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SHAREHOLDERS
Paul R. Cockrel
James P. Collins
Robert G. Cole
Timothy J. Flynn
Evan D. Ela
Linda M. Glesne
David A. Greher
Kathryn G. Winn

ASSOCIATES
Joseph W. Norris
Allison C. Ulmer
Bart W. Miller

OF COUNSEL
Matthew P. Ruhland

cccfirm@cccfirm.com

SUMMARY OF COLORADO EXECUTIVE SESSION LAWS

BEFORE ENTERING EXECUTIVE SESSION

- **When Executive Session May Be Called.** An Executive Session may only be called at a properly noticed regular or special meeting where official action may be taken by the governing body, and the Executive Session and purpose should be noted on the meeting agenda whenever possible. **If a local public body fails strictly to comply with the requirements set forth to convene an executive session, it may not avail itself of the protections afforded by the executive session exception.** Therefore, if an executive session is not properly convened, it is an open meeting subject to the public disclosure requirements of the Open Meetings Law. Gumina v. City of Sterling, 119 P.3d 527 (Colo. App. 2004).

- **Motion Required.** A member of the Board must make a motion (and the minutes must reflect the motion) to enter Executive Session by announcing the topic to be discussed; citing at least one of the specific sections of the Colorado Revised Statutes that authorizes the Executive Session; and describing the matter to be discussed to inform the public of the topic, but not with so much detail as to compromise the purpose of being in Executive Session. **(See the Sample Motions on Page Two.)**

- **Statutory Authority Must Be Cited.** The specific sections of Colorado Revised Statutes authorizing Executive Sessions include the following general categories. This list is a general summary only – consult the statutes for specific details.

  (a) ***§24-6-402(4)(a), C.R.S.***, Concerning the purchase, acquisition, lease, transfer, or sale of any real, personal, or other property interest. Exception: Not available where a member of the governing body has a personal interest in the transaction.

  (b) ***§24-6-402(4)(b), C.R.S.,*** Conferences with an attorney for the public entity for the purposes of receiving legal advice on specific legal questions. Notes: 1) Mere presence of the attorney is not sufficient; 2) State topic of the legal questions in as much detail as possible without disclosing confidential information.

  (c) ***§24-6-402(4)(c), C.R.S.***, Matters required to be kept confidential by Federal or State law or rules or regulations (citing the specific statute or rule).

  (d) ***§24-6-402(4)(d), C.R.S.***, Specialized details of security arrangements or investigations.

  (e) ***§24-6-402(4)(e), C.R.S.***, Determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators.

  (f) ***§24-6-402(4)(f), C.R.S.***, Personnel matters, identifying the person or position to be discussed. **Exception:** Not available for the following discussions: 1) to discuss general personnel policies; 2) if the employee who is the subject of the executive session has requested an open meeting; 3) if the personnel matter involves more than one employee and all of the affected employees have requested an open meeting; or 4) to discuss any member of the governing body or the appointment of any person to fill the office of a member of the governing body. Note: Agenda and motion must identify the employee, by name or position.

390 Union Blvd, Suite 400, Denver, CO 80228-1556
office 303.986.1551 | toll free 800.354.5941 | fax 303.986.1755 | www.cccfirm.com

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(g) ***§24-6-402(4)(g), C.R.S.*,** Consideration of any documents protected by the mandatory nondisclosure provisions of the Open Records Act. Includes: medical records, personnel files, privileged documents, See §24-72-204(3)(a) for complete list.

- **Vote on the Motion.** The Board must vote on the motion. An affirmative vote of 2/3 of the quorum present must approve the motion to go into Executive Session.

CONDUCTING THE EXECUTIVE SESSION

- **Discussion Limited.** Once the Board has entered Executive Session, it must limit its discussion to the topic(s) for which the Executive Session was called.
- **No Final Action.** No final action regarding legislation or other act specified by statute may take place in Executive Session. However, the governing body may develop a negotiating position, or vote on confidential direction to negotiators or staff in the Executive Session. **Reminder:** No motion or vote is required to close the Executive Session.
- **Electronic Record of Executive Session.** An electronic record (or any type of audio recording) of the actual contents of the discussion in the Executive Session must be made, including: 1) the specific citation to the Colorado Revised Statutes which authorizes the Executive Session; and 2) the actual contents of the discussion.
- **Exception for Attorney-Client Communications.** No electronic or other record is required to be kept of the part of the discussion constituting privileged attorney-client communications if 1) the Executive Session was properly announced; and 2) the attorney is present and in the attorney's opinion the contents of the discussion contain privileged attorney-client communications. The attorney must state on the electronic record or provide a signed statement, which will be added to the Minutes, attesting that the portion of the discussion not recorded constituted privileged attorney-client communications.

AFTER THE EXECUTIVE SESSION

- **Retain the Executive Session Electronic Record.** The governmental entity must retain the electronic record of any Executive Session in a secure location for at least ninety days. We recommend a Policy that permits the destruction of Executive Session electronic record after the ninety (90) day period.
- **Court Order.** If someone petitions for a review of the Executive Session records, a judge will privately listen to the electronic record and make a determination as to whether the Executive Session discussion was authorized in accordance with the Statute. If the judge determines that the discussion (or a portion of the discussion) was improper (i.e., substantial discussion took place on matters not authorized by the Executive Session laws, or a policy, position, resolution, rule, regulation or formal action was adopted in the Executive Session), the portion of the electronic record containing such improper discussion shall be open for public inspection. Otherwise, Executive Session electronic records are deemed confidential and must not be released pursuant to a public records or other request.

SAMPLE MOTIONS

- ***Personnel.*** "I move that we enter Executive Session pursuant to §24-6-402(4)(f), C.R.S, for discussion of a personnel matter involving the evaluation of the District Manager, who was previously informed of the meeting."
- ***Legal Advice***. "I move that we enter Executive Session for the purpose of receiving advice from legal counsel on specific legal questions related to (state topic: e.g., a complaint filed by _____ or potential or probable litigation), as authorized by §24-6-402(4)(b), C.R.S."
- ***Negotiations***. "I move that we enter Executive Session pursuant to §24-6-402(4)(e), C.R.S., for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators concerning _____(state topic)____."

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