget to policy goals
- Think long-term
- Use workshops effectively
- Clear Direction to Staff—help staff prepare



# Tips for Strategic Governing cont.

- Be consistent
- Embrace strategic change v. “way we’ve always done it”
- Embrace Community Vision – Enable staff to implement
- Evaluate professional recommendations and make decisions—no decision is still deciding and may not be best one
- Publicly praise, but avoid criticism of fellow Council members and staff
- Tough on issues, easy on people
- Avoid surprising your colleagues
- Avoid promises you can’t keep
- Ok to say “I don’t know, but will find out”



# Tips for Strategic Governing cont.

- Communicate, collaborate and compromise
- Once a vote is taken, move forward in unity
- Adopt protocols for elected behavior (CIRSA workshop)
- Respect chain of command within City
- Partnerships are critical for success





# Upcoming Training Opportunities

## May 16: Effective Governance Webinar

- One of CML's most popular trainings is back as a webinar ahead of our 100<sup>th</sup> Annual Conference. During this two-hour, virtual Effective Governance mini-workshop, attendees will hear from CML Executive Director Kevin Bommer about the roles and responsibilities of elected officials and maintaining positive council/board relationships; CML General Counsel Robert Sheesley on open meeting and records; and CML Executive Board President Bob Widner on effective meetings.

## CML Annual Conference

- June 21-24, 5 attending

## ICMA Webinar Series

- **Session 1** | **April 27:** Introduction to Form of Government and Strategies for Success
- **Session 2** | **May 3:** Roles and Responsibilities of the Councilmember
- **Session 3** | **May 11:** Strategic Planning and Budgeting
- **Session 4** | **May 17:** Public Relations
- **Session 5** | **May 24:** Leadership
- **Session 6** | **June 1:** Ethics
- Recordings available, \$795 for group

## CIRSA Workshop?





**FRUITA**  
COLORADO

