



Presentation to City of Toledo City Council

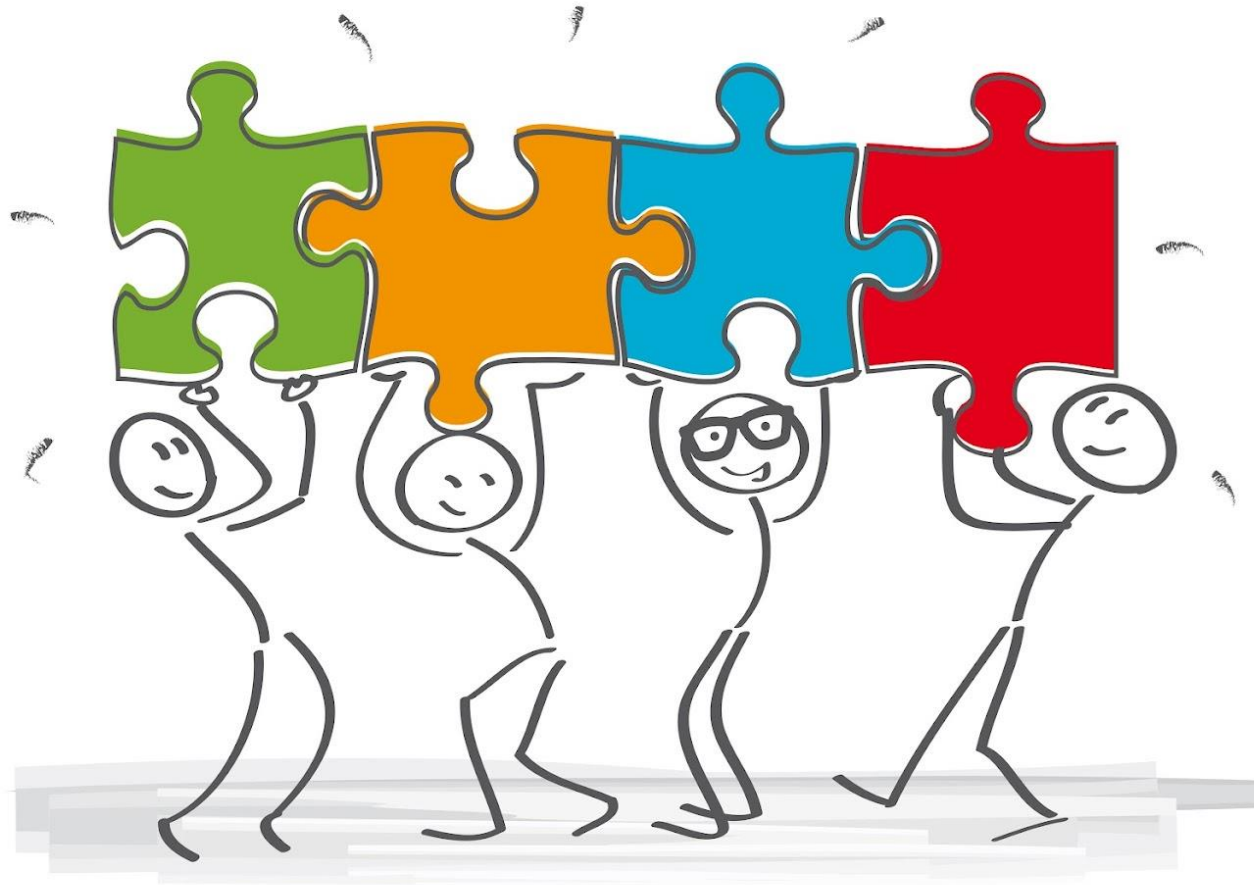
By City Attorney Mike Adams
& CIS Deputy General Counsel Tamara E. Russell
November 15, 2024



- The Eight Habits of Highly Effective Councils
- Legal Issues re City Councilors' "Scope of Duties"
- Social Media: Potential Legal Pitfalls
- Q&A (a.k.a., "Let's play *Stump the City Attorney and CIS Lawyer!*")



Eight Habits of Highly Effective Councils (a.k.a., “teams”)



But first . . . Principles of a Team

- Shared Goals
 - Everyone Contributes
 - No Person Feels Threatened by Conflict
 - Participative Decision-Making
- Shared Ownership
 - Room for Everyone to Express Ideas & Opinions
 - Atmosphere of Trust and Encouragement



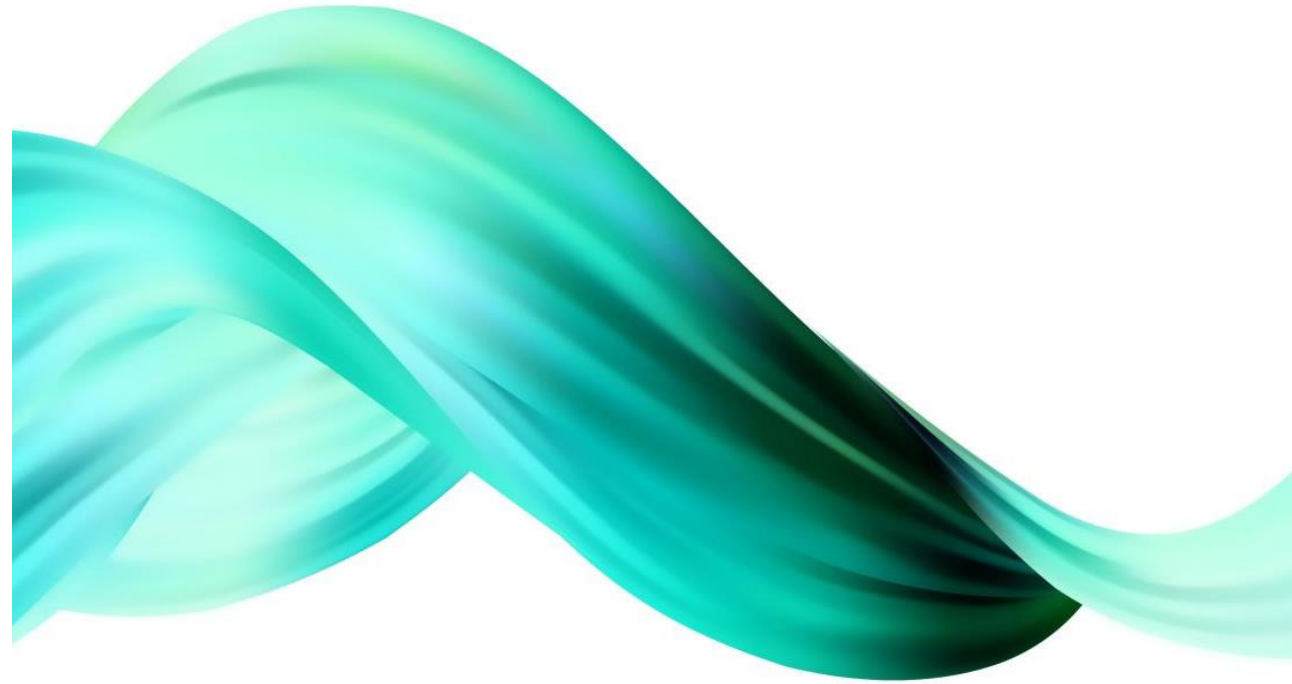
Habit #1

Think and act strategically

Habit #2: Understand & Demonstrate Teamwork

The Three Hallmarks of an Effective Small Group:

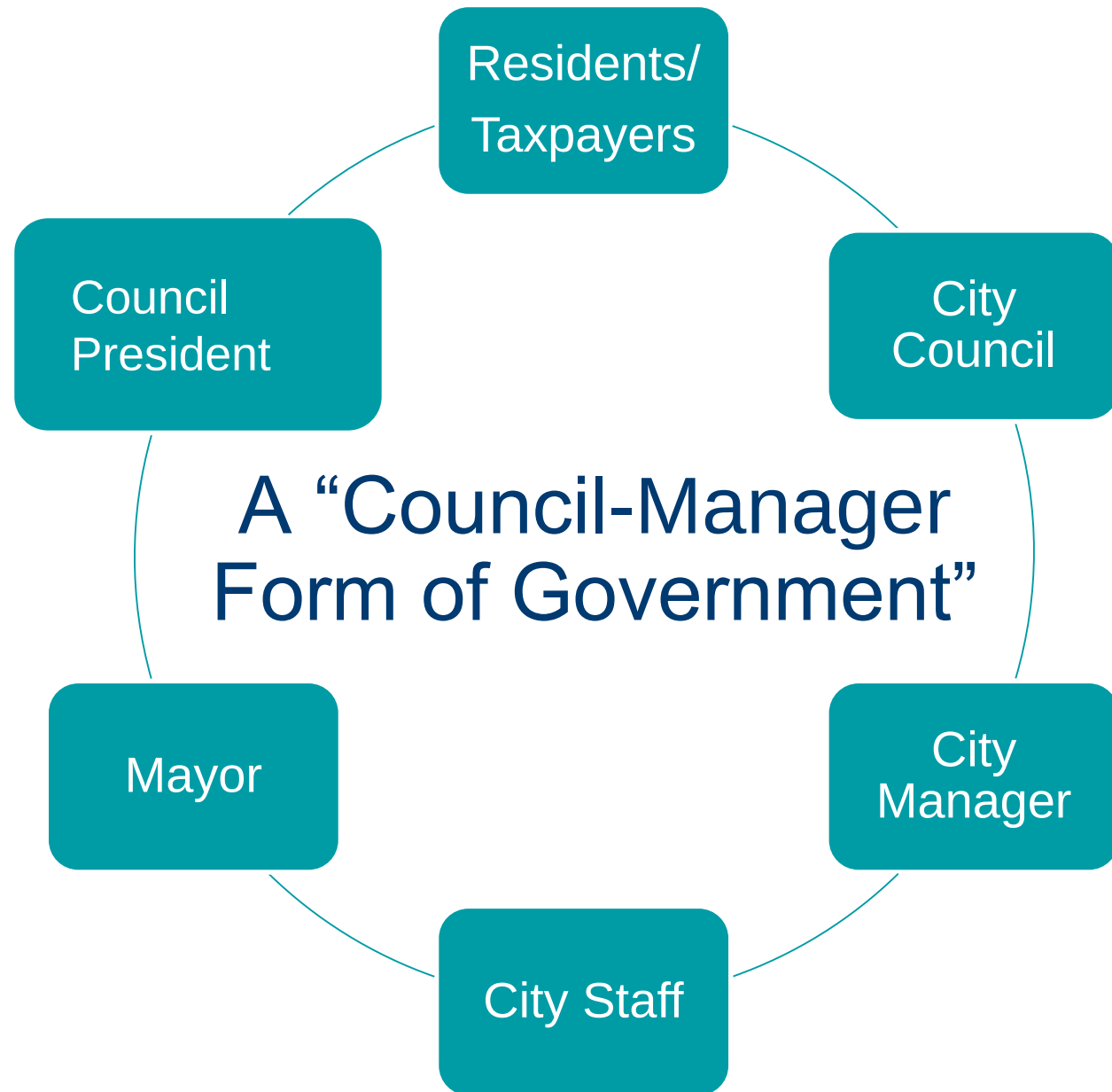
1. **Interpersonal Skills**
Ability to Work With Others
2. **Task Skills**
Knowledge to do a Job
3. **Rational Skills**
Ability to Deal with Issues and Problems Rationally



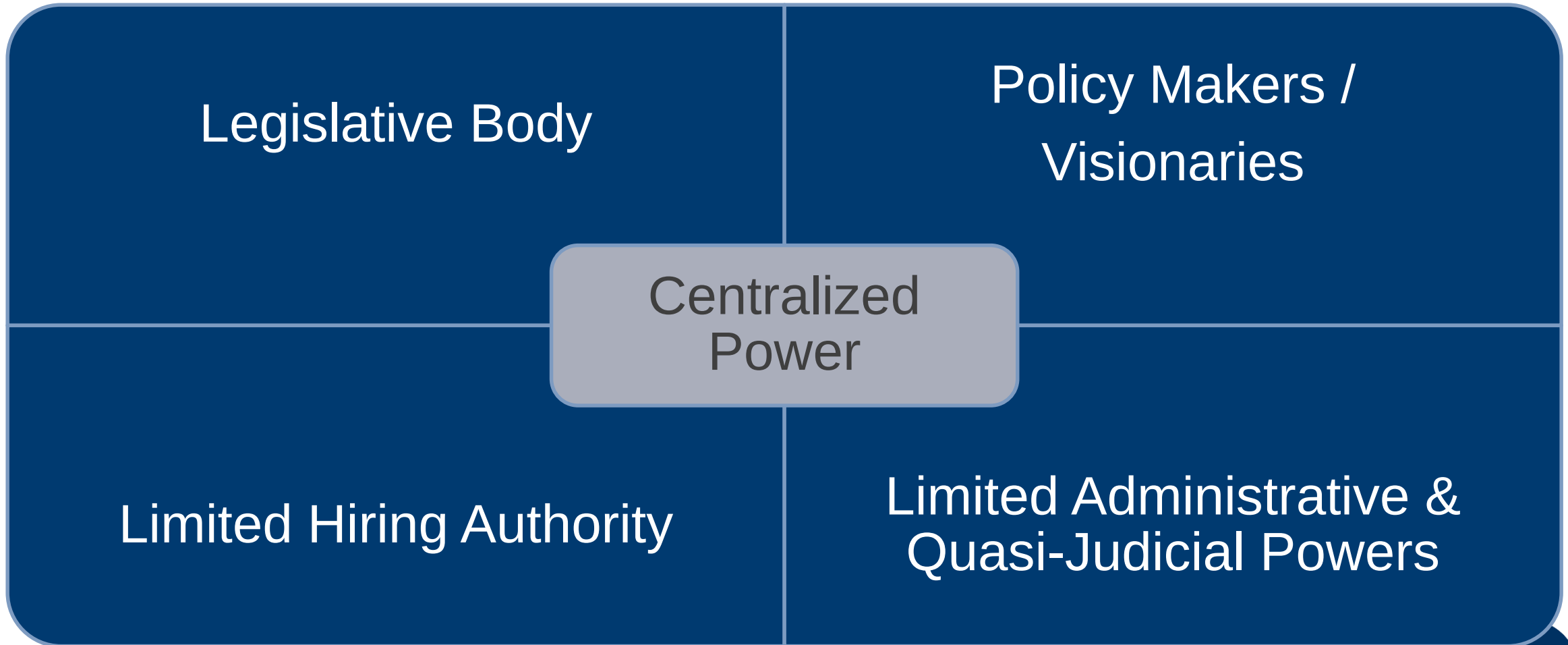


Habit #3

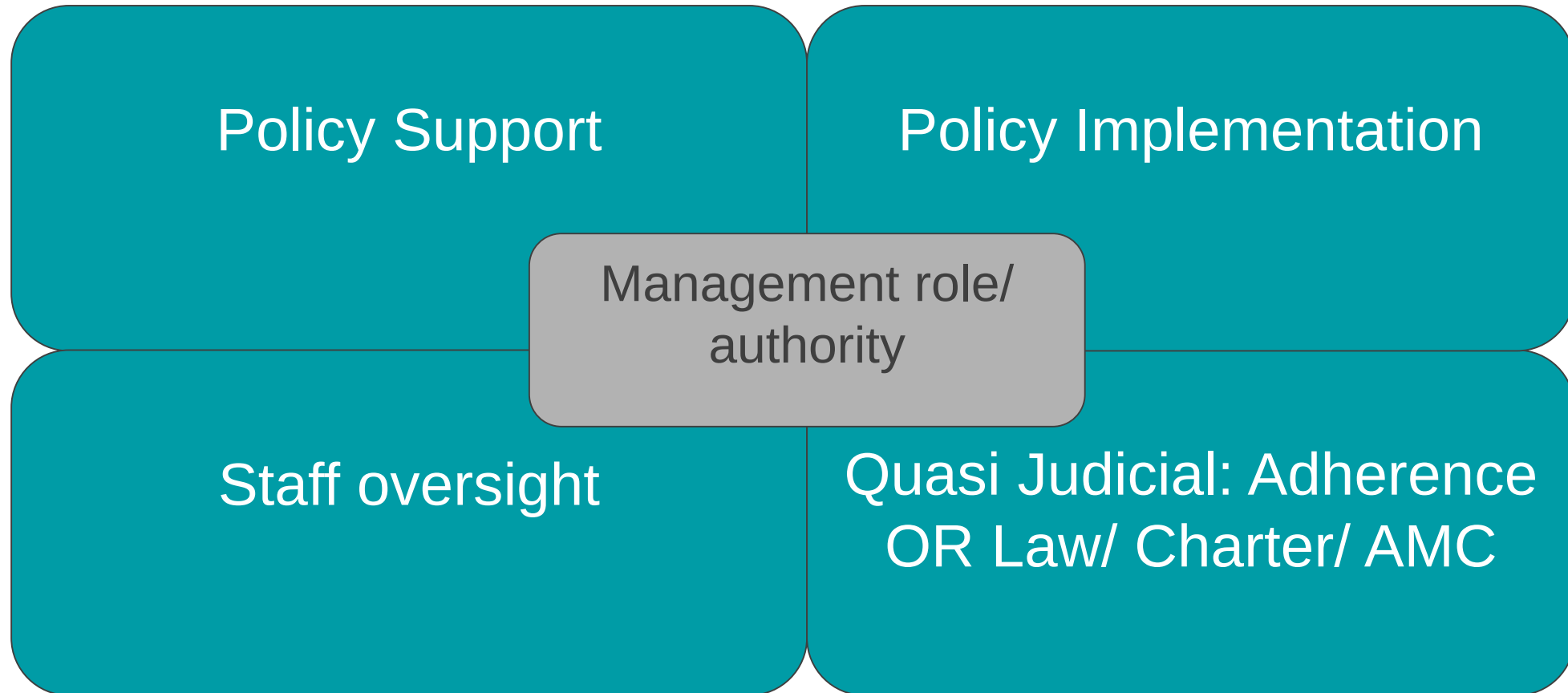
Define Roles and Responsibilities



City Councils - Generally



City Management- Generally



What “rules” apply to a City Council?

- Authority given by Charter, Ordinance & Resolution
- Authority does not rest with any single elected official but with the majority of the body
- City business is not an elected official's business
- City employees are not elected official's employees
- Elected officials can be held responsible for their actions toward city employees and third parties
- Statements made to the city attorney are not necessarily confidential

Habit #4

Consistently Evaluate
Policy Implementation



Habit #5: Allocate Time Appropriately





Habit #6

Follow the Council's
Rules

TMC 2.36 and City of
Toledo Charter Revision
approved November,
2024

Habit #7

Seek Objective
Assessments



Habit #8

Never Stop Growing or Learning
(continuing education)

Example:
LOC's Elected Essentials Training
(available on the LOC website)



Seven Ways to Improve Communication During a Conflict

Focus on behaviors and not your interpretations	Avoid the use of “always” and “never”
Use “I” statements	Say what you want and not what you don’t want
Beware of non-verbal messages	Apologize for your contribution
Give others a chance to speak	

Debate vs. Dialogue

Debate	Dialogue
Assumes there is one right answer (and you have it)	Assumes others have pieces of information that, when joined, crafts a solution (together)
Style is combative, attempting to prove the other side “wrong”	Style is collaborative, seeks to find common understanding
Listens to find flaws and counter argue	Listens to understand
Critiques only the other position	Critiques all views, including your own
Defends your own views at all costs	Allows others’ thinking to improve yours
Encourages searches for differences	Encourages search for basic agreement
Creates a winner/loser & discourages further conversation	Creates an open end, leaving the idea open for further discussion
Involves no focus on feelings, often actively seeking to belittle or offend	Involves a real concerns for the other, doesn’t actively seek to alienate or offend

Social Media:

Potential Legal Pitfalls



Photo by Jeremy Bezanger on Unsplash

Public Records & Social Media

Oregon's Public Records law applies to cities in two ways:

- Retention; and
- Requests

Public Records & Social Media

What social media content needs to be retained?

- At a minimum, any records covered by the general retention schedule under OAR, Ch. 166, Div. 200.
- These regulations do not specify a retention schedule for social media posts. BUT they do specify rules for “communications and distributions” and “complaints” received by the City.

Public Records & Social Media

What social media content can be requested by the public?

- Any content that pertains to “the conduct of the public’s business”
- This would include any content on a City-operated account because it is a product of City resources.
 - Ex. 1: Social media content that is no longer retained, but still recoverable on the web site.
 - Ex. 2: Direct messages or posts made on other user’s pages.

Types of Accounts

For cities, there are two types of social media accounts.

1. City-operated accounts

- A city's main FB page, a police department's X account, etc.

2. Private accounts

- The personal accounts of city staff and elected officials.
- To what extent are these private accounts subject to the law?
Answer: Depends on how they are used!

“Private” Accounts

Campbell v. Reisch, 986 F3d 822 (8th Cir 2021)

(Lawmaker’s Twitter account was found to be a “private” account – lawmaker protected from liability for a First Amendment violation)

“Private” Accounts

Davison v. Randall, 912 F3d 666 (4th Cir 2019)

(County commissioner violated the First Amendment rights of a County resident by banning the resident from her Facebook page.)

“Private” Accounts: State of OR Interpretation

Social media posts are considered public records if:

- Posts are made on an official public agency account or on a private account that is being used to distribute information for that agency to the public
 - If a private account is used to conduct government business[,] then it becomes public and is subject to the Oregon Public Records Law. . . .”
- Oregon State Archives, Record Management Section

Key Takeaways

Have Two Social Media Accounts:

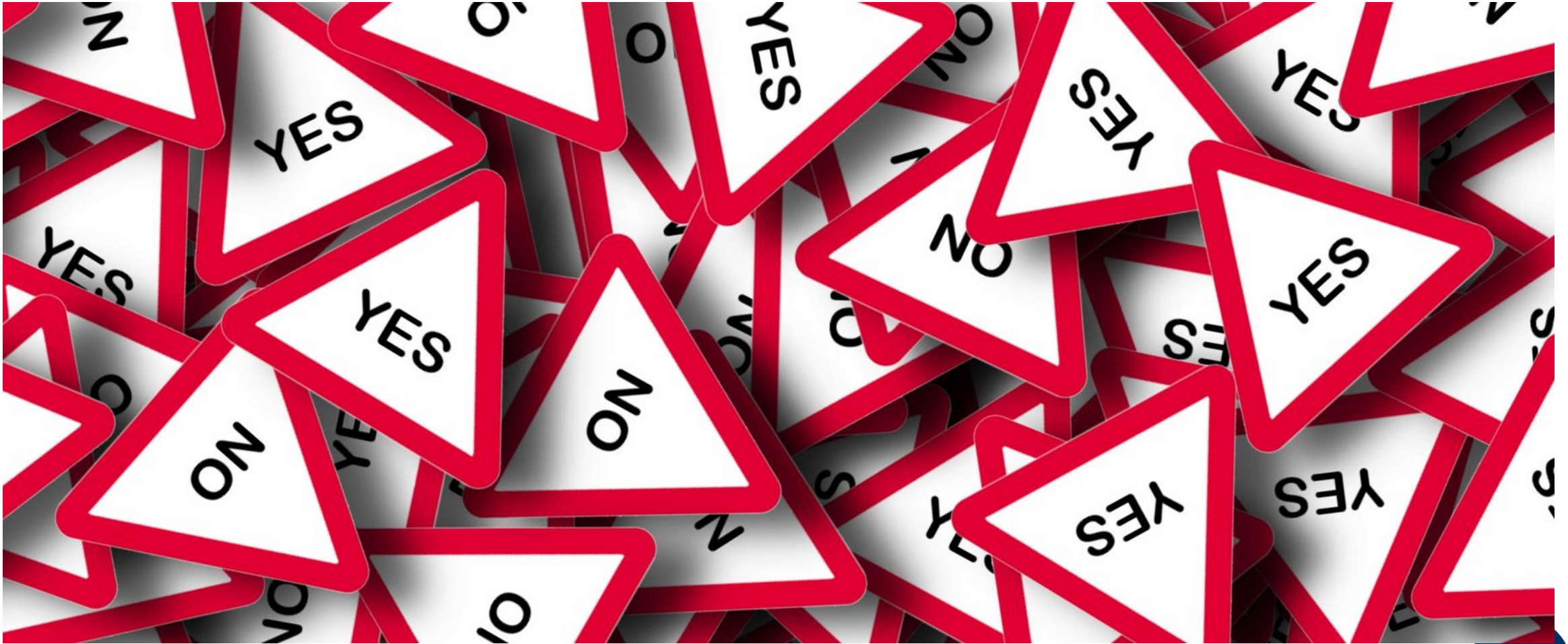
An “official” City Councilor social media page that you oversee and post to. Use this to inform the public about the City’s business.

A “personal” social media page. Use this to post stories and pictures about your family and dog, write restaurant reviews, and to address non-City issues.

Key Takeaways

- (1) CIS recommendation: Implement a Policy
- (2) Professionalism matters on both your “official” and “personal” social media pages.
- (3) When conducting the City’s business on social media, you have no privacy rights.
- (4) Visitors to your social media pages have First Amendment rights. There are legal consequences if you don’t honor those rights (and may be coverage issues as well – see next slide).

Legal Issues re City Councilors' "Scope of Duties"



Claims Against Public Officials

“[E]very public body is subject to civil action for its torts and those of its officers, employees and agents **acting within the scope of their employment or duties**, . . . arising out of a governmental or proprietary function” (ORS 30.265)

What isn't Included?

- Malfeasance in office;
- Willful or wanton neglect of duty;
- Actions outside the scope of duties/employment

Liability Coverage for Claims Against City Councilors

CIS provides coverage for claims against City Councilors who are “authorized to act on behalf of [the City], all **acting within the scope of their employment or duties**”

BUT: No coverage for public records/meeting violations

- If no CIS coverage, attorney fees and damages become the City’s concern and situation
- If acting outside the scope, personal liability. (ORS 30.265)



Questions?

Let's play "Stump the City Attorney and CIS Lawyer"!

"... you can either ask the question or experience the answer ..."

- Author unknown

Thank you, City of Toledo City Council!

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