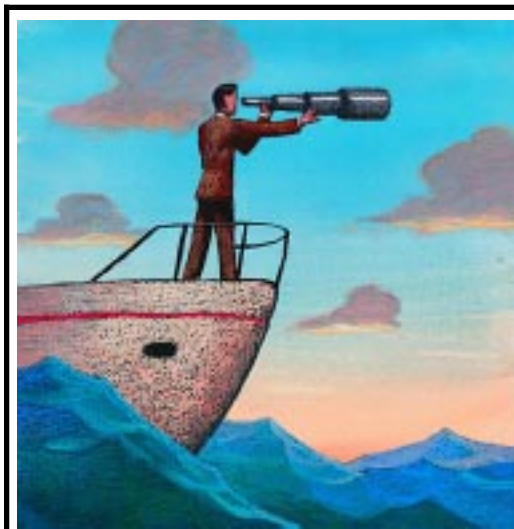


DEVELOPING A LOCAL AGENCY ETHICS CODE: A PROCESS-ORIENTED GUIDE



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WASTE MANAGEMENT FOCUSES ON INTEGRITY

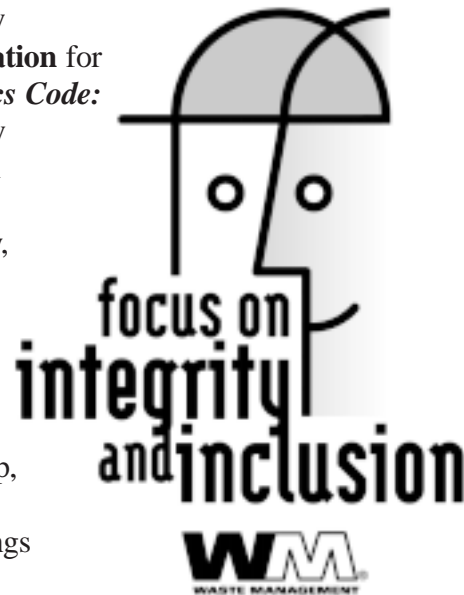
The **Institute for Local Self Government** is profoundly grateful to the **Waste Management Charitable Foundation** for providing funding for *Developing a Local Agency Ethics Code: A Process-Oriented Guide*. The partnership is especially meaningful given Waste Management's process-oriented commitment to its own code of ethics and values. Waste Management is California's largest solid waste company, providing collection, recycling, transfer and landfill services to residential, commercial and industrial customers in over 260 communities.

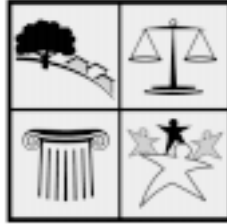
Waste Management's code outlines the company's core values of honesty, respect, responsibility, citizenship, environmental stewardship and excellence while emphasizing the need for fair and honest business dealings in all aspects of the company's business. The company regularly communicates these values to its employees through its "Focus on Integrity" program.

Implementation strategies include:

- Assuring each employee has copies of the code (also available online at http://www.wm.com/NewWM/about/Code_of_Ethics.pdf);
- Training programs;
- Workplace posters, wallet cards and magnets with the company's ethics hotline number; and
- Regular features in the company's employee newsletter and other employee communications relating to ethics issues.

Waste Management has a Business Ethics and Compliance Department that takes the lead on these activities; the department also investigates and resolves ethical lapses. The company's Vice President of Business Ethics and Compliance briefed the Institute's Ethics Advisory Panel on the company's practices. Waste Management's provision of both funding and expertise materially assisted the Institute in making this guide available to local officials.





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DEVELOPING A LOCAL AGENCY ETHICS CODE: A PROCESS-ORIENTED GUIDE

Prepared by JoAnne Speers

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*All final decisions about the content and formatting of this report were made
by the Institute for Local Self Government.*

**DEVELOPING A LOCAL AGENCY ETHICS CODE:
A PROCESS-ORIENTED GUIDE**

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November 2003

Dear Reader:

Was there something we missed? Or was a piece of information provided in this publication the “difference maker” on a project?

Either way, we want to know. The Institute strives to produce meaningful and helpful publications that can assist local officials in carrying out their duties. Your input and feedback, therefore, is vital! Comments from readers help us understand what you need and expect from Institute publications.

We have provided a feedback form on the back of this page and would greatly appreciate it if you could take a moment to provide some constructive comments.

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We are interested in hearing your comments. We would like to know how you used this publication, what you liked about it, and how you believe it could be improved. This is your chance to shape future Institute publications. **Thank you in advance for your time in filling out this form. You may copy this page and either mail or fax it to:**

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Or comment by e-mail to speersj@cacities.org.
 Please put "Ethics Code Guide" in the subject line.

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Instructions: To what degree did you find this guide useful? <i>(please mark boxes that apply)</i>	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
Do you think the process for adopting or updating an ethics code in this guide will be helpful for your agency?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is your agency likely to use the ideas in this guide for adopting or updating an ethics code?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did this guide provide meaningful options for addressing ethics challenges facing your agency?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Comments/Suggestions?

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FORWARD

“All that is necessary for evil to triumph is for good [people] to do nothing.”

– Edmund Burke, 18th-century English political philosopher



“Optimism is the father that leads to achievement.”

– Helen Keller,
20th-century American social activist, public speaker and author

Polls suggest that, fairly or unfairly, the public has serious reservations about the ethics of public officials.¹ How can local officials demonstrate that they (and their agency) are different from this perception?

The first step, of course, is to be different. The process of adopting and implementing a values-based ethics code can help. Here is how:

- **Public Discussion.** It helps by involving your agency in an open discussion on which ethical values are most important for your agency.
- **Commitment.** The code that evolves from these discussions will represent the agency officials' commitment to conform their conduct to the code.
- **Implementation and More Discussion.** The implementation process, in which the code is disseminated, referred to and discussed is an opportunity to further reflect on ethical values. It is also an opportunity to incorporate those values in one's everyday activities.
- **Review and Update.** The annual review process is an opportunity to refine the code and ensure that it continues to reflect the sensibilities of the agency's officials and the community they serve.

¹ See generally Berman, Evan M., “Public Cynicism: Manifestations and Responses,” in *The Ethics Edge*, International City/County Management Association: 1998, at 206-215.

Make no mistake about it: achieving these benefits requires a commitment of both time and energy by the agency. The task is not simply to adopt a code. The task is to build an organizational culture – from the top down – that demonstrates ethics are important. Building an organizational culture is an arduous task.

But the journey of a thousand miles, as Lao Tzu observed, begins with a single step. The other necessary ingredient, of course, is a commitment to keep taking those steps. And the process of building, maintaining and/or restoring public trust in your agency is a very worthwhile journey to undertake. Public trust and confidence is vital to your agency's ability to grapple with the difficult issues within the agency's jurisdiction, be they budgetary issues or issues of policy on which there is good faith but profound disagreement.

The Institute for Local Self Government hopes this guide provides assistance for this journey.

CHAPTER 1: WHAT IS AN ETHICS CODE?



“The ultimate answer to ethical problems in government is honest people in a good ethical environment. No web of statute or regulation, however intricately conceived, can hope to deal with the myriad possible challenges to a [person]’s integrity or his devotion to the public interest.”

John F. Kennedy, Message to Congress on April 27, 1961

CORE CONCEPT

An ethics code is a framework for day-to-day actions and decision-making by officeholders and, depending on how the code is written, an entire agency. The fundamental premise of an ethics code is that it is easier for people to do the right thing when they know what it is.²

ETHICS CODE GOALS

An agency usually has three goals for adopting an ethics code:

1. Encouraging high standards of behavior by public officials;
2. Increasing public confidence in the institutions that serve the public; and
3. Assisting public officials with decision-making.³

As will be repeatedly emphasized throughout this guide, achieving these goals requires a well-conceived process for both adopting and implementing the code.

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² Lewis, Carol W., *The Ethics Challenge in Public Service: A Problem Solving Guide*, Jossey-Bass Publishers: 1991, at 139.

³ Zimmerman, J.S., “Ethics in Local Government,” *Management Information Service Report 8*, International City/County Management Association, August 1976.

VALUES-BASED VERSUS RULE-BASED CODES

There are two types of ethics codes. One emphasizes rules (“don’ts”). Such codes often parallel, if not duplicate, state laws relating to ethics. As will be discussed in more detail in the next section, California local officials are already subject to a complex set of ethics laws.

The other kind of code emphasizes values and the kinds of behaviors that demonstrate those values. Such codes represent more a list of “do’s” rather than “don’ts.”⁴

They are a commitment to uphold a standard of integrity and competence beyond that required by law.⁵

An ethics code thus creates a set of *aspirations* for behavior, based on values associated with public service held by public servants and the communities they serve. The process of adopting and reviewing an agency’s ethics code enables agency officials to clarify these values and link them with standards of conduct.

Ethics codes therefore complement ethics laws by going beyond the minimum ethical requirements established by ethics laws to define *how public officials act when they are at their best*.⁶ A values-based ethics code is a complement to ethics laws. An ethics code identifies those areas in which agency officials set their sights higher than the bare minimum requirements of the law.

The values-based approach reflects the general distinction between the law and ethics. Fundamentally, “ethics” is obedience to the unenforceable.⁷ Laws, of course, are enforceable – typically by those other than local agency officials. Obedience to the unenforceable requires self-regulation in light of ethical values.⁸

⁴ Lewis, *The Ethics Challenge in Public Service*, at 143.

⁵ Kazman, Jane G. and Bonczek, Stephen J., *Ethics in Action: Leader’s Guide*, International City/County Management Association, 1999, at 97.

⁶ The concept of ethics codes defining how local officials behave when they are “at their best” is a theme that runs throughout the City of Santa Clara’s ground-breaking code of ethics and values. The city developed the code with the help of Dr. Thomas Shanks of the Markkula Center for Applied Ethics at the University of Santa Clara.

⁷ Early twentieth century English jurist John Fletcher Moulton, quoted in Kidder, Rushworth M., *How Good People Make Tough Choices*, Simon & Schuster: 1995 at 66.

⁸ Brousseau, Patricia L. “Ethical Dilemmas: Right versus Right,” in *The Ethics Edge*, International City/County Management Association: 1998, at 38.

ON ETHICS AND POLITICS

In a state study of local ethics ordinances, the authors observed:

Ethics and politics encourage different sets of behaviors. Ethics is concerned with moral duties and how a person should behave, while “all’s fair in love, war and politics” seems to have its followers. During most of American history, enforcement of ethical standards has relied on public disclosure and an informed electorate. It is a rough, imperfect arrangement.

Democracies are particularly reliant on public confidence to maintain their legitimacy. Declining public confidence in American governmental institutions, as reflected in public opinion polls, is one important reason that government ethics standards have become such a concern...

Questionable official behavior ranges along a continuum from bad judgment to unethical behavior to outright corruption.⁹

FURTHER LIMITS ON RULE-BASED CODES

“Never create by law what can be accomplished by morality.”

*– Charles-Louis de Secondat, Baron de Montesquieu,
17th/18th-Century French jurist and political philosopher*

In addition to the conceptual distinctions between ethics and the law described above, there are other reasons that this guide recommends a values-based approach. They are:

- California already has a complex set of ethics laws governing local official conduct; and
- It is unclear that rule-based systems achieve the goal of either encouraging ethical behavior or increasing public confidence.

Values-based ethics codes are premised on the notion that adherence to ethics laws is not enough to instill public trust in governmental institutions and those who serve in government.

⁹ See Wear Simmons, Charlene, Roland, Helen, Kelly-DeWitt, Jennifer, *Local Government Ethics Ordinances in California*, California Research Bureau: March 1998 at 3.

ETHICS LAWS IN CALIFORNIA

Local officials already must comply with an extensive set of laws that govern the ethical aspects of public service. These laws cover such areas as:

- Disclosure of personal economic interests;
- Receipt of loans, gifts, travel payments and honoraria;
- Campaign contributions;
- Conflicts of interest;
- Dual office-holding and incompatible offices; and
- Criminal misconduct in office.

There can be some benefit to supplementing these requirements at the local level – and there are gaps in the law. However, for many agencies, trying to adopt a comprehensive, rule-based ethics code will result in an overlay of two complex sets of laws. Moreover, trying to summarize existing state law (for example, with respect to conflicts of interest) risks creating inconsistencies.¹⁰ Put another way, an ethics code should not be viewed as a tutorial on the various laws relating to ethical conduct in office.

RESOURCES AVAILABLE ABOUT CALIFORNIA ETHICS LAWS

Familiarity with ethics laws is nonetheless important. The Institute for Local Self Government has prepared a summary of such laws called *A Local Official's Guide to Ethics Laws*. The guide is available online for free at www.ilsg.org/trust; it is also available for purchase from the League of California Cities' CityBooks Service (916/658-8257). The Institute also makes an instructional video available for a modest fee.

Moreover, there may be ways that local agencies can supplement the existing framework of state laws relating to ethics. Two areas, for example, are anti-nepotism policies and expense reimbursement policies. Materials relating to these types of local ethics laws are available from the Institute's website (www.ilsg.org/trust).

¹⁰ See Wear Simmons *et al.*, *Local Government Ethics Ordinances in California*, at 44 (suggesting that these conflicts may mean that the state should review local ethics codes).

DO ETHICS LAWS WORK?

Do ethics laws improve public trust? Two scholars have concluded, in the context of the federal government at least, that the web of ethics laws have not increased public trust in federal government officials.¹¹ They propose “deregulating” ethics, in the legalistic sense of the term, and focusing instead on acquainting those new to public service with the values associated with being an ethical public servant.¹² They also recommend focusing on the kinds of situations that can present ethical issues for public servants and how to deal with those situations.¹³

They also note that the law is “too blunt of an instrument” to assure proper behavior.¹⁴ They fault federal ethics policy for substituting formal regulations for the expectations of good conduct.¹⁵ Their quarrel is not with the goal of increasing governmental integrity, but in the means chosen to achieve that goal.¹⁶ They worry that law-based ethics policies are rooted in such a culture of distrust as to actually diminish public trust in government.¹⁷ They also worry that this culture of distrust in government risks creating a self-fulfilling prophecy in terms of the kinds of individuals that are attracted to public service.¹⁸

The Institute for Local Self Government believes that positive, values-based ethics codes can avoid many of these pitfalls.

¹¹ Mackenzie, G. Calvin & Hafken, Michael, *Scandal Proof: Do Ethics Laws Make Government Ethical?*, Brookings Institution Press: 2002 at 149-59.

¹² *Id.* at 164.

¹³ *Id.*

¹⁴ *Id.* at 172.

¹⁵ *Id.*

¹⁶ *Id.* at 174.

¹⁷ *Id.* at 176.

¹⁸ *Id.* at 177.



BRIGHT IDEA:

AN INCORPORATION-OF-LAWS-BY-REFERENCE APPROACH IN CODES

If compliance with laws is a salient ethics law issue in your jurisdiction, you can include a requirement in the agency's ethics code that commits people to comply with the law. The cities of Sunnyvale and Mountain View do this in their otherwise value-based codes. Here is sample language based on those codes:

Members will comply with the laws of the nation, the State of California and the [insert agency name] in the performance of their public duties. These laws include, but are not limited to: the United States and California constitutions; the [insert agency name] Charter [if applicable]; laws pertaining to conflicts of interest, election campaigns, financial disclosures, employer responsibilities and open processes of government; and [insert agency name] ordinances and policies.¹⁹

The Institute for Local Self Government provides instructional resources on ethics laws (see sidebar on page 6).²⁰

¹⁹ City of Sunnyvale, Code of Ethics for Members of Sunnyvale City Council, Boards and Commissions, adopted June 27, 1995 (section 2); City of Mountain View, City Council Personal Code of Conduct, adopted November 2002 (section 3.2.2) and available online at www.ilsg.org/trust.

²⁰ The lack of training available on ethics law was a criticism in the California Research Bureau report. See *Local Government Ethics Ordinances in California*, at 45 (suggesting that the Legislature mandate such training).

CHAPTER 2: MOTIVATIONS, OPPORTUNITIES AND RISKS



“Life is about not knowing, having to change, taking the moment and making the best of it, without knowing what’s going to happen next. Delicious ambiguity.”

– Gilda Radner, Actress and comedienne

MOTIVATIONS: THE GOOD, BAD AND UGLY

As discussed earlier, goals that are likely to engender support for the code effort include:

- Encouraging high standards of behavior by public officials;
- Increasing public confidence in the institutions that serve the public; and
- Assisting public officials with decision-making.²¹

If the goal of ethics code proponents is to embarrass their political rivals (a goal that would not likely be acknowledged in any event), the concept of an ethics code will be a non-starter. Such a goal will also tend to undermine public trust and confidence in the agency as opposed to building it. However, if the discussion tends to be heading in a direction that suggests politics is becoming a factor, it can be useful to remind the discussion participants about the core goals in adopting an ethics code.

There can be other, more subtle goals for a code that can be equally valuable to consider. They include inspiring and encouraging the code’s target audience to high principles of conduct. They can also include capturing the spirit or ethos of the agency and/or attempting to define and protect its culture.²²

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²¹ Zimmerman, J.S., “Ethics in Local Government.”

²² See Ethics Resource Center, The Ethics Toolkit, available online at www.ethics.org.

Being clear on goals is important, but so is being realistic about the time and effort it will take to achieve them. Adopting an ethics code will not, in and of itself, result in better ethical behavior. As Senator Adlai Stevenson observed when the United States Senate reviewed its code provisions in 1980: “If there are culprits in our midst, they are unlikely to be deterred by ethics codes.”²³ The code is part of an overall effort to foster an ethical culture within the agency – one that will not support the activities of the “culprits” that may or may not be in our midst.

As is wise before adopting any kind of policy, consider the pros and cons of taking action. Because the pros and cons will vary from one community to another, these are framed as opportunities and risks.

ENCOUNTERING RESISTANCE

“I never failed once. It just happened to be a 2000-step process.”

*– Thomas Edison (19th/20th-century American inventor),
responding to a reporter who asked how it felt to fail
2000 times before successfully inventing the light bulb*

There are going to be skeptics on your governing board, within the community and among the employees (if your agency’s code will also apply to them).

People may be concerned about an ethics code being used to criticize the agency unfairly. On divided boards, political rivals may think this is an effort to embarrass them or otherwise make them look bad before the public they serve. Employees may think that this is just the latest “flavor-of-the-month” management fad. The public may just think this is “window dressing” intended only to deflect criticism.

The task of proponents of an ethics code is to prove the skeptics wrong. The theory of this guide is that one can do this by:

- Charting a course of incremental change by first starting with an ethics code for the governing board;²⁴
- Starting with a relatively few values on which everyone agrees and making a concerted effort with respect to those;
- Demonstrating one’s commitment to the code by *not* using the effort to embarrass rivals; and
- Including implementation strategies – involving both individuals and the body as a whole – to convince the public and agency employees that the agency’s commitment to the code is genuine.

There will be setbacks, to be sure. The key is to learn from them and keep moving forward, with an eye on the long-term goals for the code. The successful implementation of an ethics code is a multiple year process that will span election cycles, budget crises, personnel changes and more.

²³ Lewis, *The Ethics Challenge in Public Service*, at 143.

²⁴ See Blanchard, Ken & O’Connor, Michael, *Managing By Values*, Barrett-Koehler Publishers: 1997 at 60-62, 129 (recommending that the success of the program requires an organization’s leaders to first work on themselves).

OPPORTUNITIES

Fundamentally, the process of adopting an ethics code offers the following opportunities for a local agency:

- An opportunity to create an environment in which ethical behavior is the norm and ethical considerations are routinely considered in evaluating alternative courses of action;
- An opportunity to demonstrate a commitment to ethics;
- An opportunity to establish priorities among competing values and identify those values that are particularly important in a community;
- An opportunity for collective reflection and discussion on the values that ought to form the basis of a public official's behavior and decision-making; and
- An opportunity to create a positive public identity for agency officials, which can lead to more public trust.

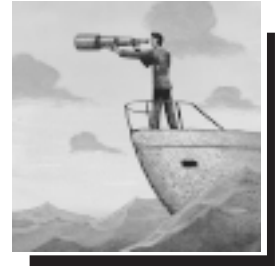
Ethics codes can also serve as a guide or reminder for proper behavior and as a focal point for discussion of ethical challenges faced by public officials.

The reason that these advantages are framed as “opportunities” is that, like so many things in life, whether an action achieves its full potential depends on how the action is accomplished. Achieving the advantages of adopting an ethics code requires good intentions and solid follow-through.

RISKS

Ethics codes adopted without good intentions and follow-through risk the following:

- Ethics codes can diminish public trust in government if officials' behavior is at odds with the values expressed in the code – the public will perceive the code as mere “window dressing.”
- Ethics codes can be used as an instrument to embarrass political rivals – a concept known as “vigilante ethics”
(*see sidebar on page 12*).



- The sustained effort required to implement an ethics code can exceed the resources available within an agency. This is particularly so if an agency decides to undertake an organization-wide ethics effort during the initial consideration of the code.

Local agencies also run the risk of adopting long and unwieldy codes out of a desire to demonstrate their commitment to ethics. This can diminish the code's ability to guide behavior and decision-making.

In addition, agency critics and unhappy employees may seize on an ethics code as a focal point for criticism of particular agency action. The charge is that the agency is not complying with its code.

Finally, it almost goes without saying that no ethics code – no matter how thoughtfully crafted – can provide all the answers to ethical dilemmas local officials may face. This is because ethical dilemmas typically are choices between competing sets of “right” values. In his book, *How Good People Make Tough Choices*, Dr. Rushworth Kidder observes that it is easy for an ethical person to resolve “right versus wrong” choices. What is difficult is choosing between competing sets of “right” values.²⁵

VIGILANTE ETHICS

There is an “unethical” use of ethics codes that needs to be acknowledged. This is when political opponents use ethics and the adoption of an ethics code as a means to embarrass or disadvantage political rivals. In *The Ethics Challenge in Public Service*, the author calls this “vigilante ethics” or the use of ethics to intimidate rather than inspire.²⁶

The political use of ethics obviously gives ethics a bad name. It undermines the efforts of those who truly care about promoting the consideration of ethical values in public service. It also undermines one of the key goals of adopting an ethics code – which is to foster public trust in the institution as a whole, not just those who promote a code.

In suggesting a process for adopting an ethics code and proposing a “menu” of possible topics for the code, this guide endeavors to minimize the opportunities for individuals to misuse the ethics code adoption process. Moreover, a values-based approach to codes is designed to focus on more universal principles of good behavior on which everyone should be able to agree. The process also is designed to allow everyone to contribute to the crafting of the agency's ethics code and demonstrate their commitment to values.

²⁵ Kidder, Rushworth M., *How Good People Make Tough Choices*, at 16-17.

²⁶ Lewis, *The Ethics Challenge in Public Service*, at 98.

CHAPTER 3: KEY DECISIONS IN THE CODE ADOPTION PROCESS



“Choose always the way that seems the best, however rough it may be. Custom will soon render it easy and agreeable.”

– Pythagoras

“It’s not hard to make decisions when you know what your values are.”

– Roy Disney

“When you come to a fork in the road ...Take it.”

– Yogi Berra

TO WHOM SHOULD THE CODE APPLY?

There are a number of possibilities:

- Elected officials;
- Elected and appointed officials (for example members of boards and commissions);
- Elected officials, appointed officials and top level staff; or
- Only agency staff.

There may be some elements of the code that one would want the public to adhere to – for example, if the code contained provisions relating to civility in public discourse. However, our recommendation is for local officials to first lead by example. This does not, of course, preclude officials from indicating that they have set certain standards for themselves and encourage others to do likewise.

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BRIGHT IDEA:

START AT THE TOP AND WORK DOWN

Because the process of adopting and implementing a code requires significant effort, adopt a code that first applies to the governing body. This enables the governing body to lead by example. It also streamlines the adoption process.

What this means in practice is for elected officials to first consider adopting a code that will govern their own behavior – and then make a demonstrated effort to conform their conduct to the code. This may be especially advisable if the agency has not had an ethics code in the past. This gives elected officials an opportunity to “walk the talk” and send a message that their commitment to ethics is indeed genuine.²⁷

Then, as part of the ongoing review process, consider expanding the code to apply to others’ behavior. In part, this relates to the next aspect of an effective code adoption process, which is to consult with all of those whose behavior will be governed by the code.

WHO SHOULD BE INVOLVED IN THE CODE ADOPTION PROCESS?

The answer to this question is driven by the scope of the code. For members of an organization to accept and be guided by the values reflected in an ethics code, they need to be part of the process of crafting the code.

For example, if all agency officials (elected and appointed officials and staff) will be subject to the code, then representatives from all these groups should participate. One city manager whose city adopted a citywide code recommends that organization-wide participation occur early on. Otherwise, it is easier for those not engaged in the code-crafting process to feel that the code does not apply to them. Non-involvement can also foster suspicion about the code.

Of course, launching an agency-wide discussion about ethics can be a daunting task. Another approach is to focus on getting an agency governing body to agree about what values should be included in the agency’s “initial” ethics code. The word “initial” is in quotes because the concept is that the code will be a living document that will be reviewed and updated periodically.

²⁷ “Bosses Set Bar for Ethics, Experts Say,” *Contra Costa Times*, June 9, 2003 (“Ethics must come from the top,” said Marshall Schminke, who teaches business ethics at the University of Central Florida and has written a book on the subject. “A person’s individual moral framework is only the third-most important factor in deciding what they’ll do. The most important is what does their boss do: Workers look to their boss first for cues on what constitutes moral behavior.”)

Expanding the discussion in subsequent versions of the code to include appointed officials and/or top level staff and revising the code to reflect their input can be part of the review and update process. Expanding the discussion even further to include the input of all staff can round out the process and demonstrate the agency's commitment to keeping the ethics code a living, breathing document.

Moreover, the process of engagement – no matter how big or small the group – should not simply be one of having people review a proposed draft ethics code, possibly based on codes adopted by other local agency jurisdictions. Instead, use a “menu approach” in which participants are asked to select among competing values and expressions of those values. A sample “menu” from which to work is included in chapter 4 of this guide.

Bottom-line: it is critical to the success of an ethics code that it responds to real-life situations. The code-adoption process should involve people in a meaningful way in a discussion of those situations.

AN ALTERNATIVE APPROACH: STAFF IN THE CITY OF SAN BUENAVENTURA INITIATE A CODE FOR THEMSELVES

In San Buenaventura, the staff initiated a process of adopting an ethics code that applied only to the city's 600-plus employees. The staff created an interdepartmental working group that developed the code. The group met every other Thursday, with everyone contributing to the final product. The preamble of the code is instructive:

As City employees, these core ethical principles serve as a central guide for our everyday decisions, behaviors and actions at work. By applying these ethical principles, we hope each employee will make more effective decisions with greater confidence.²⁸

The code goes on to list the values of respect, equitable treatment, impartiality, honesty, responsibility and trustworthiness. The code then explains what these values mean in the context of the staff's work. The staff also created an ethical checklist to guide decision-making.²⁹

²⁸ City of San Buenaventura Ethical Principles, available online at www.ilsg.org/trust.

²⁹ Examples of such a checklist are available online at www.ilsg.org/trust.

WHAT TOPICS SHOULD BE INCLUDED?

This, of course, is the \$64,000 question. In *How Good People Make Tough Choices*, Dr. Rushworth Kidder identifies eight universal ethical values that transcend cultures.³⁰ He also believes that standards for ethical conduct do not vary by context. In other words, there is not a separate set of ethical values appropriate for business, another for the public sector and yet another for one's personal life.

Of course, what can vary is how these values are applied in different contexts. For this reason, we recommend that public agencies develop the values portion of their ethics code in a three-part process:

1. Identification of core ethical values (for example, honesty, loyalty or compassion);
2. Discussion of what those values look like in the public service context; and
3. Examples of behavior reflecting/not reflecting those values.



Such a process will enable those involved in developing an agency's ethics code to fully engage in the discussion of what the agency's ethics code means. This approach is an adaptation of the one used by the Markkula Center for Applied Ethics and the City of Santa Clara to develop that city's code of ethics and values.

In this way, the code almost writes itself. This is why this guide provides a "menu" of examples of potential values that an agency may want to reflect in its ethics code, along with sample expressions of what those values mean in practice (*see chapter 4*).

Admittedly, at least three of the values ("community service," "proper use of public resources" and "vision") potentially have a more unique relevance to ethical aspects of public service. Inclusion of these values is based on the Institute's research on what values are commonly reflected in cutting-edge ethics codes. Of course, other values could be included based on what is important in a particular community/agency.

³⁰ Kidder, *How Good People Make Tough Choices*, at 91-92.



BRIGHT IDEA: RESIST THE IMPULSE TO BE TOO COMPREHENSIVE

In their enthusiasm for fostering a completely ethical environment in their agency, officials may be tempted to include all the values that are important to all officials in an agency's ethics code. Officials may be loathe to exclude any value – or expressions of what that value means in practice – out of a concern that the omission of a particular value means that the agency condones the opposite behavior. Such an impulse can also be the product of a desire to obtain buy-in from all whose conduct will be guided by the code.

These are natural inclinations. However, in crafting a code, officials may want to evaluate whether a too-comprehensive approach diminishes the utility of the code. A too-long or too-complex code is difficult to remember and apply. This undermines the objective of creating a code that provides a bona fide source of guidance for agency officials.

“Keep your code understandable,” cautions Mountain View Mayor Michael Kasperzak.

An alternative approach is to identify priority values, particularly for agencies adopting ethics codes for the first time. Three can be a good number in terms of ease of recall. If the agency focuses its attention on pursuing those values for the coming year, it can identify additional or alternative priority values as part of an annual review of its code. Ethics codes are living, growing documents – not one-shot efforts, and it is not necessary to include every possible ethical value in the first code.

WHAT ABOUT ACCOUNTABILITY?

What happens when someone disregards the values expressed in an agency's ethics code? This question comes up all the time, with the underlying question being “what is the point of having an ethics code if we are not going to enforce it?”

As it relates to elected official's behavior, the voters are the ultimate enforcers of the code. This is why it is so important that the code reflect community values. There are various ways to think about the accountability and enforcement issue.

SELF ENFORCEMENT

A values-based ethics code, like the kind of code suggested in this guide, truly does require “obedience to the unenforceable,” as discussed in chapter 1. This is particularly true for elected officials, inasmuch as our democratic system contemplates that the voters are the ultimate judges of whether an official's behavior is consistent with the community's values. This is why it is important to involve the community, as the ultimate stakeholder in the agency, in the process of developing an agency's ethics

code. It is also why this guide recommends that the agency consider mechanisms for soliciting public input on the ethics code as a threshold matter (*see “step 1” on page 22*) in the code adoption process.

Some local agencies’ ethics codes expressly acknowledge this phenomenon. Sample language is as follows:

This code of ethics expresses the standards of ethical conduct expected for members of the agency governing board [*include any other affected individuals*]. Members themselves have the primary responsibility to assure that ethical standards are understood and met and that the public can continue to have full confidence in the integrity of its government.³¹

As an additional measure of accountability, some agencies 1) include ethical standards in their candidate orientations (including boards and commissions), and 2) ask new members to sign the agency ethics code upon entering office.³²

THE POWER OF DISCUSSION AND PERSUASION

An ethics code is a set of agreed-upon values and behaviors that flow from those values. Officials can engage in honest but diplomatic discussion about whether a particular course of action is consistent with the agency’s adopted ethics code. The most constructive and productive way to initiate such a discussion is to frame the issue as a question (*see example on page 19*).

³¹ *See, e.g.*, City of Sunnyvale, Code of Ethics, Section 18; City of Mountain View, City Council Personal Code of Conduct (section 20) and available online at www.ilsg.org/trust.

³² *See, e.g.* Sunnyvale, Code of Ethics, Section 17; Mountain View, Section 19, and available online at www.ilsg.org/trust.

MAKING THE CODE REAL: EXAMPLE

It has been a lengthy board of supervisors meeting and there are still a number of items on the agenda to go. The chairperson, in a somewhat irritated fashion, suggests that testimony be cut off on the current agenda item. You are concerned about the people who made a special trip to the meeting to speak.

You say:

I am concerned that, if we cut off testimony at this point, we will be acting inconsistently with our ethics code that says we value and respect public input.

The chair replies:

I am troubled by that too. But I asked people who wanted to testify on this item not to repeat points that have already been made and the testimony is getting repetitive. I also feel I have an obligation to respect the interests of those who are here waiting to testify on other agenda items that we have not yet been able to get to. It's getting late and I know a number of them need to get home to their families.

You say:

I understand your concerns. How about if we ask if anyone has anything new to add before we cut off testimony? We could also ask that people be especially brief in consideration of those who are waiting to speak on other agenda items and the length of time we have already spent on this item.

The chair replies:

Okay. Does anyone who hasn't already spoken have anything to share that hasn't been covered already? We ask you to be brief and considerate of others who also want to participate in later parts of the agenda.

This kind of conversation, tied into the values in the county's ethics code, has reached a compromise resolution of whether to cut off testimony. It has also had the collateral effect of sensitizing the public to the impacts of their (potentially repetitive and long-winded) behavior on others like them.

The ethics code provides a starting point for good faith conversation on how to resolve concerns or issues.

By contrast, imagine how the conversation in the example would have gone if you had simply asserted that the chair's proposal to cut off discussion was "unethical" because it violated the county's value of respect for public input. Imagine not only the defensive and angry answer the chair would have been likely to give, but also what impression this kind of exchange would have had on the audience. Thus, the key, as one ethics expert advises, is to "condemn the sin, not the sinner."³³

The suggested approach requires thought and a certain degree of self-restraint (particularly if your energy level is also sagging after a long meeting) than simply accusing someone of acting inconsistently with the ethics code. Investing in such effort is part of your own personal commitment to the ethics code and having it make a positive difference for your agency. This is another opportunity to lead by example.

REPROVAL OR CENSURE

Some agencies provide enforcement measures in their policies. For example, the City of La Mesa's policy reads as follows:

Violations and Penalties. Any violation of this Ethics Policy by a member of the City Council shall constitute official misconduct if determined by an affirmative vote of three members of the City Council in an open and public meeting. In addition to any criminal or civil penalties provided by Federal, State or local law, any violation of this Ethics Policy shall constitute a cause for censure by City Council adoption of a Resolution of Censure.³⁴

³³ Hanson, Kirk O., "Confronting Unethical Conduct," *Association Management* (January, 2003).

³⁴ City of La Mesa, City of La Mesa Ethics Policy, adopted March 2003 (section 7) and available online at www.ilsg.org/trust.

Similarly, San Jose has a censure policy that defines “censure” as a punitive action that carries no fine or suspension of the rights of the council member as an elected official. Under the policy, censure is distinguished from “condemnation” of a council member’s actions, which expresses strong disapproval but is not punitive. The policy sets out detailed procedures to provide the accused council member with an opportunity to understand and respond to the criticisms against him or her.³⁵

When considering these kinds of enforcement policies, be sure to consult with one’s agency attorney about relevant legal considerations.³⁶



BRIGHT IDEA: THE POWER OF PRAISE

The “Character First!®” program developed by the nonprofit Character Training Institute emphasizes positive reinforcement or praise in its promotion of character issues.³⁷ It notes that there are three steps associated with offering praise:

1. Give the **definition** of the character quality;
2. Offer a **specific illustration** of how it was demonstrated; and
3. Explain the **benefit** to you and/or others.

This approach to positive reinforcement is another way agency officials can make ethics code provisions real.

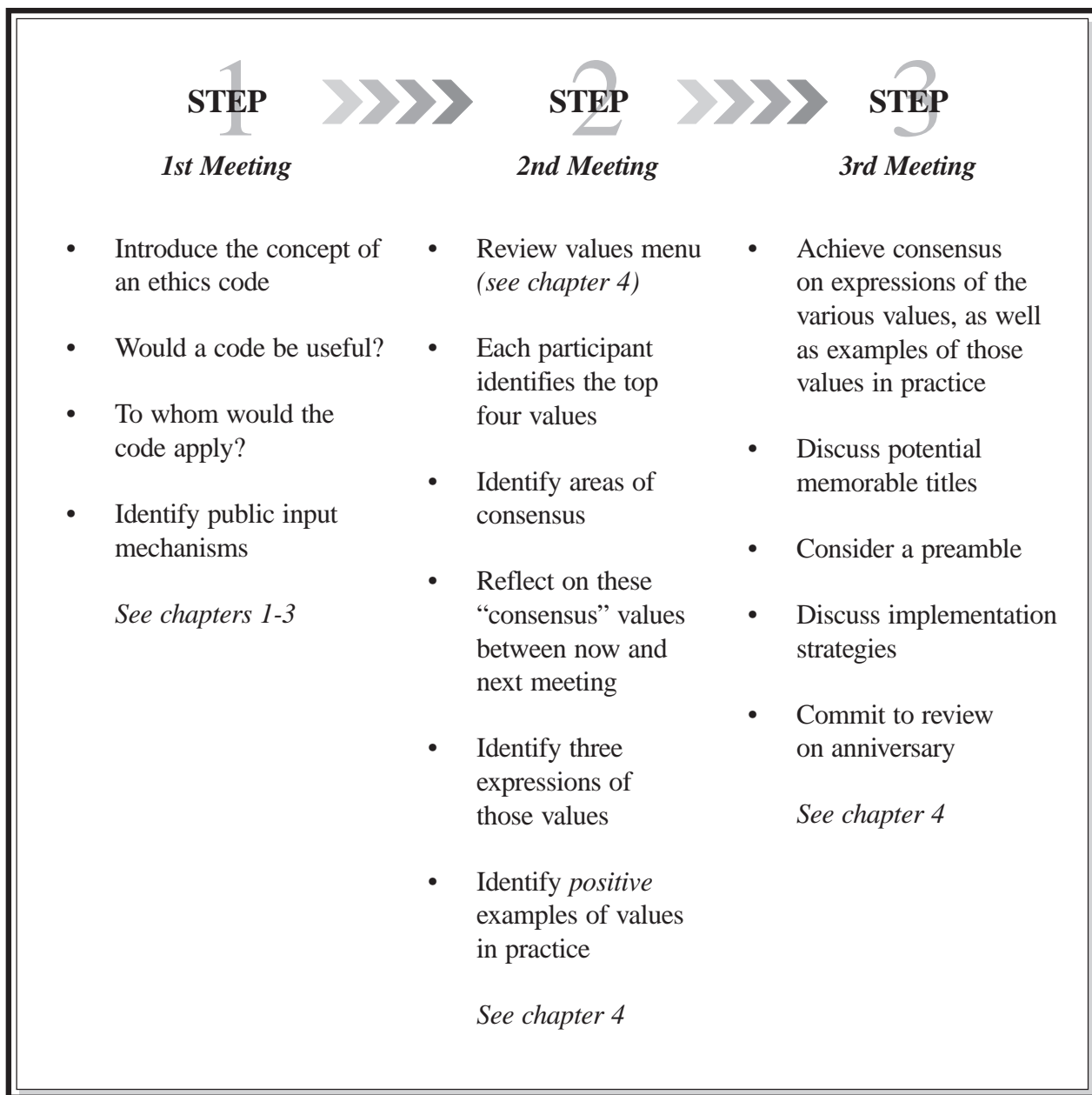
³⁵ City of San Jose, Censure Policy, November 1994 and available online at www.ilsg.org/trust.

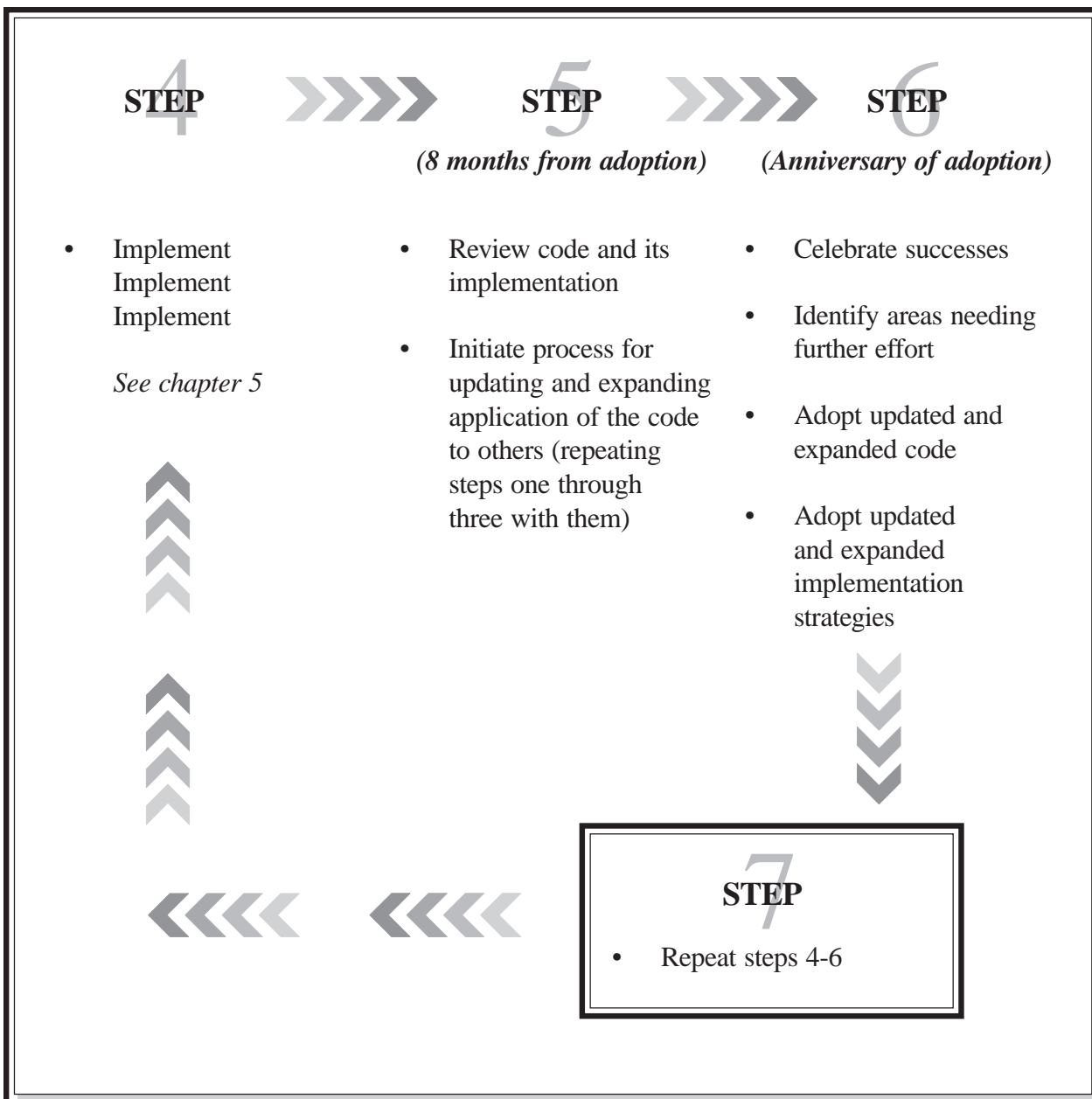
³⁶ This topic was covered at the 1995 City Attorneys Spring Conference, where James P. Jackson delivered a paper entitled “Coping with Intra-Council Conflicts.” Copies are available from the League of California Cities’ library (www.cacities.org), but should be reviewed for updates in the law.

³⁷ Character First! materials are available through www.characterfirst.com.

SUGGESTED ITERATIVE PROCESS FOR ADOPTING AN ETHICS CODE

This process can be adapted to successive governing board meetings or meetings with management and staff. Depending on the time available for the code adoption effort, some steps can be combined.





Step One (First Meeting)

- Introduce the concept of an ethics code – what it is, what it can and cannot achieve and the process of adopting one.
- Discuss whether agency officials think a code would be useful.
- Determine to whom the agency’s first code should apply.
- Identify the mechanisms by which public input in this process will be solicited.

Step Two (Second Meeting)

- Review the values menu (*see chapter 4*).
- Determine whether agency wants to focus on a limited number of key values (as we recommend) or have a more comprehensive approach.
- Ask participants whether there are any key values missing from the menu.
- Ask participants to identify the top four values that they think are most important in their public service.
- Identify areas of agreement on values and confirm these with the group.
- Ask participants to reflect on these “consensus” values before the next meeting, identifying three expressions of those values that seem most useful for the agency to focus on. Remind the group that they can add or modify expressions of values listed on the menu. Also ask them to identify positive examples of the expressions of values in practice.

Step Three (Third Meeting)

- After preliminary discussion, use the “dot” or similar process to achieve consensus on the expressions of the various values, as well as examples of those values in practice (*see sidebar below*).
- Direct staff to write code up based on the areas of consensus about 1) which values should be in the first version of the code, 2) what expressions of those values also should be in the code, and 3) examples of those values.
- Discuss potential memorable titles³⁸ (for example, “The Way We Serve the Public” “_____ [insert agency name]’s Commitment to Character”) for the code. Consider whether the code would be enhanced by a preamble that refers to the public agency’s goals and commitments in adopting an ethics code. (*For a sample, see chapter 4*)
- Discuss implementation strategies and timelines (*see chapter 5*).



BRIGHT IDEA: USE ADHESIVE DOTS

A handy and fairly expeditious way of handling this selection process is to combine discussion with a “dot” system in which participants are asked to identify their four top values by adhering adhesive dots to a board displaying the list of potential values. Include a prohibition against individuals “power-dotting,” or placing multiple dots by one value.

³⁸ See Ethics Resource Center, The Ethics Toolkit, available online at www.ethics.org.

Step Four (Next Meeting)

- Adopt final version of the code.

Step Five (Ensuing Year)

- Implement, implement, implement! (*see chapter 5*).

Step Six (Eight Months from Code Adoption)

- Review code and its implementation.
- Initiate process for updating and expanding application of the code to others, if appropriate (repeating steps one through three with them).

Step Seven (One Year Anniversary)

- Celebrate successes.
- Identify areas needing further effort.
- Adopt updated and expanded code.
- Adopt updated and expanded implementation strategies.

Step Eight (Second Year Anniversary and Thereafter)

- Repeat steps four through six.

A NOTE ABOUT THE IMPORTANCE OF IMPLEMENTATION STRATEGIES

As the iterative suggested process suggests, adoption of the code is only the first step. To make a difference and achieve its goals, the code needs an implementation strategy. Making a commitment to implement one's ethics code is also a "key decision" in the code adoption process – as is actually implementing the code. Chapter 5 covers the topic of implementation in more detail.

CHAPTER 4: ETHICS CODE MENU



“It is strangely absurd to suppose that a million of human beings, collected together, are not under the same moral laws which bind each of them separately.”

– Thomas Jefferson

WHOSE VALUES?

Whenever one proposes that local officials engage in a conversation about values there is some likelihood that would-be participants in the discussion will take offense and view this as an effort to “impose” one group’s values on another. An unwillingness to stand up for values, according to Dr. Rushworth Kidder, has created a sort of “moral relativism” that causes us to sink to the lowest common denominator in terms of ethical conduct.³⁹

Dr. Kidder has dissected this phenomenon and concludes that there is a core set of human values that transcend cultural, socioeconomic and national boundaries.⁴⁰ These values are:

- Honesty;
- Fairness;
- Respect;
- Compassion; and
- Responsibility

Many of the ethical dilemmas that local officials face can be characterized as conflicts between two “right” values. An example is the discomfort that one feels when a friend or political supporter seeks approval for a project that may not be in the best interests of the entire community. This is a conflict between one’s loyalty to a friend or supporter and one’s obligations as a public official to act in the community’s best interests.

³⁹ Kidder, *How Good People Make Tough Choices*, at 96 (referring to research by Stace, Walter T., *The Concept of Morals*, The MacMillan Company: 1937). See also *The Ethics Edge*, at 37-38.

⁴⁰ See Kidder, *How Good People Make Tough Choices*, at 77-108.

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One advantage of adopting an ethics code is that it offers the opportunity for local officials to have a conversation about which values take precedence over other values in that community.

VALUES SELECTION PROCESS

Selecting which values will be reflected in your agency's ethics code is a key task. The following worksheet is designed to assist with this undertaking by identifying core ethical values and how each value should shape behavior.

The suggested process for using this worksheet (also described at the end of chapter 3) is to:

- Review the values menu.
- Determine whether the agency wants to focus on a limited number of key values or have a more comprehensive approach.
- Ask participants whether there are any key values missing from the menu.
- Ask participants to identify the top four values that they think are most important in their public service.
- Identify areas of consensus and check with the group to make sure the result reflects their sense of consensus. For example, it may be that there is a strong degree of consensus on only three values; conversely, there may be a strong degree of consensus on five values.
- Ask participants to reflect on these “consensus” values before the next meeting, identifying three expressions of those values that seem most useful for the agency to focus on. Remind the group that they can add or modify expressions of values listed on the menu. Also ask them to identify positive expressions of values in practice.
- After preliminary discussion, use the “dot” or similar process to achieve consensus on the expressions of the various values, as well as examples of those values in practice.

We suggest that these processes occur over multiple meetings, so participants have an opportunity to reflect on the values that are most important to your agency and how those values are best expressed in terms of behavioral practices.

“To make the code of conduct work, there must be consensus,” says Sunnyvale council member Jack Walker, who chaired the subcommittee that drafted Sunnyvale’s Code of Conduct for Elected Officials.

Note that the worksheet does not contain suggested examples. This is to assure that those using the worksheet truly contribute their own insights to the process – something that is necessary to make the code adoption process reflect the specifics of a given agency. Here, though, is an illustration of three values, expressions and examples, to help prime the discussion pump.

Illustration of Three Values, Expressions and Examples

Core Value	Potential Expressions/ What This Value Looks Like	Examples of When This Issue Arises
Community Service/ Pursuit of public’s interests as opposed to personal interests	I do not accept gifts, services or other special considerations because of my public position.	When someone invites me to dinner because of my position, I will either decline or pay for my part of the meal.
Respect for fellow officials, staff and the public	I treat my fellow officials, staff and the public with courtesy and civility, even when we disagree on what is best for the community.	During meetings, I will listen actively, attentively and politely to all speakers, even those that are arguing against the position I believe is right.
Vision	I consider the broader regional and statewide implications of the agency’s decisions and issues.	When I sit on regional boards as a representative of my agency, I balance what will serve my jurisdiction’s interests best against what will maximize benefits for those served by the regional board as a whole.

ETHICS CODE MENU/WORKSHEET

INSTRUCTIONS TO USERS:

Review

- 1) Review *values* menu.
Are any values that are important to public service missing?

Mark

- 2) Mark the box next to the *four values* you think are most important for public service.

The group will have a discussion on which values belong in the agency's code.

Review

- 3) For the "consensus" values, review "*expressions*" column. *Are any values that are important to public service missing?*

Mark

- 4) Mark the box next to the three expressions of each value you think are most important for your jurisdiction.

The group will have a discussion on which expressions belong in the agency's code.

Write-in

- 5) Write-in *positive examples* of this kind of behavior in action.

ETHICS CODE MENU/WORKSHEET, CONT.



Which four values are most important?

- Integrity/Honesty
- Community service/pursuit of public's interests as opposed to personal interests/responsibilities
- Fairness
- Respect for fellow officials, staff and the public
- Compassion
- Proper efficient use of public resources (another form of responsibility)
- Loyalty to the Agency
- Vision

ETHICS CODE MENU/WORKSHEET, CONT.
Integrity/Honesty


*Which three expressions
are most important?*

- I am honest with my fellow elected officials, the public and others.
- I do not promise what I believe to be unrealistic.
- I am prepared to make unpopular decisions when my sense of the public's best interests requires it.
- I take responsibility for my actions, even when it is uncomfortable to do so.
- I credit others' contributions to moving our community's interests forward.
- I do not knowingly use false or inaccurate information to support my position or views.
- I do not leave false impressions.
- I support ethics within my agency.
- I disclose suspected instances of corruption to the appropriate authorities.



*Write in positive examples of when
the three checked issues arise.*

ETHICS CODE MENU/WORKSHEET, CONT.

Community service/pursuit of public’s interests as opposed to personal interests/responsibilities



Which three expressions are most important?



Write in positive examples of when the three checked issues arise.

- I do not accept gifts, services or other special considerations because of my public position.
- I refrain from any action that might appear to compromise my independent judgment.
- I support merit-based processes for the award of public employment and public contracts.
- I excuse myself from participating in decisions when my or my family’s financial interests may be affected by my agency’s actions.
- I do not use information that I acquire in my public capacity for personal advantage.
- Consistent with my role as a steward of the public trust, I do not represent third parties’ interest before either my agency or those of neighboring jurisdictions.
- I do not accept gifts, services or other special considerations because of my public position.

ETHICS CODE MENU/WORKSHEET, CONT.

Fairness



Which three expressions are most important?



Write in positive examples of when the three checked issues arise.

- I support the public’s right to know and participate in the conduct of the public’s business.
- I am impartial when making decisions, avoiding the temptation to favor those who have supported me and disfavor those who have not.
- I promote non-discrimination in public agency decisionmaking.
- I recognize that I am an agent for the democratic process, not the owner of authority.
- I provide services at or above established standards without favoritism or prejudice.
- I will promote meaningful public involvement in the agency’s decision-making processes.
- I treat all persons, claims and transactions in a fair and equitable manner.
- If I receive substantive information that is relevant to a matter under consideration from sources outside the public decision-making process, I publicly share it with my fellow governing board members and staff.
- I make decisions based on the merits of the issue.

ETHICS CODE MENU/WORKSHEET, CONT.

Respect for fellow officials, staff and the public



Which three expressions are most important?



Write in positive examples of when the three checked issues arise.

- I treat my fellow officials, staff and the public with patience, courtesy and civility, even when we disagree on what is best for the community.
- I focus on the merits in discussions of issues, not personalities, character or motivations.
- I respect others' time by coming to meetings prepared and offering observations only when I believe it will move the discussion forward.
- I work towards consensus building and gain value from diverse opinions.
- I make decisions and recommendations based upon research and facts, taking into consideration short and long-term goals.
- I respect the distinction between the role of office holder and staff.
- I follow through on my commitments, keeping others informed, and responding in a timely fashion.
- I am approachable, open-minded and willing to participate in dialog and I work to convey this to others.

(continued on next page)

ETHICS CODE MENU/WORKSHEET, CONT.

Respect for fellow officials, staff and the public, continued





Which three expressions are most important?

- I engage in effective two-way communication by listening carefully, asking questions, and determining an appropriate response that adds value to conversations.
- In my interactions with constituents, I am interested, engaged, and responsive.
- I involve staff in meetings with individuals, those with business before the agency, officials from other agencies and legislators to ensure proper staff support and to keep staff informed.
- I support a positive work environment for agency staff and others who serve the agency.
- When campaigning, I avoid personal attacks on issues unrelated to my fellow candidates' ability to discharge the duties of the office that we both seek.



Write in positive examples of when the three checked issues arise.

ETHICS CODE MENU/WORKSHEET, CONT.

Compassion	
 <i>Which three expressions are most important?</i>	 <i>Write in positive examples of when the three checked issues arise.</i>
<ul style="list-style-type: none"> <input type="checkbox"/> I recognize government’s responsibilities to society’s less fortunate. <input type="checkbox"/> I am sensitive to the fact that some people in the community are intimidated by public officials and public agencies and try to make their interactions with our agency as stress-free as possible. <input type="checkbox"/> I convey the agency’s care for and commitment to its community members. <input type="checkbox"/> I am attuned to, and care about, the needs and issues of citizens, public officials and agency workers. 	This area is intentionally left blank for user input

ETHICS CODE MENU/WORKSHEET, CONT.

Proper/efficient use of public resources (another form of responsibility)



*Which three expressions
are most important?*



*Write in positive examples of when
the three checked issues arise.*

- I recognize that the responsibility for making both large and small decisions about the use of public resources is a public trust.
- I actively promote the efficient and economical use of public resources.
- I do not use public resources, such as agency staff time, equipment, supplies or facilities, for private gain or personal purposes.
- I make decisions after prudent consideration of their financial impact, taking into account the long-term financial needs of the agency, especially its financial stability.
- I make decisions on hiring and contracting based on merit and value to the agency, rather than favoritism and/or family or personal relationships.
- I demonstrate concern for the proper use of agency assets (such as personnel, time, property, equipment, funds) and follow established procedures.
- I provide friendly, receptive, courteous service to everyone.
- I make good financial decisions that seek to preserve programs and services for agency residents.

ETHICS CODE MENU/WORKSHEET, CONT.

Loyalty to the Agency



Which three expressions are most important?



Write in positive examples of when the three checked issues arise.

- I respect the confidentiality of information concerning the agency's property, personnel or affairs.
- I do not disclose confidential information without proper legal authorization.
- I represent the official policies or positions of the agency to the best of my ability when authorized to do so.
- When presenting my individual opinions and positions, I explicitly state that my opinions do not represent the agency's position and I will not allow the inference that they do.

ETHICS CODE MENU/WORKSHEET, CONT.**Vision**

*Which three expressions
are most important?*

- I exhibit a proactive, innovative approach to setting goals and conducting the agency's business.
- I display a style that maintains consistent standards, but is also sensitive to the need for compromise, "thinking outside the box," and improving existing paradigms when necessary.
- I promote intelligent and thoughtful innovation in order to forward the agency's policy agenda and agency services.
- I consider the broader regional and statewide implications of the agency's decisions and issues.



*Write in positive examples of when
the three checked issues arise.*

Once the areas of consensus around values, expressions of values and examples are identified, staff can be directed to write up the code based on the menu selections for final adoption at the next meeting. The code will contain the four values the agency has selected, the three expressions of those values and three examples of the expressions in action.

PREAMBLES

A preamble is the introduction to the code. It addresses these questions:

- Why is the code important?
- What is the code's purpose?



BRIGHT IDEA: OTHER USEFUL CODE PROVISIONS

Two other code provisions to consider are:

- A requirement that affected officials sign the code; and
- An annual review.

Such provisions make the commitment more public and more formal.

Here is sample language for each, based on the provisions of Sunnyvale's code, which are included in an "implementation" section⁴¹:

Members entering office will sign a statement affirming that they have read and understood this code.

This code will be annually reviewed. The *[insert governing board name]* shall consider recommendations for updating the code as necessary.

⁴¹ See City of Sunnyvale, Code of Ethics, Section 17.

- To whom does the code apply?
- What will happen as a result of this code?

Here is sample preamble language:

The effective operation of democratic institutions requires that public officials enjoy the trust and confidence of the individuals and businesses they serve. Accordingly, *[insert agency name]* has adopted this code to:

1. Encourage the highest standards of behavior by *[insert agency name]* officials;
2. Promote and maintain the public's trust and confidence in *[insert agency name]*; and
3. Provide an ongoing source of guidance to *[insert agency name]* officials in their day-to-day service to *[insert agency name]*.

To this end, the *[insert agency governing body name]* has adopted this code of ethics for *[describe whose conduct will be governed by the code, for example, governing body members, members of boards and commissions, and/or staff]*. As part of their service to *[insert agency name]*, these individuals agree to understand how this code applies to them and practice the values in the code in their day-to-day service to *[insert agency name]*.

CHAPTER 5:

IMPLEMENTATION ISSUES



“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*

MAKING THE CODE REAL: IMPLEMENTATION STRATEGIES

Adoption of the code is only the first step. To make a difference and to achieve its goals, the code needs an implementation strategy. Some of the questions to ask when designing an implementation strategy include:

- How should the code be disseminated? Can it be put on bookmarks, plaques, pocket cards, posters, the agency’s website, etc.? Should there be a media release?
- Are there elements that are useful to review at certain points in the conduct of the agency’s business? (For example, one northern California city reminds itself of its civility values at each meeting.)
- Is a leadership letter appropriate? (*see sidebar on page 45*)
- To ensure the future relevance and validity of the code, how can the provisions of the code be incorporated into orientation programs and other agency training efforts?
- Should the code be translated into all major community languages?
- If the agency begins its meetings with non-sectarian invocations,⁴² do such invocations offer an opportunity to obtain others’ assistance in reflecting upon on one or more of the agency’s core values?

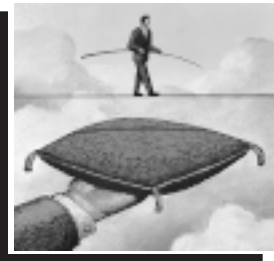
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⁴² “Sectarian” invocations have recently been ruled unconstitutional. *See Rubin v. City of Burbank*, 101 Cal. App. 4th 1194, 124 Cal. Rptr. 2d 867 (2002), rev. denied, Dec. 18, 2002, cert. denied, ___ U.S. ___ (2003). Asking that an invocation focus on one of the agency’s core value may be one way of complying with the court’s decision. For more analysis of the decision, see the article at page 8 of the July 2003 issue of *Western City* magazine, also available online at www.westerncity.com.

- To the extent that the code applies to employees, how can ethical considerations be incorporated into the hiring and evaluation process?
- If the code applies to employees, should the code be attached to the offer of employment provided new employees?
- Should copies of the code be sent to those who do business with the agency, along with a request to be notified if the agency fails to observe any of the values?
- What resources can the agency make available to those whose conduct is the subject of the code? Peer counseling? “Dear Abby” type questions in the employee newsletter? Web-based resources?
- What steps can individuals and the agency take to create a “culture of recognition” surrounding the agency’s ethics code?
- During election season, would it be helpful to have a community forum about how the city’s values and ethics code translate into ethical campaign practices?
- When should the code be reviewed?

Another useful implementation strategy to consider is an evaluation component. How has the ethics code been used? Has it affected the ethical culture of the organization? If so, in what ways? If not, what have been the impediments? How can the impediments be overcome? Surveys and interviews can help in such evaluations.





BRIGHT IDEA: LEADERSHIP LETTERS

Leadership letters are another implementation strategy to consider.⁴³ A leadership letter is a communication from the relevant agency leadership that explains the code and demonstrates commitment from the top to create an ethical organizational culture. A leadership letter from all governing board members reinforces the role of the code as an ethics pledge. It is another opportunity for each member of the governing body to affirm his or her support for the code and encourage others to do likewise.

A leadership letter can convey why the agency has adopted an ethics code and why it focused on the values it did. It should also address how the code came to be and the process behind it.

To summarize, some questions to consider in drafting a leadership letter include:

- Why a code? Why now?
- What is the ethical context in which the organization operates?
- What are some of the challenges that elected and appointed officials, management, employees and members face, and how can this ethics code be a helpful document for people at all levels?
- What are the major trends facing similar local agencies that will impact and affect the code and its implementation?
- Might this code set an example for other local agencies?

In some cases, it may be advisable to refer to an agency's past ethical problems, particularly if they are well known. This can be opportunity to be straightforward about the reason for the code.

“SELF FIRST”

“You must be the change you wish to see in the world.”

– Mahatma Gandhi

“Few things are harder to put up with than the annoyance of a good example.”

– Mark Twain, *Pudd'nhead Wilson* (1893)

There seems to be a consensus – if an official earnestly desires others to act differently, that official has to act differently. This concept is expressed as the “self first” rule in the management book called *Managing By Values*.⁴⁴ Even if you feel you are not “the problem” at your agency, demonstrably modify your behaviors to reflect the values expressed by your agency's ethics code. As ethicist Michael Josephson observes, ethics is such that “we don't have to be sick to get better.”⁴⁵

⁴³ See Ethics Resource Center, The Ethics Toolkit, available online at www.ethics.org.

⁴⁴ Blanchard & O'Connor, *Managing By Values*, at 61.

⁴⁵ For more about Michael Josephson's work, visit www.josephsoninstitute.org.

What steps can an official take to promote awareness of ethical values within his or her agency? One is an effort to explain the official's decisions, large and small, in terms of the values in the agency's code.

MAKING THE CODE REAL: EXAMPLE

It has been a long and tense city council meeting. Before the council is a controversial affordable housing project that the local neighborhood passionately opposes. You feel that some council-members are pandering to that opposition, particularly since they know that the city is at serious risk for a lawsuit by affordable housing advocates if the project is turned down. In explaining your decision to vote in favor of the project, you say:

“This is a terribly difficult decision. Accordingly, I consulted our city’s values code. Although I deeply respect the depth of the neighbors’ concerns about the potential impact of this development and have listened carefully to the views expressed, I also have committed to be a prudent steward of the public’s resources. The law gives the developer the right to build this project and my view is that it would not be a wise use of our limited public resources to get involved in a lawsuit over this project. There also is a fairness issue, which is that our teachers, our police officers, our food service workers and our young people just starting out ought to be able to purchase a home in our community. Accordingly, I am going to vote “yes” on this project and then commit to work very hard with the developer and city staff to minimize the likelihood that this project will have the adverse impacts the neighbors fear. I know this is not the politically popular decision to make, but it is the decision I feel I must make ethically, based on all the information before me.

Then, of course, you must follow-through on this commitment to work with the developer and staff (possibly by setting up a consultative process with the neighborhood group) to address the concerns about impacts (demonstrating the ethical value of following-through on your commitments). In this case, you are “talking-the-walk” of ethical values by explaining your decision in terms of those values.

Will the project opponents stand up and cheer your decision? Probably not. But that is fundamentally what ethics is, which is making difficult decisions when there may be a personal cost to you.

CREATING A CULTURE OF RECOGNITION

Some governing boards are lucky. Their members get along, treat each other with respect and work through disagreements based on the mutual understanding that everyone has the community's best interests at heart. Other governing boards are beset with animosity, in which meetings degenerate into personal jibes and attacks.

Although your close supporters may be encouraging you to act on your gladiator instincts and come out swinging at every meeting, consider whether such a strategy is really promoting confidence in your agency by the public as a whole. Polling data suggests that the public really does want public officials to work together to solve the agency's problems and is growing tired of the politics of the personal attack.⁴⁶

Employing the "self-first" approach, think about how you can acknowledge the ways your colleagues apply the values in your agency's code. Such acknowledgement can be as simple as privately complimenting someone for the restraint and respect they showed during a particularly contentious discussion.

⁴⁶ This statement is based on polling relating to campaign practices. That polling shows, for example:

- 86% of poll respondents believe unfair attack campaigning is unethical
- 81% of poll respondents believe attack-oriented campaigning is undermining and damaging our democracy
- 76% of poll respondents think negative campaigning produces less ethical and trustworthy leaders
- 82% of poll respondents think negative campaigning makes people less likely to vote
- 88% of poll respondents think candidates should agree not to make any personal attacks
- 71% of poll respondents think their elected officials have a different set of values than they do
- 53% of poll respondents think that most elected officials don't know right from wrong
- Only 42% of poll respondents trust the government to do what is right
- 55% of poll respondents believe that all or most candidates twist the truth to get elected

Source: *Institute for Global Ethics bipartisan survey, conducted by Lake, Snell, Perry & Associates, Inc. and Deardourff/The Media Company. Respondents were asked in June 2002 about their attitudes concerning candidates and campaigns. View the full poll at www.campaignconduct.org.*

Statewide surveys conducted by the Public Policy Institute of California in 1998 found that 44% of Californians considered elected officials to be untrustworthy. However, when asked which level of government is best at solving their problems, people had more confidence in city (27%) and state government (26%) than in the federal (20%) or county government (18%). See Baldassare, Mark, *California in the New Millennium*, University of California Press/Public Policy Institute of California, 2000, at 44-45.

Review your agency's ethics codes and try to identify which values each of your colleagues follow most strongly and then watch for ways that they act on that value. It may or may not be appropriate to recognize such efforts publicly (you don't want to appear patronizing), but being alert to such issues will give you a fuller appreciation of the qualities that individual brings to the board.

If your ethics code applies to boards and commissions and/or staff, talk with your management team about ways to further reinforce a culture of recognition with respect to the ethics code. In *Managing By Values*, the authors describe situations in which companies recognize "success stories" in which an employee's behavior has exemplified a particular value.⁴⁷ Some companies offer certificates; others have a "Wall of Fame" in which employees' good works are recognized. Whatever makes sense for your jurisdiction, think about ways to recognize and reinforce what people are doing right.



BRIGHT IDEA: SELECT VALUES FOR PARTICULAR FOCUS

One technique for reinforcing compliance with the code is to select a value for particular focus and discussion during a meeting. For example, one city manager describes how she incorporated the city's fiscal responsibility discussion into a staff meeting on budget matters. The staff incorporated the city's values into a series of budget principles to help guide the council's budget approval process. The process of integrating the city's values into a difficult decision-making process helped make the ethics code real and was well received.

⁴⁷ See Blanchard and O'Connor, *Managing By Values*, chapter VI.

MAKING THE CODE REAL: EXAMPLE

A colleague of yours is very active in an association of agencies like yours. She diligently attends conferences organized by the association and brings conference materials back to share with her colleagues. She also makes a point of making a brief report about the conference at the appropriate point in meetings of your agency's governing board. After one such report, you say:

I really appreciate these reports. It helps both the public and me understand what our agency gets out of our participation in this association and attending these conferences [value: careful use of public resources]. Receiving the conference materials also helps me learn, even though I was not able to attend the conference. [values: more careful use of public resources and concern for colleagues] It also means our agency is part of a larger discussion of issues affecting our ability to serve our community at the state/regional level. [values: vision/leadership]

The goal is to create a culture of ethics built around the values that are important to the agency and then create a culture of recognition for the everyday ways that individuals put those values into action.

If your agency's code applies to employees, work with your top management to reinforce a culture of recognition by celebrating the efforts of those employees whose actions reflect the agency's values. In addition to day-to-day recognition, such recognition should be a part of each employees' annual performance review, just as the degree to which supervisors promote a culture of recognition should be part of their annual performance review.



BRIGHT IDEA: CORE VALUES WORKSHEET FOR GROUPS

The City of Santa Clara has developed a worksheet to assist with training employee workgroups on the city's ethics code. The worksheet lists the values and the expressions (columns one and two on the values menu in chapter 4) out on the worksheet and then asks employees to rate (on a scale of one to four, with one being very high and four being very low):

- How important a value is to their particular job; and
- Their perceived skill level on that value.

The worksheet then asks employees to brainstorm ways to develop skills in a particular area. These worksheets prepare the employees for the discussions in the training sessions.



BRIGHT IDEA:

USING THE REVIEW PROCESS TO BROADEN CODE APPLICATION

The review process can also be a springboard for expanding the code's application to additional people. The agency's governing board can direct staff to begin the consultation process so that the suggested modifications to the code will be ready by the code's first anniversary.

Irrespective of whether an expansion of the code is planned, the agency should commit to an abbreviated version of the code adoption process as part of an annual review of the code. This review can also include community and self-assessment on how the agency performed in conforming their conduct to the values expressed by the code.

RECRUIT WITH ETHICS IN MIND

If your agency's code applies to board and commission appointees and/or staff, include ethics issues in the selection process. Some ways to do this include:

- **Refer to the Agency's Code in the Application Materials.** This highlights the importance of the code to the agency.
- **Interview for Ethics.** In the interview, describe a scenario relevant to the position in question that implicates one or more of the values in the agency's code. Ask the applicant how he or she would analyze the situation. Does the applicant recognize the question as presenting ethical issues? Does the applicant make reference to the agency's code in the applicant's response?
- **Sign the Code upon Joining the Team.** Include the code along with a signature line in the various documents an individual is asked to fill out after having been selected (*see also section on training, below*).

By highlighting the importance of ethics during the recruitment process, the agency underscores the agency's commitment to its code. This also helps the agency identify those potential appointees and employees who will readily embrace the values in the agency's code. It will also help the agency identify those who will help the agency make the code a success.

TRAINING

If a person's conduct is governed by the agency's code, that individual should receive training on the code, either upon the code's adoption or upon joining the agency team. "Ethics training is critical," says Art Madrid, Mayor of La Mesa.

Two relatively practical training options include:

- Have the individual review the code and think of specific ways it will affect his or her service to the agency (a modified version of the exercise agency officials went through in adopting the code, see the third column on the values menu in chapter 4); and

- Develop scenarios/case studies for ethical dilemmas implicating the values in the code and then having small group discussions on how the dilemma should be resolved.

The goal of the training is to relate the concepts in the code to the day-to-day realities of the individual receiving the training. As with any adult learning experience, the more interactive and engaging the experience is, the more effective the training will be.

Some private sector companies use online training on their ethics codes; other companies offer online training services on their ethics codes.⁴⁸

THE IMPORTANCE OF AN ANNUAL REVIEW

Reviewing the code annually serves a number of critical purposes in the implementation strategy, according to Jennifer Sparacino, Santa Clara City Manager. She notes that the review process is an opportunity to:

- Increase people's awareness of the code;
- Engender enthusiasm for the code;
- Broaden the number of people involved with the code; and
- Keep the code a vital document.

The annual review process is also an opportunity to celebrate successes under the code.



BRIGHT IDEA:

LOCAL ETHICS CODE AND THE CAMPAIGN CONDUCT CODE IN CANDIDATE ORIENTATIONS

A number of local agencies conduct candidate briefings or orientations. Including a segment on the agency's code and the relationship of the state's "Code of Fair Campaign Practices" to the local code will highlight your agency's commitment to ethics in both campaigning and public service. It also highlights the ethics-in-political-campaigning issue for any media attending the orientation.

The goal is to help the media and the public to be better equipped to ask the question of whether candidates are "fit" for the office they seek based on whether they demonstrate commitment to the community's prevailing ethical norms in public service.

⁴⁸ Winter, Gretchen A. and Simon, David J., "Code Blue, Code Blue: Breathing Life into Your Company's Code of Conduct," *ACCA Docket*, November/December 2002, at 72, 82-84.

PROMOTING THE CODE WITHIN THE COMMUNITY

Once the code has been adopted, think about ways to publicize the code to the community and those who regularly interact with your agency.

- Post the code prominently on your agency’s website;
- Talk up the code in meetings with community leaders and in presentations to service clubs; and
- Distribute the code to those who do business with the city, for example in attachments to requests for proposals or as a general mailing to all vendors expressing the agency’s appreciation for the opportunity to do business with vendors.

These efforts provide positive exposure for the agency’s efforts in the ethics area. They also enable the community to hold agency officials accountable for conforming their conduct to the code.

A SPECIAL NOTE ABOUT ETHICS CODES AND CAMPAIGNS

*Political interest [can] never be separated in the long run
from moral right.*

– Thomas Jefferson

What about ethics codes as they relate to local campaigning? After an agency has adopted its code, it may want to determine whether some of the values and expressions of those values are relevant to campaigns. The City of Santa Clara did this and conducted a number of workshops about its ethics code and its relevance to campaign conduct for candidates, their managers and supporters.⁴⁹ The city reports that acquainting candidates with the city’s values produced good results in terms of a more positive campaign with fewer personal attacks.

⁴⁹ Santa Clara’s work in this regard was featured in the December 2002 issue of *Western City* magazine (article begins on page 29). Santa Clara won the League of California Cities’ prestigious Helen Putnam Award for its efforts.

CALIFORNIA'S CODE OF FAIR CAMPAIGN PRACTICES

There are basic principles of decency, honesty, and fair play which every candidate for public office in the State of California has a moral obligation to observe and uphold, in order that, after vigorously contested, but fairly conducted campaigns, our citizens may exercise their constitutional right to a free and untrammelled choice and the will of the people may be fully and clearly expressed on the issues.

THEREFORE:

(1) I SHALL CONDUCT my campaign openly and publicly, discussing the issues as I see them, presenting my record and policies with sincerity and frankness, and criticizing without fear or favor the record and policies of my opponents or political parties which merit such criticism.

(2) I SHALL NOT USE OR PERMIT the use of character defamation, whispering campaigns, libel, slander, or scurrilous attacks on any candidate or his or her personal or family life.

(3) I SHALL NOT USE OR PERMIT any appeal to negative prejudice based on race, sex, religion, national origin, physical health status, or age.

(4) I SHALL NOT USE OR PERMIT any dishonest or unethical practice which tends to corrupt or undermine our American system of free elections, or which hampers or prevents the full and free expression of the will of the voters including acts intended to hinder or prevent any eligible person from registering to vote, enrolling to vote, or voting.

(5) I SHALL NOT coerce election help or campaign contributions for myself or for any other candidate from my employees.

(6) I SHALL IMMEDIATELY AND PUBLICLY REPUDIATE support deriving from any individual or group which resorts, on behalf of my candidacy or in opposition to that of my opponent, to the methods and tactics which I condemn. I shall accept responsibility to take firm action against any subordinate who violates any provision of this code or the laws governing elections.

(7) I SHALL DEFEND AND UPHOLD the right of every qualified American voter to full and equal participation in the electoral process.

I, the undersigned, candidate for election to public office in the State of California or treasurer or chairperson of a committee making any independent expenditures, hereby voluntarily endorse, subscribe to, and solemnly pledge myself to conduct my campaign in accordance with the above principles and practices.

_____ Date _____ Signature

Another thing to keep in mind is that California law requires all candidates to be given the opportunity to sign a code of campaign conduct.⁵⁰ The code is provided to a candidate at the time he or she is given the papers necessary to run for office. The local elections official keeps copies of all signed codes on hand for public inspection until 30 days after the election.⁵¹ A candidate's agreement to abide by the code is voluntary.⁵² *For the text of the code, see sidebar on page 53.*

⁵⁰ See Cal. Elec. Code § 20440.

⁵¹ See Cal. Elec. Code § 20442.

⁵² See Cal. Elec. Code § 20444.

CHAPTER 6: CONCLUSION



***“The way to succeed is never quit. That’s it.
But really be humble about it.”***

– Alex Haley, 20th-century American author

“The greater the obstacle the more glory in overcoming it.”

– Jean Baptiste Molière, 17th-century French dramatist

Is adopting an ethics code going to change the community’s perception of agency officials overnight? No. But the process of adopting and implementing an ethics code can have several benefits. Among them is the opportunity to make a meaningful commitment to ethical values in public service. Another is meeting the public’s expectations regarding how its public servants should behave.

To achieve these benefits, the agency needs to do more than simply adopt a suggested “model” ethics code. The agency must make a concerted effort to reflect on the ethical values that should inform a public official’s behavior. It must then assiduously put these values into action.

An ethics code is not a “silver bullet” solution to ethics issues for an agency. But, by committing to both a process of developing and implementing a values-based ethics code, an agency and its officials can be better prepared for challenges they may face.

There is also a synergy when multiple agencies make this commitment and adopt a code.

If significant numbers of local agencies adopt and genuinely implement such values-based ethics codes, it will provide empirical support for the proposition that many believe to be true – that local government is the most responsive, ethical and accountable level of government.

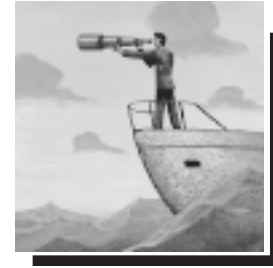
Let the Institute for Local Self Government know what your agency decides to do, what you learn from the experience and how this guide can be improved. We welcome your feedback in all forms.

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RESOURCES OF INTEREST



WEBSITES

American Society for Public Administration. This organization has an interesting, values-based professional ethics code.

www.aspanet.org/ethics/coe.html

Center for the Study of Ethics in the Professions. Sponsored by the Illinois Institute of Technology, this site provides links to ethics codes online. www.iit.edu/departments/csep

City Ethics. A collaborative effort with the Council on Governmental Ethics, this site features presentation materials from conferences and links to other ethics sites.

www.cityethics.org

Communities of Character. Communities of Character is a comprehensive and practical approach to character education and training which helps organizations define their core values. Groups identify the ideals that will shape behavior.

www.communitiesofcharacter.org

Ethics Toolkit. An interesting site offering a “toolkit” for adopting ethics codes.

www.ethics.org/toolkit.html

Independent Commission Against Corruption. This site has a 200-plus page guide entitled “Practical Guide to Corruption Prevention.”

www.icac.org

Ethics Codes and Campaigns. This site has information for candidates, media and the public about promoting voluntary codes of campaign conduct.

<http://www.campaignconduct.org/>

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TOP SEVEN THINGS TO KNOW ABOUT ETHICS CODES

- 1. What An Ethics Code Is.** An ethics code reflects the agency's shared values in public service, leadership and decision-making. A code reflects upon the agency and gives the public confidence about the agency's values and priorities.
- 2. The Process Is As Important As the Product.** While it makes complete sense to start with a review of other agencies' codes, it is important to have your agency's code reflect the unique values and priorities for your community. It is also important for those whose conduct will be guided by the code to have input into the content.
- 3. Style Matters.** An agency's code should be written in simple, direct language. Standards should be stated as much as possible in the positive (what kinds of conduct are desired as opposed to what is prohibited). Illustrate the standards for greater clarity and understandability (What does a particular standard or value look like in practice? What kinds of behavior are inconsistent with the particular standard or value?). Avoid legalistic language at all costs.
- 4. Values-Based versus Rule-Based Codes.** Rules-based codes speak in terms of "don'ts". Values-based codes speak more in terms of aspirations and priorities ("do's"). The concept underlying this guide is that values-based codes serve as a positive complement to the current framework of ethics laws in California.
- 5. Adoption of the Code Is Just the First Step.** For the agency's ethics code to truly make a difference, the values expressed in the code need to be communicated and applied. The code needs to be communicated to all whose behavior is intended to be guided by the code; training/orientation sessions need to cover the code and its importance to the community. This is how officials "walk-the-talk," and the "walk" needs to start at the upper-most levels of the organization.
- 6. Periodic Review Helps.** Periodically reviewing the principles in the code (this guide recommends an annual review) keeps the code current and in everyone's consciousness—including the public's. This process can include the addition or revision of standards, as well as the expansion of the code's application to others in the agency.
- 7. Accountability.** Self-accountability is the most constructive approach. A helpful question to pose in a situation in which it appears conduct inconsistent with the code will occur or has occurred is whether a particular course of action is or isn't (was or wasn't) consistent with the agency's ethics code and values. When a heavier hand is necessary, any warning and counseling of individuals about the importance of adhering to the code should be done in a fair, consistent and even-handed manner.

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