

INSTITUTE *for* LOCAL GOVERNMENT

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ETHICS LAW COMPLIANCE BEST PRACTICES



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INTRODUCTION

Local agency officials – and the agencies in which they serve – face a complex array of ethics-related laws. While some of these requirements may seem intuitive, others can be fairly characterized as traps-for-the-unwary public official. Moreover, missteps—even inadvertent ones—can seriously undermine the public’s trust and confidence in an agency and those associated with the agency.

What steps can the well-intended official take to make sure that his or her agency is maximizing the prospects for compliance and minimizing the likelihood of missteps? This checklist provides some ideas.

GENERAL

- Do agency officials and employees receive informational materials explaining 1) their obligations under public service ethics laws (see list on page 4) and 2) the unique ethical obligations and values associated with public service?
- Are these materials targeted to their intended audience in terms of being prepared in non-legalistic language and reflective of the audience’s demographics?
- Does the agency offer regular (at least two hours every two years) training to relevant decision-makers on the ethics and ethics-related laws governing their obligations as public servants? (see box on page 14 on suggested elements of an ethics training program)

- ❑ Are agency staff encouraged to engage in continuing education activities to keep abreast of changes in legal requirements?
- ❑ Does the agency have an effective method for regularly monitoring compliance with ethics laws and laws governing use and expenditure of public money? (see page 4)
- ❑ Does the agency periodically engage in self-assessment activities (such as this best practices checklist) to assure itself that its practices continue maximize the likelihood of ethics law compliance?
- ❑ Does the agency have a code of conduct or ethics ordinance?

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What Constitutes an Ethics Law?

The good of the people is the chief law.

— CICERO

The purpose of most laws is to encourage good behavior and discourage bad behavior. What then makes a law an “ethics law?”

There is no universally accepted categorization. One test is whether a law promotes the public’s trust and confidence that the agency and its officials are acting in the public’s interests—as opposed to narrow personal interests. Another is whether the law relates to core ethical values, for example values relating to trustworthiness, respect, responsibility, and fairness.

For purposes of its own ethics education programs, the Institute for Local Government believes that “ethics laws” include the following:

- (1) Laws relating to personal financial gain by public servants (for example, laws prohibiting bribery and conflict of interest laws),
- (2) Laws relating to claiming perks of office (for example, gift and travel restrictions, prohibitions against the use of public resources for personal or political purposes, prohibitions against gifts of public funds, mass mailing restrictions, and prohibitions against acceptance of free or discounted transportation by transportation companies),
- (3) Government transparency laws (for example, financial interest disclosure requirements and open government laws),
- (4) Laws relating to fair processes (for example, common law bias prohibitions, due process requirements, incompatible offices, fair procurement processes for public contracts, and disqualification from participating in decisions affecting family members),
- (5) Laws relating to respectful and fair treatment of staff, including those related to political solicitations and whistle-blower protections,
- (6) Laws designed to safeguard public resources, either in terms of maximizing public benefits (procurement practices) or minimizing harms (in terms of guarding against improper use or theft of public resources), and
- (7) Campaign-related laws (including fundraising restrictions and campaign disclosure).

For more information about these laws, see *A Local Official’s Reference on Ethics Laws* and other resources published by the Institute for Local Government. These are all available at www.ca-ilg.org/trust.

While we are free to choose our actions, we are not free to choose the consequences of our actions.

— STEPHEN COVEY

DECISION-MAKING

- Are State Fair Political Practices Commission's Form 700s (Statements of Economic Interests) timely distributed and collected on an annual basis?
- Do decision-makers know where the 500-foot boundaries are with respect to their various property interests?
- Are officials advised of prohibitions against self-dealing (Government Code Section 1090) in addition to the Political Reform Act?
- Do decision-makers receive training on due process rules applicable to quasi-adjudicatory (administrative) hearings?
 - Do decision-makers know how to disclose information they receive outside adjudicatory hearings?
- Are agency policies applied consistently to those seeking agency approvals, regardless of personal connections?
- Are meeting notices sent out in a timely manner and written in a way that is understandable to the general public?
- Do decision-makers listen attentively at public hearings, particularly adjudicatory hearings?
- Have decision-makers received information on bias issues?

USE OF PUBLIC RESOURCES

- Does the agency have an adopted travel and expense reimbursement policy?
 - Does it contain the elements recommended in the Institute for Local Government's sample policy (available at www.ca-ilg.org/reimbursementpolicy)?
 - Do staff and elected officials receive periodic reminders on the provisions of the policy that most likely apply to them (for example, using agency time or equipment for personal business)?
 - Is this policy consistently applied?
 - Is compliance with the policy subjected to verification?
- Are any allowances (for example, telephone or technology allowances) backed up by documentation explaining factual basis for the allowance?
- Does the agency have an adopted policy explaining under what circumstances public benefits are achieved by the agency's participation in community events or activities (for example, such things as a purchase of a table at a local chamber of commerce, labor council, or other community events)?
- For Special Districts:* Are local officials aware of what kinds of activities do and do not constitute compensable service to the district?
 - Does the agency have an adopted policy explaining under what circumstances per diem stipends will be paid?
- Does the agency have an adopted policy governing the use of agency property and equipment by officials and employees?

- Does this policy take into account pro-scriptions against 1) gifts of public resources, 2) personal use of public resources, and 3) political use of public resources?
 - Is this policy consistently applied?
- Do staff and elected officials understand and comply with mass mailings proscriptions?

INCENTIVES FOR SPEAKING TRUTH TO POWER¹

- Does the agency have an adopted policy clearly explaining procedures for reporting and investigating allegations of misconduct and protection of those who report misconduct?
- Do employees receive positive reinforcement for bringing truthful, but sometimes unwelcome, unpopular or difficult, information to the attention of relevant decision-makers?
- Is unlawful conduct dealt with swiftly, firmly and consistently?
- Are employees encouraged to bring forward unsolicited, unwelcome, unfamiliar or difficult information? (The opposite of a “Don’t Ask, Don’t Tell” policy)?
- Are agency supervisors familiar with legal protections relating to whistle-blowing activities?
- Do staff participate in professional associations that provide guidance on ethics as it relates to their role within the organization? (For a list of local agency professional associations with ethics codes, for example, see www.ca-ilg.org/staffrelations).

¹ Aaron Wildavsky, *Speaking Truth to Power: The Art and Craft of Policy Analysis* (Boston: Little, Brown, 1979).

HIRING, APPOINTMENTS AND STAFF RELATIONS

- Does the agency have an anti-nepotism policy?
- Does the agency consistently make a concerted effort to advertise widely for appointments for boards and commissions?
- Does the agency encourage its officials to engage in personal outreach for appointments to boards and commissions?
- Does the agency consistently make a concerted effort to advertise widely for job openings?
- Does your agency have a non-discrimination policy and abide by its terms?
- Do supervisors, including elected officials, receive training on issues relating to fair, respectful and appropriate treatment of staff?
- Does the agency have a policy about second jobs for staff?
 - Does staff receive periodic reminders on the provisions of the policy (for example during annual reviews)?
 - Is this policy consistently applied?

PROCUREMENT ISSUES

- Does the agency have adopted procurement rules and regulations?
- Do the agency's procurement practices comply with both the letter and spirit of the procurement laws and policies?
- If the agency has a decentralized purchasing system, does it have clear organization-wide standards and guidelines?

- ❑ Does the agency have policies in place for the proper disposal of surplus property?
- ❑ Do all local officials involved in contracting decisions receive training on the proscriptions against self-dealing in agency contracts (Government Code section 1090)?

FINANCIAL PRACTICES

One who thinks that money can do everything is likely to do anything for money.

— HASIDIC SAYING

- ❑ Does the agency fully and accurately disclose both positive and negative financial information to the public and financial institutions?
- ❑ Does the agency have appropriate internal controls in place, including such practices as
 - Segregating duties among staff to minimize risk of error or misconduct (for example, no one person should initiate a transaction, approve it, record it, reconcile balances, handle assets and review reports).
 - Limiting access to agency assets such as cash, equipment, documents and credit cards to safeguard against unauthorized acquisition, use or disposition.
 - A system of authorizations, approvals, and verifications, in which 1) certain individuals are authorized to perform certain activities and to execute certain transactions within limited parameters (some of which may need supplemental supervisory approval before they are performed or executed by employees), 2) a supervisor's approval (manual or electronic) indicates that he or she has verified and validated that the activity or transaction conforms to the agency's established policies.

- Diligent reconciliation processes to compare various sets of data to one another (for example, charges in a statement of account to documentation of expenses, including the proper authorization for those expenses), identifying and investigating any discrepancies and taking corrective action when necessary.
- ❑ Do agency officials receive periodic financial reports? These include monthly reports, quarterly reports and mid-year budget reviews.
 - Do financial reports provide meaningful information about the agency's expenditures as they relate to revenues and budgeted amounts?
 - Do these reports provide a complete picture of the agency's assets and liabilities?
- ❑ Does the agency have its financial reports audited on a timely basis? (Audited reports should be issued no later than 180 days after year-end).
 - How long has the agency's auditor been auditing the agency? Does the agency periodically change auditors to provide a fresh view of the agency's financial statements?
 - Are the annual financial reports prepared by a certified public accountant, in accordance with generally accepted accounting principles?
 - Does the agency receive "unqualified" auditors' opinions? An "unqualified" opinion means that the auditor concludes the agency followed all accounting rules and that its financial reports present an accurate picture of the agency's financial condition.
 - Does the agency periodically conduct its own audits of particular functions?

- Does the agency have clear capital financing and debt management policies that address how it selects external consultants like bond counsel, financial advisors, trustees, assessment engineers and underwriters?
 - Do these policies address disclosure and relations with rating agencies?
 - Do key managers attest to the accuracy of financial statements in writing?

CAMPAIGNS

- Do candidates for the agency's governing board receive information on how to comply with campaign laws, including local campaign requirements and restrictions?
- Are candidates given information about ethics laws, including conflict of interest, incompatible offices and governmental transparency requirements that will be relevant to their service if they are elected?
- Are agency officials and employees advised of restrictions relating to campaign fundraising and political activity of public employees?
- Are there mechanisms in place to promote equal treatment of candidates and avoid both perceptions and realities of preferential treatment?
- Is the state's Code of Fair Campaign Practices distributed to all candidates?

What Constitutes an Effective Ethics Compliance Program?

Effective compliance programs can take many forms ranging from regular financial audits that include periodic review of management practices, to more extensive programs. Here are some concepts on compliance program elements from the Federal Sentencing Guidelines:²

- Does the agency have standards and procedures to prevent and detect unlawful conduct?
- Is the agency's leadership knowledgeable about the agency's compliance programs?
 - Does the leadership exercise reasonable oversight of program implementation?
 - Are specific individuals assigned overall responsibility for compliance issues, as well as day-to-day operational responsibility? Is there periodic communication between the two areas of responsibility?
 - Does the governing body and top management take responsibility for assuring that the agency's actions comply with the law and that the agency's ethics program is effective?
- Do employees have a mechanism for reporting concerns about illegal or unethical behavior without fear of retaliation?
- For employees, are those who have engaged in unethical or illegal behaviors disciplined and precluded from serving in positions of authority (in a manner consistent with federal, state and local personnel laws)?
- Do employees and agents have incentives to act legally and ethically (including avoiding even the appearance of impropriety)?
- Is the agency's compliance and ethics program monitored and periodically evaluated to assess its effectiveness?
- Does the agency have a history of taking reasonable steps to respond to misconduct and prevent future misconduct?

Does the agency periodically assess the risk of unlawful conduct, so it can take steps to minimize those risks?
This can include:

- An inventory of the range of agency activities, the laws that apply to those activities, and the potential for missteps in complying with those laws.
- An analysis of what would be the most serious missteps and hence most deserving of priority in prevention efforts.

Does the agency's leadership foster a culture of ethics within the agency?

A key theme of the guidelines is holding management accountable for encouraging compliance and ethical behavior. Moreover, the emphasis on a "culture of ethics" recognizes that no matter how effective an ethics program is, it will not be effective in the absence of demonstrated ethical leadership by an organization's top leadership. For more information on this topic, see www.ca-ilg.org/culturechecks.

Note that these guidelines do apply to governmental units.³ The guidelines also recognize that efforts will reasonably vary based on the size of an organization, history of misconduct and industry practice.⁴

**Another question to ponder
is how the "location" of ethics-related
functions in an agency influences ethics
law compliance. What happens if "ethics"
is assigned to a department which is
viewed as having little or no power?**

² United States Sentencing Commission, Guidelines Manual, Chapter 8, Part B: Remedying harm from criminal conduct, and effective ethics and compliance program (November 2004).

³ *Id.* § 8A1.1 (Application Note #1: The organizational sentencing guidelines apply to "corporations, partnerships, associations, joint-stock companies, unions, trusts, pension funds, unincorporated organizations, governments and political subdivisions thereof, and non-profit organizations.")

⁴ *Id.* § 8B2.1 (Application Note #2A: The organizational sentencing guidelines apply to "corporations, partnerships, associations, joint-stock companies, unions, trusts, pension funds, unincorporated organizations, governments and political subdivisions thereof, and non-profit organizations.")

Recommended Elements of an Ethics Law Training Program

There's a big difference between what you have a right to do and what is right to do.

— POTTER STEWART

An overall training program for ethics and laws governing public official conduct should cover the following aspects of those laws:

- Personal financial gain laws (for example, disclosure and disqualification requirements, prohibited interests in contracts, bribery)
- Special privileges and perks laws (gift limits and disclosure requirements, prohibitions against personal and political use of public resources)
- Fairness laws (bias, procurement, hiring)
- Open government laws (public records, open meetings requirements)
- Whistle-blowing protections
- Staff relations issues (for example, working through the city manager to give direction to staff and staff neutrality in campaigns for elective office)

Because of the complexity of those subjects, training should occur in discrete segments to maximize both comprehension and retention. For example, if an agency provides periodic ethics law training for its officials and staff, the agency can focus on different topics during each session.

In addition, an agency should communicate information about ethics law requirements through multiple communications channels. An example is periodic bulletins or memos to relevant agency officials reminding them of relevant ethical standards and legal requirements.

Finally, all training should emphasize the fact that the law is a floor for acceptable conduct, not a ceiling. Moreover, focusing on minimum levels of compliance with legal standards is a risky compliance strategy in and of itself. A truly effective compliance training program will focus on the values and ideals that the law is trying to protect—sometimes known as complying with not only the letter of the law, but also its spirit.

Local agency officials can keep these values and ideals in mind to enrich their analysis on what the overall “right” thing to do might be in a given situation—ideally above and beyond what the law requires. A positive, value-based code of ethics for the agency can be a helpful tool in this regard (for more information, see www.ca-ilg.org/ethicscodes). In short, ethics is not simply about compliance, but integrity.

TAKING SELF-ASSESSMENT ONE STEP FURTHER

*Genuine success does not come from
proclaiming our values, but from consistently
putting them into daily action.*

– **KEN BLANCHARD AND MICHAEL O’CONNOR,**
MANAGING BY VALUES

Every agency should on a periodic basis, engage in the self-assessment process suggested by the above checklist. This is part of the agency’s due diligence with respect to ethics laws. Although compliance with ethics laws is a floor – and not a ceiling – for ethical conduct, it is nonetheless important for an agency to assure itself it is meeting minimum legal requirements for its activities.

As the Federal Sentencing Guidelines suggest, however, the *ethical culture* of an agency is important for promoting both ethics law compliance and encouraging the agency to operate on a higher ethical plane than bare minimum legal requirements.

Such assessments explore how employees feel about the organization’s standards and behavior, including the perceived priorities and ethical effectiveness of individuals and sub-units of the organization, as well as the organization as a whole. This can assist the agency in reaching a preliminary conclusion that increased attention to ethical issues would be beneficial.

For more information on such assessments, visit the Institute’s website at www.ca-ilg.org/culturechecks.

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**Does your agency engage in
"best practices" that are not
covered in this checklist?
Let us know: ilg@cacities.org.**

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