

WELD COUNTY COMMISSIONER RESPONSES TO THE PERFORMANCE AUDIT RECOMMENDATIONS

RECOMMENDATION 1.1: The Board of County Commissioners should consider an ordinance that further defines the Coordinator role, including actions that would be considered improper without consultation with the full Board.

RESPONSE: Disagree, in part. The recommendation calls for an ordinance which further defines the Coordinator role of County Commissioners. The Board of County Commissioners is of the opinion Weld County Home Rule Charter Section 3-8 *Power and Duties* of the Board, and Section 4-1 *Departments Created* along with the attached document *Roles and Responsibilities Necessary to Govern and Manage Weld County*, which has been in place for over twenty years, adequately addresses the recommendation without creating an ordinance.

RECOMMENDATION 1.2: The Board of County Commissioners should direct the Clerk to the Board to: (1) record all work sessions with an audio device and make such audio recordings available upon request by the public, and/or (2) record and publicly post minutes of all work sessions to ensure consistency with the State's Open Meeting Law.

RESPONSE: Agree as to (1). Although not required, the Board has directed staff to research the costs associated with recording and/or taking minutes of work sessions and will consider doing one or the other. The Board recently upgraded its calendar system to give easier access to the public to view the weekly schedule of work sessions.

Disagree as to (2). The Board of County Commissioners is not required, pursuant to the Colorado Open Meetings Act, to record and/or take minutes of work sessions. Section 24-6-402(2)(d)(II), C.R.S., says: "Minutes of any meeting of a local public body at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or could occur shall be taken and promptly recorded, and such records shall be open to public inspection." The only meetings of the Board of County Commissioners of Weld County where "the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or could occur" is at a regular meeting on Monday or Wednesday morning, or a special meeting noticed to consider specific issue(s). In accordance with Home Rule Charter Section 3-10, Minutes of regular and special meetings are taken, promptly recorded, and made available for public inspection. HRC Section 3-10 does not allow the Board of County Commissioners to adopt "any proposed policy, position, resolution, rule, regulation, or formal action" at work sessions. This contrasts to statutory counties, where such actions may take place at *any meeting*. Section 30-11-107(1), C.R.S.

RECOMMENDATION 1.3: The Director of Human Resources should work with the Board to determine a schedule to review and update succession plans on a regular basis such as annually or biennially to ensure that the County is effectively managing its talent and keeps pace with director turnover.

RESPONSE: Agree, in part. The County has a succession plan or "next in line" plan for all department heads and elected officials in the event of a temporary or permanent absence due to an emergency in the Continuity of Operations Plan (COOP).

The County puts in place succession plans for department heads and key managers when the timing and situation is appropriate, such as a planned retirement or anticipated departure of a key employee. This task is the responsibility of the department head, not Human Resources. Examples of such succession planning is the succession plan and restructuring approved by the Board in April, 2017, for Finance and Administration for the Director of Finance and Administration and Controller positions, the creation of the Deputy Director position in Human Services in 2016, Deputy Director of Information Services, and the

Communications
9-13-2017

cc: Bocca (11)
ca (11)
9/13/17
Page 1 of 4

2017-3181

recent approval of two Deputy Director positions in Public Works. All of them were initiated and developed by the appropriate department head, and not Human Resources.

Even when succession plans are in place there is no guarantee an incumbent in a deputy position is the heir apparent to automatically become the Department Head's replacement. When a vacancy exists for a department head the Board of County Commissioners at the time will most likely open the position, and recruit the very best applicant available to fill the position, which may or may not be the department's deputy.

Weld County, through Human Resources, offers many management and leadership training opportunities to county employees to develop future managers in the county, and expand the county's talent pool.

RECOMMENDATION 1.4: The County Council should further study the whistle blower programs in place in Arapahoe and Douglas Counties to determine if Weld County would benefit from the implementing those programs.

RESPONSE: Agree. The Board of County Commissioners has reviewed the whistleblower provisions for Douglas and Arapahoe Counties. The Board will be considering those examples and others to determine which will work best to implement in Weld County.

RECOMMENDATION 2.1: The Director of Information and Technology should work with the Finance Director, the Controller, the Director of Human Resources, and the Board of County Commissioners throughout the upgrade of the County's financial system to ensure that the financial dashboard continues to improve the financial and other data available to commissioners.

RESPONSE: Agree. As the auditors were informed, this was already planned and is a work in progress. The financial dashboard capability is available to all elected officials, department heads, and key managers in Weld County.

RECOMMENDATION 2.2: The Board of County Commissioners should consider and pass an ordinance defining and requiring department documentation of significant changes in appropriations from the original proposed budgets.

RESPONSE: Disagree. The County has in place under *Significant Budget and Accounting Policies* in the annual budget the following **Amendment to Budget Process** (page 63 of the 2017 Final Budget), and Weld County Home Rule Charter Section 5-5-90 clearly documents the process and requirements for amending the budget. In addition, the Director Finance and Administration maintains a record of all recommended changes and presents them as part of the Board's approval process of any Supplemental Appropriation Ordinance amending the budget.

Further, each year as part of the *Management Discussion and Analysis* section of the *Comprehensive Annual Financial Report* there is a requirement to discuss and explain all significant mid-year budget amendments as part of full financial disclosure. One can read an example of this in the *December 31, 2016, Comprehensive Annual Financial Report* on page 23. Thus, the Board does not agree an additional ordinance recommended by the auditors is necessary or warranted.

All supplemental appropriations must be done by ordinance and in a public meeting duly noticed in accordance with Section 29-1-106, C.R.S.

AMENDMENT TO BUDGET PROCESS:

Section 29-1-111, C. R. S., provides that, if during the fiscal year, the governing board deems it necessary, in view of the needs of the various offices or departments, it may transfer budgeted and appropriated monies from one or more spending agencies in the fund to one or more spending agencies in another fund and/or transfer budgeted appropriated monies between spending agencies within a fund.

Section 29-1-111, C. R. S., provides that, if during the fiscal year, the governing body or any spending agency received unanticipated revenue or revenues not assured at the time of the adoption of the budget from any source other than the local government's property tax mill levy, the governing board of the local government may authorize the expenditure of these unanticipated or unassured funds by enacting a supplementary budget and appropriation.

Sec. 5-5-90. - Budget.

- A. An annual budget and appropriation ordinance is adopted by the Board of County Commissioners in accordance with the Colorado State Budget Act and the Home Rule Charter. The budget is prepared on a basis consistent with generally accepted accounting principles for all governmental, proprietary and expendable trust funds. The accounting system is employed as a budgetary management control device during the year to monitor the individual departments (level of classification which expenditures may not legally exceed appropriations). All annual appropriations lapse at year end.
- B. The Director of Finance and Administration is authorized to transfer budgeted amounts within departments of each fund. Any revisions that alter the total appropriation for each department must be approved by the Board of County Commissioners through a supplemental appropriation ordinance.

Supplementary budget and appropriations require a two-thirds majority vote by the Board of County Commissioners.

RECOMMENDATION 2.3: The Board of County Commissioners should pass an ordinance amending Section 5-4-90 of the County Code to clarify when to pursue sole source purchases. Rather than stating that purchases “may” be sole sourced if there is only one appropriate vendor, the Code should be amended to provide additional criteria on when Commissioners “should” undertake sole source purchasing process.

RESPONSE: Disagree. Per Weld County Home Rule Charter Section 14-9 (1) the Board of County Commissioners shall adopt bidding procedures for county purchases which shall assure open and competitive bidding on all county purchases. The Board and staff are of the opinion that Weld County Home Rule Charter Section 5-4-90 adequately covers sole source purchases. Current and future Boards, on a case-by-case basis, “may” determine when a sole source purchase is appropriate, and not be obligated to do a sole source purchase by a “should” undertake sole source purchasing policy.

The case in point is the purchase of the election equipment discussed in the audit. The Board of County Commissioners required a full bid process because of the threatened litigation from vendors, and the Colorado Secretary of State’s unwillingness to provide the County with a written document defending and holding the County harmless in the event a vendor other than the Secretary of State’s temporarily certified vendor challenged the County’s use of a sole source vendor.

To avoid putting the County in legal jeopardy, the Commissioners choose to go through a full competitive bid process. The Weld County Clerk and Recorder disagreed with the decision, but she does not have the

ultimate fiduciary responsibility of protecting the County's assets from a liability claim as do the County Commissioners.

RECOMMENDATION 2.4: Draft and pass a resolution defining and requiring or encouraging elected officials to publicly disclose facts related to the appearance of a conflict of interest in order to dispel a reasonable person from concluding a conflict of interest exists when in fact the elected official does not have a conflict of interest under the relevant state and local laws.

RESPONSE: Agree, in part. The Board of County Commissioners intends to amend the Weld County Code to require all County Elective Officers and employees to comply with the Ethics Rules and Standards set forth in the laws of the State of Colorado, including, but not limited to, Article XXIX "Ethics in Government" of the Colorado Constitution. The Colorado Independent Ethics Commission (IEC) *Ethics Handbook* (3rd ed., 2016) contains a section addressing the issue of appearance of impropriety. The *Ethics Handbook* discusses how the IEC may be requested to review questions regarding appearance of impropriety to determine if the IEC has jurisdiction and how to analyze a specific case. With the adoption of the Code amendment, the issue of the appearance of impropriety will be addressed.

Additionally, the County Attorney routinely advises Commissioners, prior to consideration of quasi-judicial or administrative matters at public meetings and hearings, to disclose facts when there may be a potential conflict of interest present. He advises the Commissioners to say whether they will be able to consider the matters in an impartial and unbiased manner. When an actual conflict involving a Commissioner's pecuniary interest and a matter being considered exists, the County Attorney advises the Commissioner that recusal would be in the best interests of all involved.

The Board does not feel the resolution recommended by the auditors will be necessary, because of the proposed new Code amendment and the County Attorney's continuing practice of advice regarding conflict of interest. The Board intends to amend Weld County Code Section 2-2-150 to require all Elective Officers and employees to comply with the ethics rules, standards, and penalty provisions set forth in the laws of the State of Colorado, including, but not limited to, Article XXIX 'Ethics in Government' of the Colorado Constitution. Such amendment language will also require the County Attorney to provide to all Elective Officers and employees annual updated guidance about the ethics rules, standards, and penalty provisions and how to comply with them.