

Promoting Personal and Organizational Ethics

August 31, 2016
10:00 am – 11:15 am



Speakers

Eileen O'Hare Anderson, Partner, Liebert Cassidy Whitmore

Ed Shikada, Assistant City Manager, City of Palo Alto and member of
the Cal-ICMA Ethics Committee

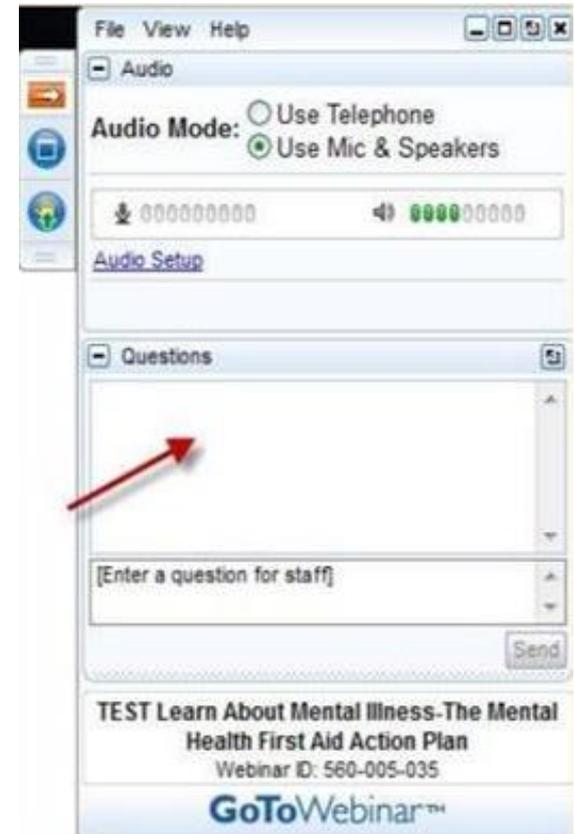
Moderator

Melissa Kuehne, Communications and Development Manager,
Institute for Local Government

**Thank you to ILG Partner Liebert Cassidy
Whitmore for making this webinar
possible!**

How to ask a question during the webinar

- Please type your questions into the question box at any time during the webinar.
- We will read your questions during the question period at the end of the webinar.



About The Institute for Local Government

ILG is the non-profit research and education affiliate of



CSDA

**California Special
Districts Association**

Districts Stronger Together



www.ca-ilg.org

ILG

ILG Mission



- Promoting good government at the local level
- Practical, impartial and easy-to-use materials



Promoting Personal and Organizational Ethics

Institute for Local Government (ILG)
August 31, 2016

Presented By: Ed Shikada & Eileen O'Hare -Anderson

LAWS RELATING TO PERSONAL FINANCIAL GAIN

Duty of Public Officials and Employees

- To be personally disinterested in contracts, financial matters, or hearing processes in which he or she is officially responsible.
- Avoid even the *appearance* or *possibility* of a conflict.

Government Code § 1090 Conflicts

General Rule

- A public officer or employee may not make contracts in which he or she is financially interested.
- Penalty: there can be criminal and civil consequences:
 - *People v. Honig*
 - *Thomson v. Call*

Effect of 1090 Conflict

- Insufficient for interested party to abstain from voting.
- Insufficient if contract is fair, just, and equitable.
 - Or even if more advantageous than another contract.
- No “good faith” defense.
- Contract is **void**.

Case Study on Financial Interests

City Councilmember Susan is the owner of a large parcel of property within the City limits. The City is looking to purchase land for a new City community center. Susan thinks her property would be perfect, so she sells the parcel below the fair market value to a property developer who then sells it to the City. To be safe, Susan discloses her involvement and abstains from the final decision to buy the property.

Did Susan violate Gov't Code §1090?

Case Study on Financial Interests

YES

Case Study on Gov't Code §1090

David is a Member of a Port District Board. David formed a consulting company that entered into a contract with an energy company that had business before the Board. David disclosed his consulting income and abstained from voting on any matters involving the energy company.

Has David violated Gov't Code §1090?

Case Study on Gov't Code §1090

YES

Political Reform Act Conflicts

General Rule

- No public official may:
 - Make/participate/use his or her position to influence decision.
 - If he or she knows/should know of disqualifying conflict of interest.

Effect of Conflict

- Board member must:
 - Publicly declare the specific interest.
 - Leave the room/refrain from participating.
- Employees/Officials – No clear requirements.
- Once again, no good faith defense!
- Penalties: primarily fines imposed by FPPC, and they can be large!

Case Study – Political Reform Act

The County Board of Supervisors is asked to review a proposal to lease land to a local business who pays Supervisor Anderson a monthly salary. The decision to be made by the Board will not affect Anderson's monthly salary.

Can Anderson participate in the decision?

Case Study – Political Reform Act

NO

Common Law Conflict of Interest

- Common Law Bias:
 - Based on Personal Interest:
 - Public Officials Cannot Use Their Position for Personal Gain.
 - Based on Unofficial Source: Decision at a Hearing Should Be Based on the Record.
- Common Law Prohibition on Prejudging:
 - Public Official Should Not Be Committed to an Outcome Before the Hearing.
 - Opinions Are Okay, But Should Not Approach a Hearing With a Closed Mind.

OTHER ETHICAL ISSUES

Laws Relating to Perquisites of Office

- Gift Limits.
- Travel Payments.
- Ban on Honoraria.
- Use of Public Funds.
- Gift of Public Funds.
- Prohibition on Discounted Travel.

Government Transparency Laws

- Brown Act.
- Public Records Act.
- Economic Interest Disclosure.

Laws Relating to Fair Process

- Elements of Due Process.
- Incompatible Offices.

Ethics Leadership:

*Moving from Individual Responsibility
to Organizational Culture*

A Long Journey with Plenty of Company

An Ongoing Conversation Among Local Government Managers

- While essential to local government effectiveness, Ethics is rarely discussed within individual agencies beyond mandated training and policies, except when something goes wrong
- In 2012-15, the California Chapter of the International City/County Management Association (Cal-ICMA) recognized individuals with “Ethical Hero” awards at the League of California Cities’ annual City Managers Department conference.
- Cal-ICMA is now exploring how to raise the profile of ethics, engage partners, and recognize achievements in effective local ethics programs

Cal-ICMA's Ethics Awareness & Recognition Project

- Our goals are to:
 - Increase public awareness of ethics as a core value of local government management
 - Share innovative approaches
 - Build pride in organizations with successful programs
- Initial focus is on a recognition / award for admirable local agency ethics programs

Progress to Date

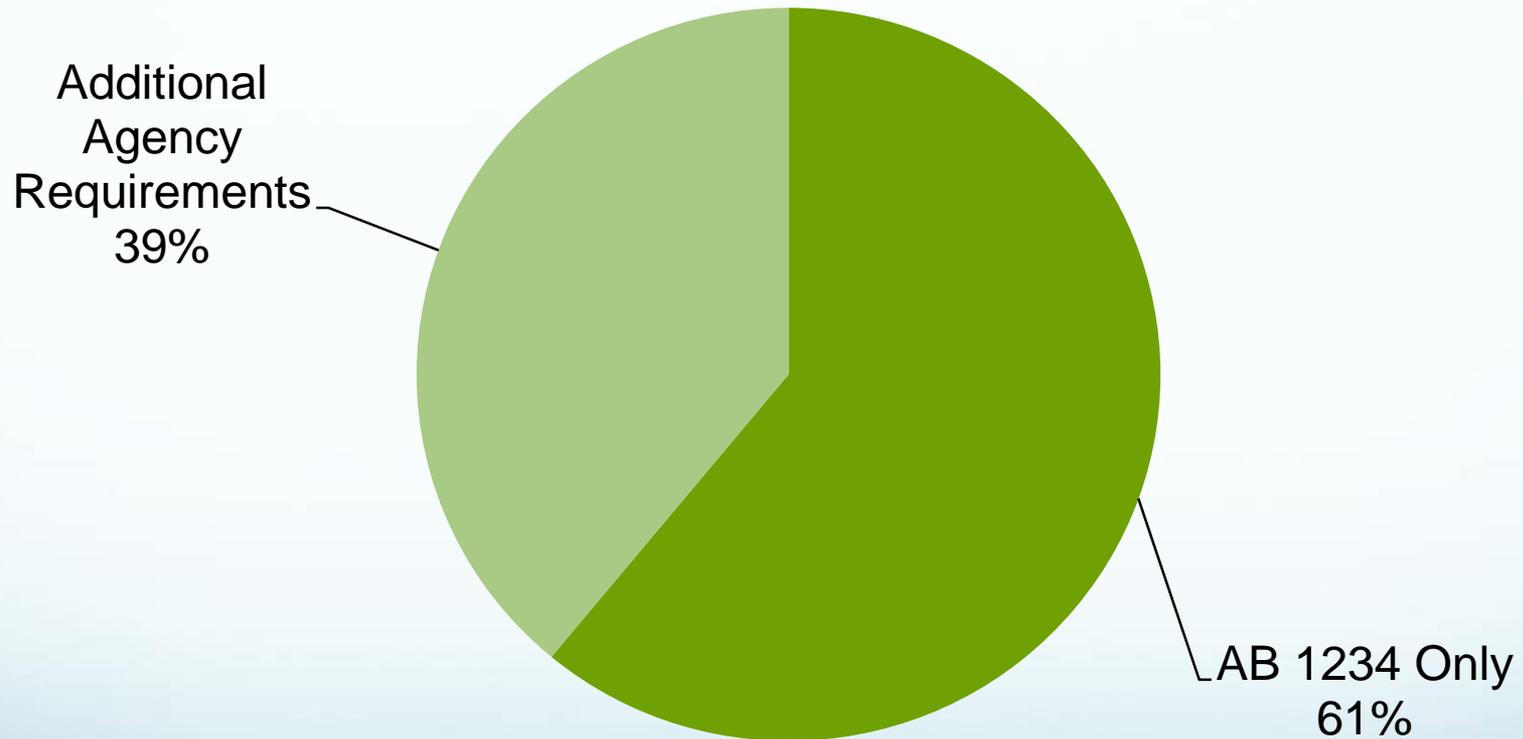
- Cal-ICMA Board set this initiative as a 2016 priority and approved workplan
- Engaged partners:
 - The Institute for Local Government (ILG)
 - Municipal Management Assn of Northern California (MMANC)
 - Municipal Management Assn of Southern California (MMASC)
 - Santa Clara County Leadership Academy
 - International City/County Management Association (ICMA)
- 2016 Santa Clara County Leadership Academy team selected this as their project to take on
- Statewide survey just completed
- Evaluating results and discussing next steps on recognition and establishing a sustainable platform

Ethics Program Building Blocks

- Locally Adopted Policy/Program
 - Statement of Values and Expectations
 - Reinforcement of Accountability
- Organizational Support
 - Point of Contact
 - Ongoing Communication
- System for Handling Issues
 - Helpline/Hotline
 - Procedures Outside of Reporting Relationships
- Roughly 500 cities(+) contacted, 73 responses (15%)

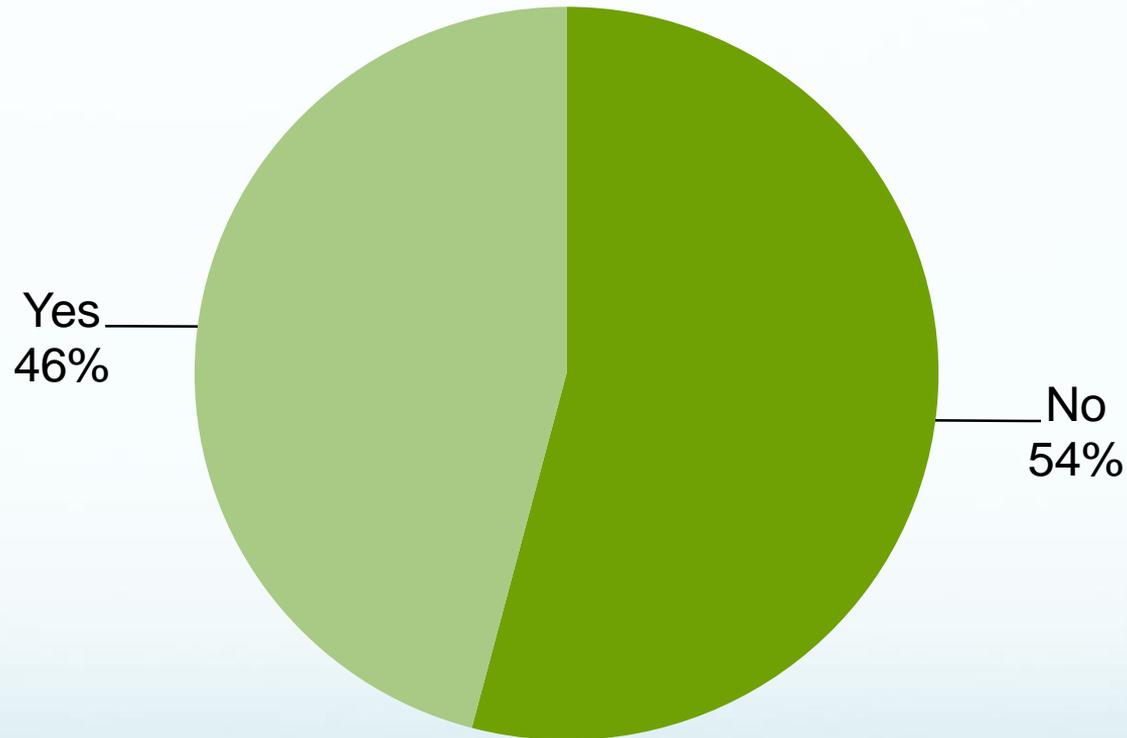
Preliminary Survey Results

Ethics Code, Policy or Program



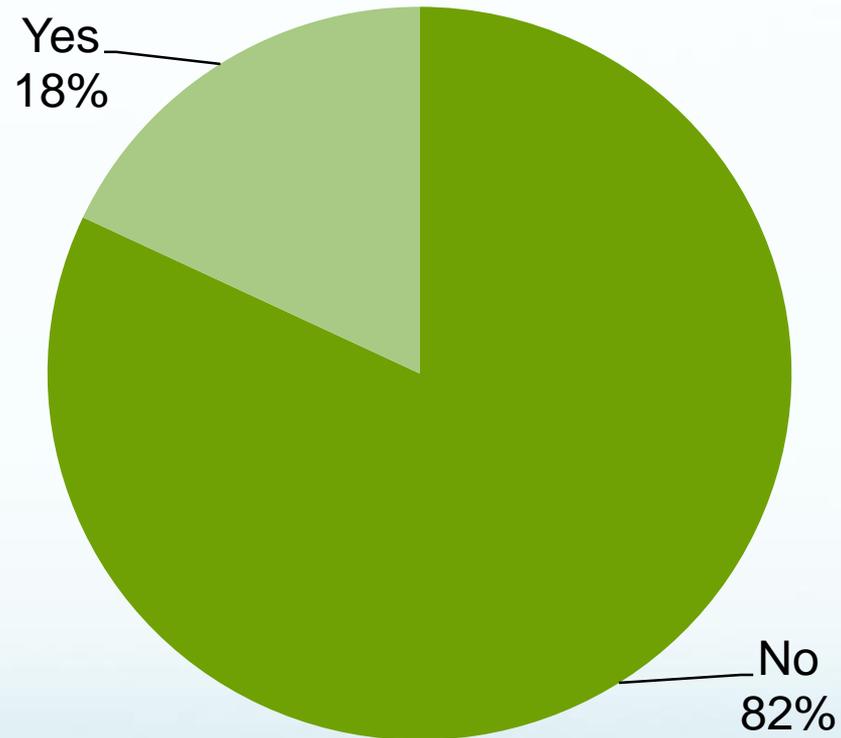
Preliminary Survey Results

Individual Overseeing Ethics



Preliminary Survey Results

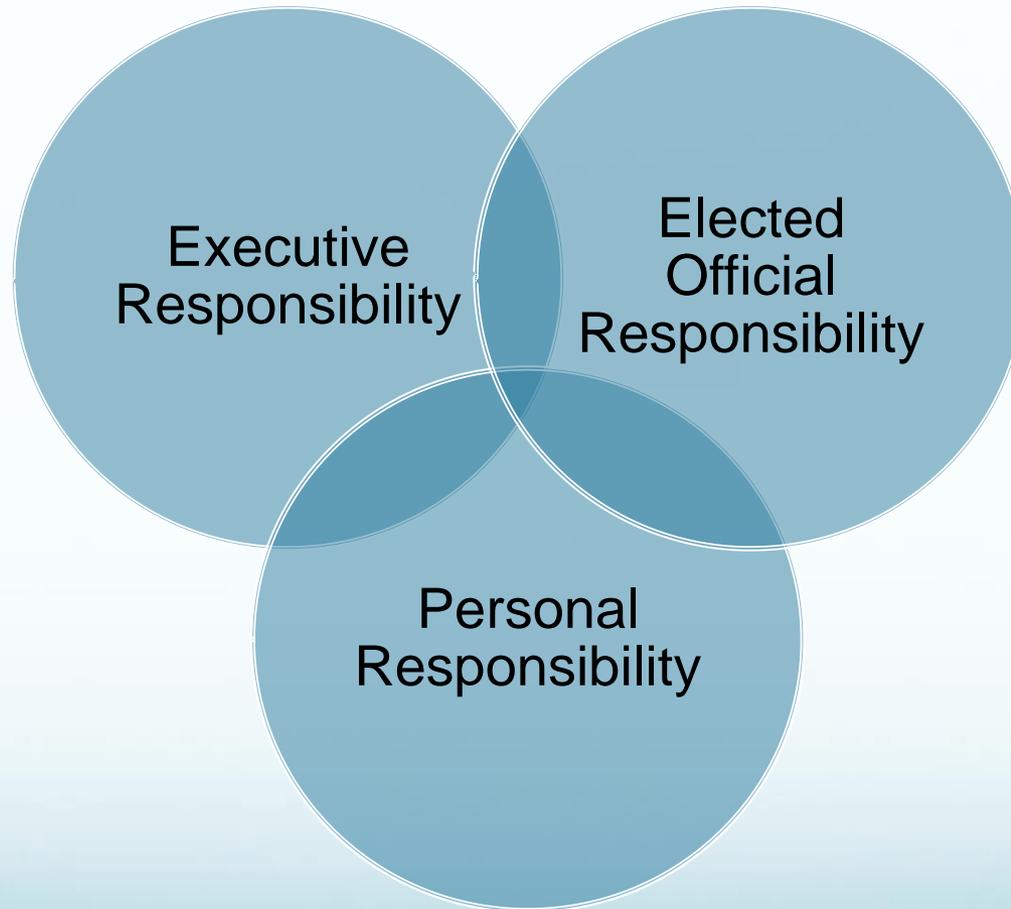
Ethics Hotline or Helpline



Institute for Local Government (ILG) Resources

- The Authoritative Reference for Local Government Ethics Resources
- Ethics Culture Assessment Tool – A “simple” framework for thinking about ethics in a local government organization context
- Good Governance Checklist – A comprehensive reference for “Good and Better Practices”
- <http://www.ca-ilg.org/ethics-assessments>

ILG Reference: Assessing Your Agency's Ethics Culture



Personal Responsibilities

1. Encouraged to speak up
2. Expected to report questionable behaviors
3. Clear where to turn to for advice
4. Expected to follow the spirit as well as letter of law
5. Expected to use ethical behaviors
6. Expected to tell the complete truth
7. Expected to treat everyone equally
8. Expected to follow governing policy not individuals
9. Surrounded by ethical coworkers
10. Working with trusted confidants

Executive Responsibilities

1. Create environment comfortable for staff to raise concerns
2. Appreciate staff bringing forward bad news
3. Expect staff to use ethical practices
4. Gear decisions to spirit as well as letter of law
5. Treat public with civility and respect
6. Use public resources for agency purposes only
7. Appoint and reward people for performance and contributions
8. Treat public equally
9. Help elected officials work within their policy role
10. Refuse to accept gifts and/or special treatment from those with business with agency

Elected Official Responsibilities

1. Create environment comfortable for staff to raise concerns
2. Appreciate staff bringing forward bad news
3. Expect staff to use ethical practices
4. Gear decisions to spirit as well as letter of law
5. Treat public with civility and respect
6. Use public resources for agency purposes only
7. Allow staff to handle day-to-day management issues
8. Treat public equally
9. Abstain where reasonable people may question ability to make a fair decision
10. Refuse to accept gifts and/or special treatment from those with business with agency

Palo Alto's Experience to Date

- City Council adopted Conflict of Interest Code in 2006
- Audit completed and recommendations approved in 2008
- City Manager subsequently rolled out program elements:
 - Ethics policy
 - Practice guidance
 - Citywide training for 1,000 employees in 2015-16 (contracted with ILG)
- Employee feedback generally positive, while reinforcing the multiple dimensions of ethical culture

Taking (Y)our Next Steps

- Every organization and community has its own context; one size/policy/sequence may not fit yours
- Culture is organic; systems can help point growth in a positive direction
- ILG is an excellent resource, guided by local governments like yours
- Agencies throughout California are on the journey; remember you are not alone!

Thank you.

Ed Shikada

Assistant City Manager | City of Palo Alto
650.329.2146 | Ed.Shikada@CityofPaloAlto.org
www.cityofpaloalto.org

Eileen O'Hare-Anderson

Partner | Liebert Cassidy Whitmore - Fresno
559.256.7806 | eanderson@lcwlegal.com
www.lcwlegal.com/eileen-ohare-anderson

Questions?



ILG's Ethics and Transparency Resources

AB 1234 Training

Understanding Public Service Ethics Laws

The Brown Act and Open Meetings

Good Governance Checklist



Visit www.ca-ilg.org
to find out more!

Join us for the rest the ethics webinar series!

- **September 22nd** – Abstentions and Disqualifications
Conflicts of Interest and When to Step Aside
- **September 29th** – The Brown Act

Find out more here:

www.ca-ilg.org/post/upcoming-ilg-webinars

Thank You!

And thank you to Liebert Cassidy Whitmore and
Cal-ICMA.

The webinar recording and PowerPoint slides will be
available on ILG's website shortly.

If you have additional questions please contact
Melissa at mkuehne@ca-ilg.org